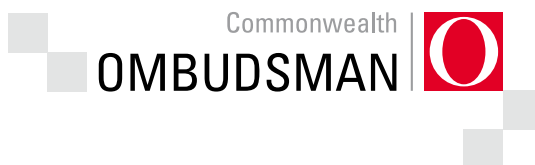


annual report 2006–2007





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8 October 2007

The Hon. John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I have pleasure in submitting the thirtieth Commonwealth Ombudsman Annual Report for the year ended 30 June 2007, as required by s 19(1) of the *Ombudsman Act 1976*.

In accordance with s 19F(3) of the Act, the report also contains the twenty-third Annual Report of the Defence Force Ombudsman.

Section 38 of the *Complaints (Australian Federal Police) Act 1981*, now repealed, requires a report on operations of the Ombudsman under that Act during the year ended 30 June 2007. This report deals with those matters.

Section 19(4) of the Act requires that the report be laid before each House of the Parliament within 15 sitting days of its receipt.

Yours sincerely

Prof. John McMillan
Commonwealth Ombudsman

GUIDE TO THE REPORT

When developing the content of our annual report, we set out to meet not only the parliamentary reporting requirements but also to provide information to the community about the diverse nature of the complaints handled by our office.

There are a number of target audiences for our report, including members of parliament, Australian Government departments and agencies, other ombudsman offices, the media, potential employees and consultants, and the general public who deal with government agencies.

As some parts of the report will be of more interest to you than others, you can read this page to help work out which parts will be more useful. Each part is divided into sub-parts.

Overview

Includes the Commonwealth Ombudsman's review and organisation overview. The review is an executive summary of the principal developments affecting the office's work during the year and its more significant achievements. The overview outlines the office's role, responsibilities, outcome and output structure and organisational structure.

Performance review

Details performance against the office's two outputs, comments on the management and accountability development and operation of the office's governance arrangements, outlines the challenges facing the office in complaint handling, and the work the office does to foster and promote good government administration.

Oversight of Australian Government agencies

Focuses on particular issues that arose in investigating complaints about individual agencies, provides examples of the diversity of complaint issues about government, how the Ombudsman's office helped people to resolve their complaint issues, and general administrative problems across government agencies. This part also includes an overview of changes over the thirty years since the office of the Ombudsman was created.

Appendixes

The appendixes include occupational health and safety reporting; freedom of information reporting; a list of papers and presentations by staff; tables setting out the numbers of approaches and complaints received about individual Australian Government agencies; a list of consultants engaged during the year; and financial statements.

We have also included a list of tables and figures contained in the body of the report, a glossary of terms, and a list of addresses for our offices in each state and territory capital city.

CONTACTING THE COMMONWEALTH OMBUDSMAN

Enquiries about this report, or the information in it, should be directed to the Director of Public Affairs, Commonwealth Ombudsman.

If you would like to make a complaint, or obtain further information about the Ombudsman:

Visit: Ground Floor, 1 Farrell Place, Canberra ACT 2600
Write to: GPO Box 442, Canberra ACT 2601
Phone: 1300 362 072 (local call charge)
Fax: 02 6249 7829
Email: ombudsman@ombudsman.gov.au
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman Annual Report 2006–2007 is available on our website.

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foreword

This is the thirtieth annual report of the Commonwealth Ombudsman. A special theme of this report is the changes that have occurred in the office since it was established in July 1977. Those changes touch most aspects of the office, including the legislation, structure, functions, work methods, and activities.

The founding of the office marked the birth of a new approach to handling problems people encounter in dealing with government. Traditional mechanisms such as courts and members of parliament would remain, but the Ombudsman's office would provide a new avenue, with distinct features. There would be no formality or charge for lodging a complaint; the office could look at issues arising in nearly all areas of government; investigation powers akin to those of a royal commission could be used where necessary; the size and continuity of the office would enable it to develop expertise and a special relationship both with the public and with government agencies; and, most importantly, the office was guaranteed statutory independence.

The Ombudsman function encapsulated twin principles—people have a right to complain about government when things go wrong, and there is a duty on government to respond. Developments over the past thirty years have reinforced those principles. Other independent agencies with a statutory oversight or complaints function have been established, internal complaint-handling procedures have been implemented across government, and agencies have adopted service charters containing commitments to the public about the standards of service they can expect.

These changes have supplemented and changed the role of the Ombudsman's office, but not made it any less relevant. This thirtieth report contains many examples that illustrate



Commonwealth Ombudsman, Prof. John McMillan

the continuing need for a vibrant Ombudsman's office in the structure of government.

In 2006–07 the office received 33,322 approaches and complaints—a rise of 18% on the previous year. While a majority were about matters that did not require investigation or were beyond the office's jurisdiction, they nevertheless show the need for an independent office that people can trust and turn to with a complaint or query.

The growing complexity in the structure and functions of government lies behind the level of public contact with the office. Two examples discussed in this report concern complaints about security-related and other

issues in Australian airports, and complaints arising from the Welfare to Work initiatives that are administered jointly by a number of Australian Government agencies and non-government organisations. A new and extended jurisdiction covering complaints about the actions of contracted government service providers is an important evolution in the role of the Ombudsman.

Another initiative commencing in 2007 that will draw on this experience in dealing with complex government programs administered jointly by numerous agencies, is to work with communities and agencies in handling complaints arising from the Government's Northern Territory Emergency Response. Additional funding was provided to the Ombudsman's office in July 2007 to support this role.

The continuing relevance of the Ombudsman's office is also captured in the range of other roles the office has developed over thirty years. The two core functions of dealing with individual complaints and undertaking own motion investigations continue to provide the bulk of the work. A third function that has grown since it began in 1988, is to undertake periodic inspection of the records of law enforcement agencies to check for compliance with laws relating to telecommunications interception, electronic surveillance, controlled operations and stored communications. This scrutiny provides reassurance to Parliament and the public that law enforcement activities that are intrusive yet shielded from public gaze are conducted properly and lawfully.

A new function that commenced in 2005 is to prepare a report for tabling in Parliament on each person held in immigration detention for more than two years. Another function that commenced in 2007 is to conduct an annual review and report to Parliament on how the Australian Federal Police has handled complaints about its officers and operations.

These new and specialised functions in the office are mirrored in the distinctive titles that it has acquired. The profile of the office as Commonwealth Ombudsman has been enhanced by the additional role and titles of Defence Force Ombudsman, Taxation Ombudsman, Immigration Ombudsman, Postal Industry Ombudsman and Law Enforcement Ombudsman.

Two other proposals are currently under consideration within government—for the office, as Access Card Ombudsman, to perform a case review function in relation to disputes about the grant or refusal of an Access Card; and to undertake a periodic review of quarantine investigations.

It is a matter of pride for the Ombudsman's office that its stature and relevance has grown rather than diminished over thirty years. There was a pleasing mention of this point at a seminar in 2006 by Sir Anthony Mason, former Chief Justice of Australia and a member of the Commonwealth Administrative Review Committee that proposed the new system of Australian administrative law of which the Ombudsman is a part. Sir Anthony noted that 'Of the major reforms, the Ombudsman has perhaps been the most successful ... Ombudsmen have shown that it is possible to maintain good working relations with government departments without compromising independent decision making.'

The achievements of the Ombudsman's office derive from the commitment and innovation of staff over thirty years, working at offices located around Australia. An appropriate note on which to end this foreword to the thirtieth annual report is to pay tribute to the staff who have taken up the challenge to develop the office from a new idea to an energetic institution that plays an essential and growing role in the system of government.

John McMillan

Commonwealth Ombudsman

overview

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1 Ombudsman's review

This report marks the milestone of thirty years operation of the Commonwealth Ombudsman's office. During that period the office has assisted hundreds of thousands of people, and helped improve administration across the gamut of government activity. To maintain its relevance and effectiveness the office has adapted to the significant changes that have occurred in government and society over the last thirty years.

The thirtieth year has been a time of both consolidation and change in the office. The work practices, complaint management system and Public Contact Team introduced last year were refined. Two new roles of Postal Industry Ombudsman and Law Enforcement Ombudsman were implemented. There was a change in the way that complaints about the Australian Federal Police (AFP) are handled, following legislative revision. Our inspections and monitoring role in relation to law enforcement agencies and other enforcement agencies expanded.

'This report marks the milestone of thirty years operation of the Commonwealth Ombudsman's office.'

The core activity of the office remains the handling of complaints and enquiries from members of the public about government administrative action. This objective is captured in the office's outcome—administrative action by Australian Government agencies that is fair and accountable. We meet this objective by helping people to resolve complaints about government agencies, by fostering improved government administration and by focusing on integrity and legislative compliance in agency administration.

We handled complaints made about 113 Australian Government departments and agencies, covering all aspects of public administration. We provided remedies and assistance to thousands of people around the country. We also made submissions to parliamentary and government inquiries, to

contribute to the improvement of Australian Government administration.

Other major activities included the investigation on the Ombudsman's initiative, or 'own motion', of the administrative actions of Australian Government agencies; and inspection of the records of agencies such as the AFP and the Australian Crime Commission (ACC), to gauge their compliance with legislative requirements applying to selected law enforcement and regulatory activities.

COMPLAINT AND INSPECTIONS WORKLOAD

In 2006–07 we received a total of 33,322 approaches and complaints (28,227 in 2005–06). As in recent years, the majority (74%) of approaches and complaints about agencies within jurisdiction relate to five agencies—Australia Post, the Australian Taxation Office (ATO), Centrelink, the Child Support Agency (CSA), and the Department of Immigration and Citizenship (DIAC).

The total number of approaches and complaints to the Ombudsman about agencies within jurisdiction has been fairly stable over the past four years. There was an increase of 51% in the number of approaches to the office relating to out-of-jurisdiction matters and requests for information. Overall this number has increased over the last four years.

'... we received a total of 33,322 approaches and complaints ...'

This year, we investigated 4,251 approaches and complaints (24%) covering 5,040 issues (31% in 2005–06) and identified agency error or deficiency in 4% (1% in 2005–06, under different guidelines and work practices). See Chapter 3—*Performance report* for further information on administrative deficiency.

The Ombudsman is responsible for monitoring the integrity of the records of telecommunications interceptions, use of surveillance devices and controlled operations conducted by the AFP, the ACC, the Australian Commission for Law Enforcement Integrity, some state law enforcement agencies and other enforcement agencies. We inspected the records of the AFP on nine occasions, of the ACC on six occasions, and the New South Wales Police and South Australia Police on one occasion each, for statutory compliance, adequacy and comprehensiveness.

FINANCIAL PERFORMANCE

In 2006–07, the office's operating revenue was \$18.923 million and operating expenses were \$18.720 million, resulting in a net surplus of \$0.204 million. The surplus is due primarily to some delays in implementing new initiatives. The office received an unqualified audit report on its 2006–07 financial statements.

PUBLIC ADMINISTRATION

Through our complaint handling and investigative work, we come into contact with most aspects of Australian Government administration. We see it as a distinct role of the Ombudsman—as stated in our strategic plan—to 'contribute to public discussion on administrative law and public administration' and to 'foster good public administration that is accountable, lawful, fair, transparent and responsive'. We mainly do this by making suggestions and recommendations to agencies, conducting own motion investigations to help foster improvements in systemic issues, and making submissions to government and parliamentary inquiries.

Recognising the role and capacity of the office, in 2005 and 2006 the Australian Government requested the office to investigate 247 cases where people had been held in immigration detention, and later released on the basis they were not, or were no longer, unlawful non-citizens. This was in addition to the case of Ms Vivian Alvarez. All these investigations were completed by June 2007 and resulted in nine public Ombudsman reports, including seven being released in 2006–07. While the issues under investigation were specific to immigration administration, and are being addressed through

DIAC's reform program, there were broader lessons emerging from the investigations that are relevant more generally for public administration in Australia.

In 2006–07 we published reports on another six own motion and major investigations. The reports related to the Australian Defence Force, the AFP, the Australian Film Commission, the ATO, the Migration Agents Registration Authority, and complaint handling in Australian airports, involving a number of Australian Government agencies. To the extent possible, Ombudsman reports on own motion investigations are published in full or in an abridged version on our website at www.ombudsman.gov.au.

We also commenced several own motion investigations, which we expect to complete in 2007–08.

The Ombudsman made submissions to parliamentary inquiries and commented on a range of administrative practice matters and legislative proposals during the year. Examples include submissions to the Senate Legal and Constitutional Affairs Committee regarding proposed new search and seizure powers for Centrelink officers, and to the Committee's inquiry into the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006. The Ombudsman also appeared before the Senate Foreign Affairs, Defence and Trade Committee regarding its inquiry into reform of the military justice system.

By fostering improved government administration, we can strengthen the community's confidence in the integrity and professionalism of government and we can support fairer and more accountable government.

Jack Richardson prize

In 2002 the Ombudsman's office established the Australian National University (ANU) Jack Richardson Prize in Administrative Law in recognition of the contributions made by the first Commonwealth Ombudsman, who was also a former professor of law at the ANU. The annual prize is for the best essay by an undergraduate student in administrative law. This year's Jack Richardson prize was awarded to Jane Woodward.

DEVELOPING ROLE OF THE OMBUDSMAN

Review of Commonwealth Ombudsman legislation

Last year we reported that a review of the *Ombudsman Act 1976* (Cth) had been submitted to the Prime Minister. The review aims to improve and modernise the legislative framework for the office. The Australian Government is considering its response.

Immigration Ombudsman

During 2006–07 the Immigration Ombudsman function, conferred on the Ombudsman in late 2005, was consolidated. We implemented new programs in monitoring and inspecting immigration compliance and detention activity, and commenced an expanded program of own motion investigations into immigration-related matters. As noted above, the office completed its investigation into the 247 cases referred to the Ombudsman and published a number of related reports. The office also continued to meet its statutory requirement to report on people held in detention for two years or more.

Postal Industry Ombudsman

The Postal Industry Ombudsman (PIO) scheme commenced operation in October 2006. In 2006–07 our office worked on raising the profile of this new function in the broader community. By the end of June 2007, five private postal operators had joined the scheme, in addition to Australia Post, and the PIO had received over a thousand approaches and complaints.

Law Enforcement Ombudsman

As reported in detail in the 'Law Enforcement' section of Chapter 7—*Looking at the agencies*, the legislative regime covering the handling of complaints about the AFP changed during 2006–07. The *Complaints (Australian Federal Police) Act 1981* (Complaints Act) was repealed on 30 December 2006 and replaced with Part V of the *Australian Federal Police Act 1979* (AFP Act) and amendments to the Ombudsman Act.

Under the new system, the Commonwealth Ombudsman is designated as the Law Enforcement Ombudsman. In that role the Ombudsman has a responsibility to review the administration of the AFP's handling of

complaints, through inspection of AFP records, as well as investigating more serious conduct issues. During the year we worked to finalise complaints made under the Complaints Act and commenced dealing with complaints about the AFP under the Ombudsman Act. We conducted the first inspection of the AFP's records of finalised complaints made under the AFP Act. A report on the adequacy and comprehensiveness of the AFP complaint system will be tabled in Parliament in 2007–08.

INTERNATIONAL COOPERATION

The Ombudsman's international program continued during the year. Funding from Australian Agency for International Development (AusAID) programs supported the facilitation of specialist advice, training, technical assistance and support to the National Ombudsman Commission of Indonesia, the Thailand Ombudsman, and the Ombudsmen in the Cook Islands, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga and Vanuatu.

The Commonwealth Ombudsman's office is well placed to continue playing a key supporting role in developing and enhancing Ombudsman offices throughout the Asia-Pacific region.

KEY STRATEGIC ACHIEVEMENTS

Achievements for 2006–07 include the following.

- We received 33,322 approaches and complaints, finalised 17,934 approaches and complaints in jurisdiction covering 19,116 issues, and handled 15,319 approaches related to out-of-jurisdiction matters and requests for information.
- We completed 13 own motion and major investigations containing a total of 106 recommendations, of which 101 were accepted by agencies; three other recommendations were a matter for government, and two recommendations that applied to more than one agency were accepted by one or more agencies.
- We consolidated and refined our new work practices and complaint management system, and the operation of the Public Contact Team, to enhance overall performance and ensure consistency at a national level.

- We worked with the Australian Government Information Management Office, the Australian National Audit Office and the Privacy Commissioner in publishing the *Automated Assistance in Administrative Decision-making Better Practice Guide*.
- We implemented the new legislative arrangements covering the handling of complaints about the AFP.
- We implemented our enhanced role and responsibilities in immigration oversight.
- We commenced operation of the Postal Industry Ombudsman scheme.
- We expanded our oversight of the use of telephone interception and access, and of surveillance devices.
- We developed proposals for improving our service delivery to Indigenous people and communities.
- We continued our participation in a national research project on the management of whistleblowers and other internal witnesses in public sector agencies, with three major surveys being conducted.
- We conducted 116 outreach activities throughout all states and territories.
- We commissioned a market research company to conduct a second public awareness survey, which showed that 'the Ombudsman' is the preferred avenue to resolve complaints about Australian Government departments and agencies.
- We commissioned a market research company to survey Australian Government agencies to ascertain their views about our effectiveness and interaction with them, with a view to speedier and more effective resolution of complaints.
- We hosted or met with several senior-level delegations from other countries, including from Canada, China, Malaysia, Papua New Guinea, the United Kingdom and the United States.
- We contributed to research projects of the Administrative Review Council on coercive powers, complex business regulation, and developing Best Practice Guides to Good Decision Making.

- The Ombudsman and staff delivered over 65 papers, and made presentations at conferences and seminars held around Australia.

CHALLENGES

The office also faced major challenges, some of a continuing nature, including:

- maintaining an effective national office structure that integrates the work of all staff in a consistent manner
- maintaining the traditions and stability of the office, while responding to increases in the functions of the office
- balancing the immediate pressure of resolving individual complaints against the broader gains achievable by carefully targeting major and systemic issues in own motion and major investigations.

THE YEAR AHEAD

In the coming year, the office's key aims include:

- reviewing the recent work practice changes in the office to identify further opportunities to improve timeliness, quality assurance and consistency in complaint handling
- reviewing the range of work undertaken in our various offices, to improve our national structure and level of expertise in particular subject areas
- reviewing selected categories of administrative decisions in key agencies
- publishing a range of information on best practice in public administration
- improving our level of service to Indigenous people and communities
- continuing to build the profile of the office and delivering our outreach program to regional and rural Australia
- sustaining effective working relationships with agencies and departments in order to deal with complaints more efficiently and effectively
- surveying complainants to ascertain their views of our services, and areas for improvement.

Not many public institutions survive thirty years with its core functions virtually unchanged. The Commonwealth Ombudsman reached that milestone on 1 July 2007.

Over the past thirty years the Ombudsman has dealt with more than 600,000 complaints and has helped government agencies change the way they go about their business to provide a better public service.



Each year the Ombudsman investigates complaints about more than 100 Australian Government departments and agencies. Around three quarters of those complaints focus on five agencies with high volume public contact—Australia Post, the Australian Taxation Office, Centrelink, the Child Support Agency, and the Department of Immigration and Citizenship.

The Commonwealth Ombudsman was established with cross-party political support during a time of innovation in Australia's federal justice system. Australia's first Ombudsman, Prof. Jack Richardson, opened the Canberra office on 1 July 1977. Following Prof. Richardson there have been six Ombudsmen—Geoffrey Kolts, Prof. Dennis Pearce, Alan Cameron, Philippa Smith, Ron McLeod and currently Prof. John McMillan.

As an important independent arbiter in a system of government undergoing constant change, the responsibilities of the Commonwealth Ombudsman have expanded over thirty years to cover areas of specific expertise such as defence, immigration, law enforcement, taxation and the postal industry.

The office has dealt with nearly every kind of complaint made against government. We continue to work with agencies to address and prevent systemic problems and to improve public administration.

Through our past successes, and the demands of the future, the Commonwealth Ombudsman continues to work towards better connecting government and the public.



Current and former Ombudsmen at a function celebrating thirty years (from left) John McMillan, Ron McLeod, Philippa Smith, Alan Cameron and Dennis Pearce. Former Ombudsmen Jack Richardson and Geoffrey Kolts were not present.

HISTORY AND ESTABLISHMENT

The office of the Commonwealth Ombudsman commenced operation on 1 July 1977. Since then, seven Commonwealth Ombudsmen have been in office.

The office was established by the *Ombudsman Act 1976* (Ombudsman Act), as part of a new and distinctive system of administrative law in Australia. The office is in the portfolio administered by the Prime Minister.

Over time the responsibilities of the Ombudsman have expanded to cover:

- complaints about the Australian Federal Police (AFP)—1981
- complaints about freedom of information—1982
- Defence Force Ombudsman role—1983
- compliance auditing of AFP and National Crime Authority (now Australian Crime Commission (ACC)) telecommunication intercept records—1988, with added responsibilities of monitoring controlled operations in 2001 and auditing of surveillance device records in 2004
- Australian Capital Territory Ombudsman—1989
- Taxation Ombudsman—1995
- assessing and reporting on the detention of long term (two years or more) immigration detainees—2005
- Immigration Ombudsman role—2005
- Commonwealth service providers—2005
- Postal Industry Ombudsman role—2006
- compliance auditing of access to stored communications by the AFP, ACC, Australian Commission for Law Enforcement Integrity (ACLEI) and other enforcement agencies (such as the Australian Taxation Office (ATO) and the

Australian Customs Service), and the use of surveillance devices by state law enforcement agencies under Commonwealth legislation—2006

- Law Enforcement Ombudsman role, with a specific responsibility to review the adequacy and comprehensiveness of the AFP complaint-handling system—2006.

Chapter 8—*Thirty years ... thirty changes* describes some of the major developments in the office over the past thirty years.

ROLE AND FUNCTIONS

The office of Commonwealth Ombudsman exists to safeguard the community in its dealings with government agencies, and to ensure that administrative action by Australian Government agencies is fair and accountable. The Ombudsman has three major statutory roles:

- *Complaint investigation*: investigating and reviewing the administrative actions of Australian Government officials and agencies, upon receipt of complaints from members of the public, groups and organisations
- *Own motion investigation*: investigating, on the initiative or 'own motion' of the Ombudsman, the administrative actions of Australian Government agencies—often arising from insights gained from handling individual complaints
- *Compliance auditing*: inspecting the records of agencies such as the AFP and ACC, to ensure compliance with legislative requirements applying to selected law enforcement and regulatory activities.

The complaint and own motion investigation roles of the Ombudsman are the more traditional Ombudsman roles that constitute the bulk of the work of the office. The guiding

principle in an Ombudsman investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or otherwise wrong. At the conclusion of the investigation, the Ombudsman can recommend that corrective action be taken by an agency. This may occur either specifically in an individual case or more generally by a change to relevant legislation, administrative policies or procedures.

A key objective of the Ombudsman is to foster good public administration within Australian Government agencies, ensuring that the principles and practices of public administration are sensitive, responsive and adaptive to the interests of members of the public.

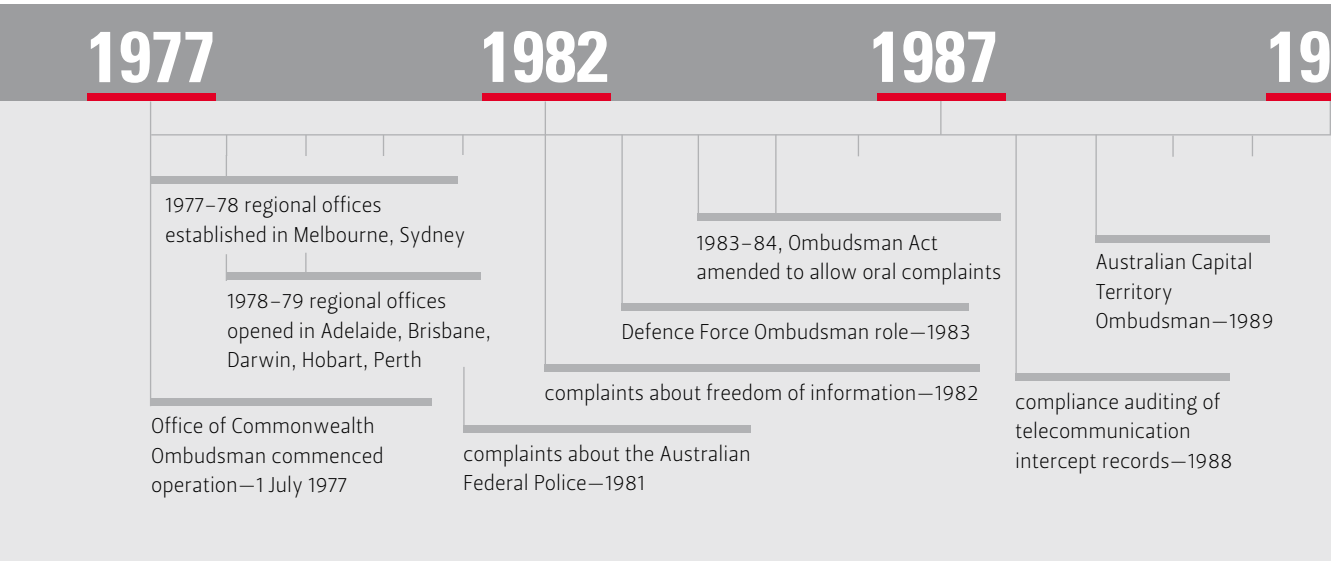
The role of the Commonwealth Ombudsman is principally performed under the Ombudsman Act. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth). This Act was repealed on 30 December 2006 after the relevant provisions of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced.

'A key objective of the Ombudsman is to foster good public administration ...'

The Commonwealth Ombudsman can consider complaints about almost all Australian Government departments and agencies and most contractors delivering services to the community for, or on behalf of, the Australian Government.

The Ombudsman Act also confers five specialist roles on the Ombudsman:

- **Defence Force Ombudsman**—handling complaints by serving and former members of the Australian Defence Force relating to their service
- **Immigration Ombudsman**—handling complaints about the Department of Immigration and Citizenship
- **Law Enforcement Ombudsman**—handling complaints about the conduct and practices of the Australian Federal Police and its members
- **Postal Industry Ombudsman**—handling complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme
- **Taxation Ombudsman**—handling complaints about the ATO.





Executive team (from left) Ron Brent, Vivienne Thom, Mary Durkin and John McMillan.

The Commonwealth Ombudsman is also the ACT Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). The role of ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT), and is funded in

accordance with a memorandum of understanding between the Commonwealth Ombudsman and the ACT Government. The ACT Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the ACT Ombudsman function.

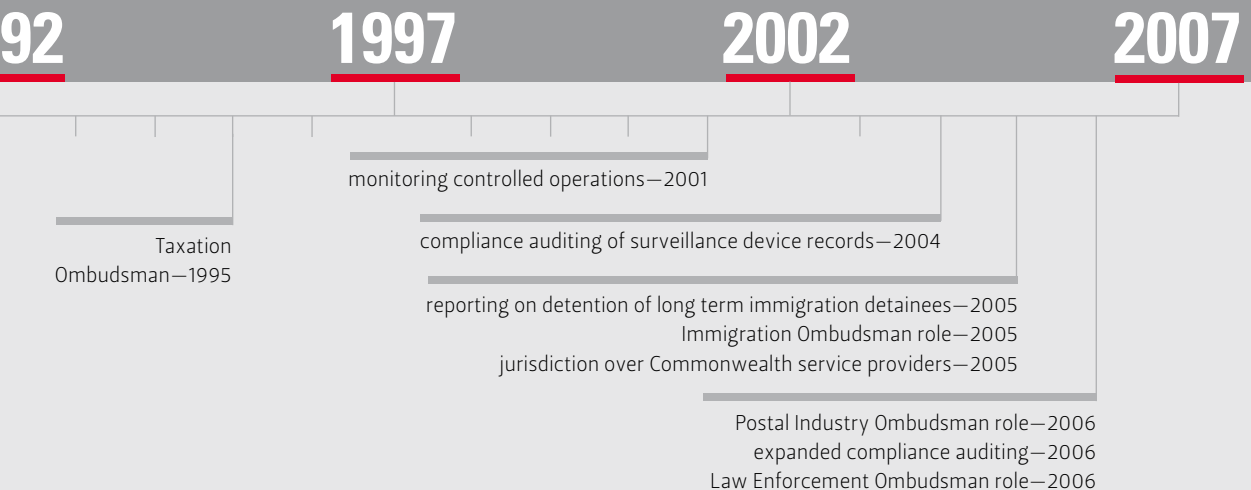
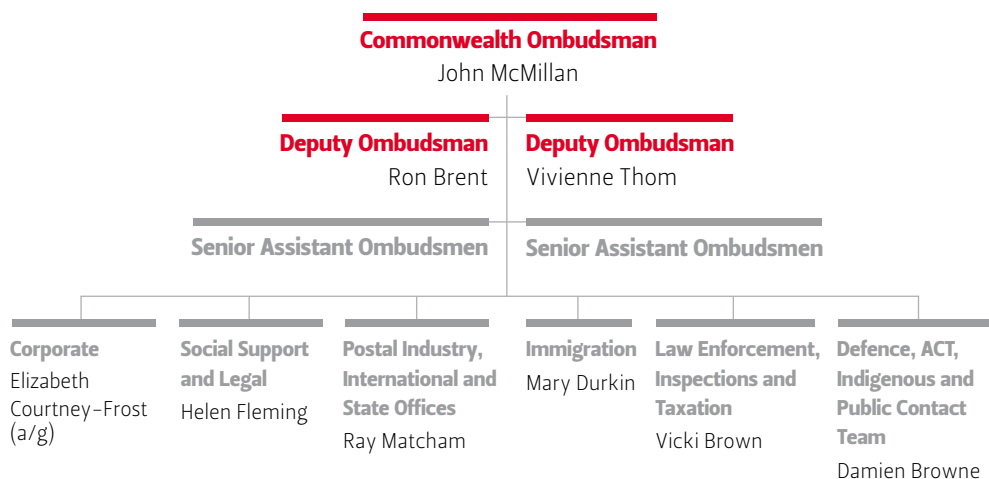


FIGURE 2.1 COMMONWEALTH OMBUDSMAN ORGANISATIONAL STRUCTURE AT 30 JUNE 2007



ORGANISATION AND STRUCTURE

The national office of the Commonwealth Ombudsman and the office of the ACT Ombudsman are co-located in Canberra. The Commonwealth Ombudsman also has offices in Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

The Ombudsman and two Deputy Ombudsmen are statutory officers appointed under the Ombudsman Act. Staff are employed under the *Public Service Act 1999*.

The office comprises a range of functional elements.

- Central office functions and responsibilities (including human resources, information technology, financial services, records management and public affairs) and the principal specialist teams are based in the national office in Canberra, as well as complaint handling relating to the ACT Ombudsman function.

- Offices throughout Australia handle complaints and undertake some specialist work. A Senior Assistant Ombudsman supervises the state and territory offices.

Details on the office's senior executive and their responsibilities are set out in Chapter 4—*Management and accountability*.

Figure 2.1 illustrates the organisational structure of the Ombudsman's office.

OUTCOME AND OUTPUT STRUCTURE

The Portfolio Budget Statements define one outcome for the office, supported by two outputs.

The outcome is *administrative action by Australian Government agencies that is fair and accountable*. The supporting outputs are:

1. review of administrative action
2. review of statutory compliance in specified areas.

Details of the Commonwealth Ombudsman's achievement of the outcome and outputs are in Chapter 3—*Performance Report*.

performance review

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from paper to an automated office

FEATURE

When the Ombudsman commenced operation in 1977, complaints were recorded on a single line in a large ledger, with details such as the complainant's name, agency complained about and complaint subject. All related papers were placed on a file, and a notation made in the ledger when the complaint was finalised.

In 1983–84 an Automatic Data Processing Strategic Plan was approved. By the end of 1985, the office had acquired 'some' microcomputers for the Canberra office, networked to a 'CT Megaframe'. One microcomputer was for word processing purposes and the other for software development and system testing.

By 1986, the central office was able to use the computer system to record all complaints, track complaint processing, report on outstanding matters and provide some statistics on workflow. It was not until 1989 that all of the Ombudsman's offices had computers and were able to enter complaints into a database rather than a ledger.

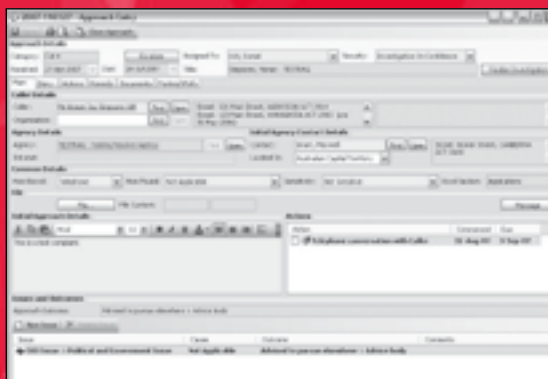
The complaint management systems used in the office have been updated many times since 1989, recognising that automated systems should reflect the changing world around them and the changing needs of users.

Today's sophisticated complaint management system, Resolve, not only contains basic data relating to a complaint, but also holds electronic copies of most documents and cross-references to related matters. It has an automated workflow—pre-programmed steps that lead the investigation officer through the complaint process—and automatically sends a reminder if an action is overdue. Statistics can be generated about specific types of complaints, complaints about a particular agency, all complaints from an individual, or all complaints allocated to a particular investigation officer.

Staff no longer need to trawl through stacks of paper to find answers—information retrieval is possible with a few keystrokes and a click of the mouse. Finding information is much simpler, enabling the Ombudsman to more easily detect systemic issues and related complaints.



File No.	Complainant	Agency	Subject	Status	Date
10/10	Mr. Smith	Department of Health	Medical services	Open	10/10
10/11	Ms. Jones	Department of Education	School fees	Open	10/11
10/12	Mr. Brown	Department of Transport	Bus services	Open	10/12
10/13	Ms. White	Department of Social Services	Welfare payments	Open	10/13
10/14	Mr. Green	Department of Environment	Land use	Open	10/14
10/15	Ms. Black	Department of Justice	Legal aid	Open	10/15
10/16	Mr. Grey	Department of Agriculture	Subsidies	Open	10/16
10/17	Ms. Gold	Department of Industry	Trade protection	Open	10/17
10/18	Mr. Silver	Department of Defence	Procurement	Open	10/18
10/19	Ms. Bronze	Department of Finance	Government expenditure	Open	10/19
10/20	Mr. Copper	Department of Communications	Media regulation	Open	10/20



The screenshot displays the 'Resolve' software interface, which is a web-based application for managing complaints. It features a top navigation bar with tabs for 'Home', 'Complaints', 'Reports', and 'Settings'. The main area contains a 'Complaint Details' form with fields for 'Complainant', 'Agency', 'Subject', 'Status', and 'Date'. Below this, there are sections for 'Complaint History' and 'Related Complaints'. The interface is designed for efficient data entry and tracking of complaint progress.

This chapter details the performance of the office based on the outcomes and outputs structure set out in the Portfolio Budget Statements and Portfolio Additional Estimates Statements 2006–07.

The office of the Commonwealth Ombudsman has one outcome supported by two outputs:

- **Outcome:** Administrative action by Australian Government agencies that is fair and accountable
 - **Output 1:** Review of administrative action
 - **Output 2:** Review of statutory compliance in specified areas.

Our original price of outputs of \$17.816 million was increased at Additional Estimates by

\$1.183 million for an increase in workload associated with the introduction of the Welfare to Work Programme, implementation of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* and amendments to the *Telecommunications (Interception and Access) Act 1979*.

This chapter outlines our achievements against the outputs and broadly explains the ways in which we continue to work towards the outcome.

A financial overview is provided in Chapter 4—*Management and accountability*. Full details of the total price of agency outputs of the Ombudsman's office are provided in Note 15 of the Financial Statements of this report.

PERFORMANCE AT A GLANCE

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PRICE

Outcome 1: Administrative action by Australian Government agencies that is fair and accountable

OUTPUT		BUDGET 2006–07	ACTUAL EXPENSES 2006–07	BUDGET 2007–08
Output 1	Review of administrative action	\$17.911 m	\$17.668 m	\$18.427 m
Output 2	Review of statutory compliance in specified areas	\$1.088 m	\$1.052 m	\$1.009 m
Total for Outcome 1		\$18.999 m	\$18.720 m	\$19.436 m

TABLE 3.2 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE 2006–07**OUTPUT 1 Review of administrative action**

	QUALITY AND QUANTITY MEASURES	PERFORMANCE
Approaches and complaints	Quantity Number and complexity of complaints/ issues received and investigated	18,003 approaches and complaints received about agencies in jurisdiction (17,384 in 2005–06); 17,934 approaches and complaints covering 19,116 issues finalised, with 4,251 complaints covering 5,040 issues investigated (17, 508 issues finalised with 6,176 investigated in 2005–06). Of the complaints investigated, 11% required more substantial investigation.
	Number of inquiries and approaches received	15,319 inquiries and approaches largely consisting of matters outside our jurisdiction or requests for information (compared to 10,147 in 2005–06).
	Quality Handling of inquiries, approaches and investigated complaints meets service standards	77% of all approaches and complaints finalised within one month and 92% finalised within three months. 32% of investigated complaints finalised within one month and 71% within three months. A remedy was recommended in 67% of the investigated complaints (54% in 2005–06).
	Quality An assessment of feedback received from the public	Conducted 196 internal reviews at request of complainants; the original decision affirmed in 80% of those reviews.
Major investigations and submissions	Quality Response to advice, submissions, services, findings and recommendations by government agencies and other organisations Agency satisfaction with the quality of services/acceptance of findings and recommendations	13 own motion and major investigations conducted and reports publicly released. The reports contained 106 recommendations; all except five recommendations accepted by agencies; two recommendations partly accepted; three recommendations matters for government.
	Quantity Number of submissions to government	Seven submissions on issues relevant to the Commonwealth Ombudsman's office.

TABLE 3.2 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE 2006–07 *continued***OUTPUT 1 Review of administrative action**

	QUALITY AND QUANTITY MEASURES	PERFORMANCE
Reports on detainees	Quantity Timely completion of reports on detainees	We provided to the Minister for Immigration 141 reports on the Ombudsman's reviews into the circumstances of people who had been in immigration detention for two years or more. The Minister tabled 133 reports in Parliament.
	Government acceptance of recommendations on detainees	The Minister's tabling statements in 2005–06 and 2006–07 indicated 48% of the recommendations were accepted at the time of tabling.
Outreach	Quantity Number of outreach activities	A total of 116 outreach activities, involving each state and territory (compared to 104 in 2005–06). We continued work on our international program with Ombudsmen offices in the Asia-Pacific region.

OUTPUT 2 Review of statutory compliance in specified areas

	QUALITY AND QUANTITY MEASURES	PERFORMANCE
Inspections	Quality Timely completion of the inspecting/reporting schedule	All inspections completed according to the statutory inspection schedule.
	Quality Government and agency acceptance of and satisfaction with the quality and relevance of inspection findings and recommendations	No objections were expressed by relevant agencies about the findings and recommendations arising out of inspection reports finalised during the year.
	Quantity Number of inspections completed by category	We inspected the records of the Australian Federal Police on nine occasions, the Australian Crime Commission on six occasions, and the New South Wales Police and South Australia Police on one occasion each.

OUTPUT 1—REVIEW OF ADMINISTRATIVE ACTION

1.1—Number and complexity of complaints/issues received and investigated and number of inquiries and approaches received

Approaches and complaints received

In 2006–07, we received a total of 33,322 approaches and complaints. Of these, 18,003 were about agencies within the Ombudsman’s jurisdiction (compared to 17,384 in 2005–06).

The categories of approaches to the office range from simple contacts that can be resolved quickly, through to more complex cases that require the formal use of the Ombudsman’s statutory powers. The decision to investigate a matter more formally can be made for a number of reasons:

- need to gain access to agency records by a formal statutory notice
- complexity or seriousness of the issue under investigation
- nature of the allegations made by a complainant
- time taken by an agency to respond to our requests for information
- likely effect on other people of the issues raised by the complainant.

In addition to the 18,003 approaches about agencies within our jurisdiction, we also dealt with approaches from members of the public that largely consisted of matters outside our jurisdiction or requests for information. We received 15,319 such approaches (compared to 10,147 in 2005–06 and 12,013 in 2004–05). It is difficult to point to a reason for this variability. It may relate to the general public profile of Ombudsmen at particular times, whether it be the Commonwealth Ombudsman, a state or territory Ombudsman, or an industry Ombudsman.

This year, we received 3,539 approaches and complaints electronically, an increase of 73% over 2005–06. Over the past four years, the percentage of approaches received electronically has increased from 5% to 11% of the total. We are continuing to look at ways to improve our online complaint lodgement processes.

There was a 54% increase in the number of approaches and complaints lodged in person and a 10% increase in the number of written approaches. Table 3.3 details approaches by method received.

TABLE 3.3 APPROACHES AND COMPLAINTS, BY METHOD RECEIVED, 2003–04 TO 2006–07

Year	Telephone	Written	In person	Electronic	AFP*	Total
2006–07	26,081	2,626	812	3,539	264	33,322
2005–06	22,897	2,383	528	2,046	373	28,227
2004–05	24,561	2,323	623	1,429	387	29,323
2003–04	21,681	2,638	460	1,343	410	26,532

* Under the Complaints Act, repealed at the end of 2006, the AFP’s Professional Standards Team notified the Ombudsman about complaints it received, for Ombudsman staff to oversee the AFP’s complaint-handling process.

Approaches and complaints by agency

Of the 18,003 approaches and complaints received about agencies within the Ombudsman's jurisdiction, 13,326 (74%) were about Australia Post, the Australian Taxation Office (ATO), Centrelink, the Child Support Agency (CSA), and the Department of Immigration and Citizenship (DIAC).

Charts comparing trends over the past five years for these agencies are included in Chapter 7—*Looking at the agencies*.

Approaches and complaints finalised and investigated

We finalised a total of 33,234 approaches and complaints. Of these, 17,934 were about agencies within the Ombudsman's jurisdiction (compared to 16,507 in 2005–06). We investigated 4,251 separate approaches and complaints, of which 11% required more substantial investigation, sometimes involving a high level of involvement of senior management and the use of formal powers (categories 4 and 5 in our classification system). Comparable data on the number of investigations requiring substantial investigation is not available for previous years.

Approaches and complaints made to the Ombudsman may include several issues. For example, a person may complain about a decision, as well as a service delivery aspect such as behaviour. Where a complaint contains several issues, it may result in different actions by the Ombudsman's office in relation to the separate issues. We therefore also report on complaint issues finalised by the office.

In 2006–07 we finalised 17,934 approaches and complaints covering 19,116 issues about agencies within the Ombudsman's jurisdiction. Of the approaches and complaints finalised, we investigated 24% (31% in 2005–06). The remaining complaint issues were usually finalised by referring the complainant to the internal complaint processes of the agency, or deciding that investigation of the issue was not warranted in all the circumstances.

'In 2006–07 we finalised 17,934 approaches and complaints covering 19,116 issues about agencies within the Ombudsman's jurisdiction.'

The Ombudsman policy on administrative deficiency was reviewed and revised during 2006–07. Staff were provided with detailed guidance and training on what might constitute administrative deficiency, which can only be recorded in an individual case with the approval of a Senior Assistant Ombudsman. The Ombudsman wrote to agency heads advising them of the new policy, emphasising that the purpose of recording administrative deficiency is not to admonish agencies, but to identify deficiencies in agency processes highlighted by complaints to the Ombudsman. This informs the systemic work of the office. More details on the revised policy are in Chapter 5—*Challenges in complaint handling*.

Of the issues investigated and finalised, some agency error or deficiency was identified in 4% of complaints (compared to 1% last year, under the previous guidelines). The most common type of deficiency noted was unreasonable delay (28% of the cases), followed by human error (20%), flawed administrative process (19%) and procedural deficiency (13%).

Causes of complaint

As in previous years, the majority (64%) of the complaint issues finalised by the Ombudsman's office under the *Ombudsman Act 1976* related to the correctness, propriety or timeliness of a decision or action of an agency. The remainder of the complaint issues finalised related to procedural matters, such as the accuracy or completeness of advice given by agencies (11%), the conduct of officers in agencies (4%), or the application of a policy to the complainant's circumstances (3%).

Complaints carried forward

The total number of complaints carried forward (past 30 June 2007) was 1,316 compared to 1,298 at 30 June 2006. A backlog will always exist as some complaints are received late in the reporting period. It also arises from the complexity of some complaints and the correspondingly longer period of time required to investigate them.

1.2—Handling of inquiries, approaches and investigated complaints meets service standards

Timeliness

Our service charter indicates that we aim to investigate complaints as quickly as possible, acting fairly, independently, objectively and impartially.

In 2006–07, we finalised 77% of all approaches and complaints within one month of receipt (in line with previous years), and finalised 32% of investigated complaints within one month (compared to 54% in 2005–06 and 65% in 2004–05). As noted below, changed work practices make this comparison unreliable.

Figure 3.1 shows the time taken to finalise all approaches and complaints for the periods 2003–04 to 2006–07.

Data from our complaint management system is used to monitor response times by the office and to identify delays in complaint investigation. With many of the complaints we investigate, we need to factor in the time that it takes an agency to provide us with information. This may reflect the complexity of

the issues, the number of different areas of the agency that need to be consulted, and in some cases the need for cross-agency responses.

There are sharp variations in the time it takes to finalise investigated complaints about different agencies, as Table 3.4 shows. In the case of complaints about the Australian Federal Police (AFP), this is partly due to different legislative requirements relating to complaints received before 2007 (see 'Law enforcement' section in Chapter 7 for more detail).

In part the decrease in timeliness of investigating complaints is due to some changed work practices that do not necessarily have an impact on complainants. For example, all investigated complaints are subject to quality assurance before closure, and we routinely advise complainants of our intended conclusion and give them a period of time to respond to this information before finalising the complaint. Under our previous work practices, formal quality assurance occurred after a complaint was finalised, and we could re-open a complaint if the complainant took issue with our conclusions. The latter process was separate to our formal review processes, described later in this chapter.

FIGURE 3.1 TIME TAKEN TO FINALISE ALL APPROACHES AND COMPLAINTS, 2003–04 TO 2006–07

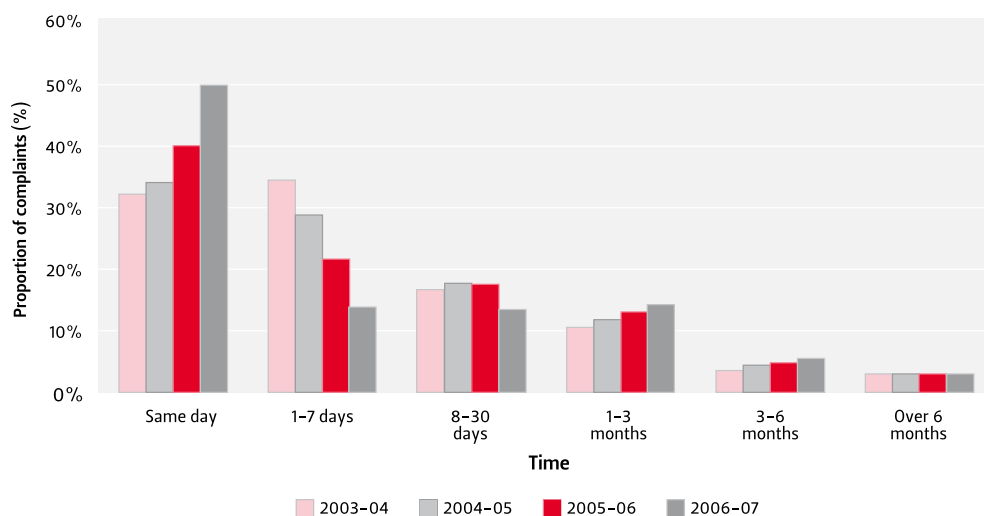


TABLE 3.4 TIME TO FINALISE INVESTIGATED COMPLAINTS FOR SELECTED AGENCIES, 2006–07

Agency	Number investigated/ dealt with*	% finalised within one month	% finalised within three months
AFP	745	35	57
Australia Post	706	38	86
ATO	187	14	63
Centrelink	1,197	50	85
CSA	508	35	78
Defence agencies	210	20	59
DEWR	112	11	55
DIAC	577	21	60

* Includes all complaints about the AFP, and complaints investigated for the other agencies.

The decrease in timeliness of investigating complaints would be of concern if it reflected a drop in efficiency rather than the work practice changes, such as those identified above, which have little impact on most complainants. We are examining our data and work practices in more detail to ensure that we fully understand the causes, and to make sure we identify any changes which may be required in our practices to improve efficiency. This analysis will take some time to complete.

Remedies

Our service charter advises that, if appropriate, and where possible, we will recommend changes to fix a problem.

The most common remedy for complaints was the provision of a detailed explanation by an agency of its decision or action (26% of cases where a remedy was identified). Other major types of remedy were an explanation of the circumstances by the Ombudsman's office (19%), agency action being expedited (13%), agency decision changed or reconsidered (11%), a financial remedy (11%) and an apology being offered by an agency (9%).

A remedy was identified in 67% of the complaints investigated (compared to 54% in

2005–06 and around 68% in the previous two years). A breakdown of remedies is provided in Appendix 4—*Statistics*.

Decisions not to investigate

Our service charter indicates that if we do not investigate a complaint we will explain why, and advise the complainant of any other avenues to pursue their complaint.

The legislation administered by the Ombudsman gives the office a range of discretionary powers not to investigate matters in particular circumstances. We most commonly decide not to investigate if a person has not raised their complaint with the agency. There can be advantages for both the complainant and the agency in an issue first being raised at the source of the problem and an attempt made to resolve it before external intervention. This year we advised the complainant to take their concerns up with the relevant agency in the first instance in 60% of the matters within the Ombudsman's jurisdiction.

Many agencies have worked on improving their internal complaint-handling mechanisms, and have appropriate procedures in place to respond to dissatisfied clients. The Ombudsman is more

likely to accept a complaint without the matter first being handled by the agency in the following circumstances:

- the relationship between the person and the agency is difficult
- the person is effectively unable to manage their own complaint, whether because of agency recalcitrance or the person's inability to articulate their problem
- it is doubtful that the complaint will be handled adequately by the agency, whether because of the nature of the complaint or the effectiveness of the agency's complaint mechanism.

We recognise that some complainants are reluctant to raise their concerns with the agency involved for a number of reasons. In the 'Looking at the agencies—Australian Taxation Office' section in Chapter 7, we describe a trial the office has undertaken of directly assisting the transfer of tax complaints to the ATO.

While a large number of approaches and complaints are outside the Ombudsman's jurisdiction, or are not investigated, we endeavour to provide a high level of service to these people and refer them to more appropriate avenues to resolve their concerns wherever possible. The description of the work of the Public Contact Team in Chapter 5—*Challenges in complaint handling* provides more insights into the services we provide.

1.3—Assessment of feedback received from the public

We apply the same principle to our own operations that we espouse for other Australian Government agencies: specifically, if a person is not satisfied with the way in which we have dealt with the issues they have raised, there is a clear procedure by which they can seek an internal review of the matter.

In November 2006 we revised the way in which we deal with requests for review. This was to

ensure that we deal with such requests consistently and with the highest level of integrity and care, and to maximise organisational learning from these requests. The office established a Review Panel, overseen by a Deputy Ombudsman, and comprising Senior Assistant Ombudsmen and a number of senior, experienced investigation staff. The Deputy Ombudsman considers each request for review. If a decision is made that a review should be undertaken, the Deputy Ombudsman allocates it to a member of the Review Panel, who is more senior to the initial investigation officer, and who was not directly involved in the handling of the original complaint.

Information on the internal review process offered by the office is available on our website and included in correspondence and other communication with complainants. If a person requests a review when they are notified by telephone of an intended investigation conclusion, we print out a 'request for review' form and send it to them. If they are unable to articulate their concerns clearly, we assist them to fill in the form.

In the reporting period we received 205 requests for internal review, more than twice as many requests as were received in 2005–06. We finalised 196 reviews during the year: some were carried over from 2005–06 (Table 3.5). Of the finalised reviews, the original outcome was affirmed in 157 reviews (80%). This was almost the same percentage as last year (85%) and the same as in 2004–05. The office decided to conduct additional investigation after 33 reviews and to change its decision on the original complaint in four reviews. Two reviews were withdrawn by the complainant.

Of the 196 reviews finalised, 87% related to decisions or actions of an officer in the course of complaint investigations. The main reasons expressed by complainants for seeking a review were that they believed the decision we made or advice we offered was wrong or that we failed to address or misunderstood the complaint issue.

TABLE 3.5 INTERNAL REVIEW OF OMBUDSMAN ACTION, REQUESTS AND DECISIONS, 2006–07

Complainant's reason for seeking review		Outcome affirmed	Outcome varied	Further investigation	Review withdrawn	Total
Decision/ action	Failed to address issue	35		11	1	47
	Misunderstood issue	13		4		17
	Wrong	93	1	12	1	107
Advice	Failed to provide	1				1
	Inadequate/unclear		1	3		4
	Misleading	1				1
Behaviour	Bias	1	2			3
	Incompetence	1				1
Practice and procedures	Failed to comply	2				2
	Inadequate			1		1
	Unfair	3				3
Timeliness	Failure to act	2				2
Other		5		2		7
Total		157	4	33	2	196

1.4—Response to advice, submissions, services, findings and recommendations by government agencies and other organisations, and agency satisfaction with the quality of services/acceptance of findings and recommendations

The Ombudsman released public reports on 13 own motion and major investigations:

- December 2006—*Department of Immigration and Multicultural Affairs: report into referred immigration cases: Mr G* (Report No 6/2006)
- December 2006—*Department of Immigration and Multicultural Affairs: report into referred immigration cases: mental health and incapacity* (Report No 7/2006)
- December 2006—*Department of Immigration and Multicultural Affairs: report into referred immigration cases: children in detention* (Report No 8/2006)
- April 2007—*Australian Taxation Office: administration of garnishee action* (Report No 1/2007)
- May 2007—*Australian Film Commission: investigation into the assessment of film funding applications* (Report No 2/2007)
- May 2007—*Complaint handling in Australian airports: own motion investigation* (Report No 3/2007)
- June 2007—*Australian Defence Force: management of complaints about unacceptable behaviour* (Report No 4/2007)
- June 2007—*Migration Agents Registration Authority: complaint-handling process* (Report No 5/2007)
- June 2007—*Review of ACT Policing's Watchhouse operations: joint report by the Australian Federal Police and the Commonwealth Ombudsman* (Report No 6/2007)
- June 2007—*Department of Immigration and Citizenship: report into referred immigration cases: detention process issues* (Report No 7/2007)
- June 2007—*Department of Immigration and Citizenship: report into referred immigration cases: data problems* (Report No 8/2007)

- June 2007—*Department of Immigration and Citizenship: report into referred immigration cases: notification issues (including cases affected by the Federal Court decision in Srey)* (Report No 9/2007)
- June 2007—*Department of Immigration and Citizenship: report into referred immigration cases: other legal issues* (Report No 10/2007).

The reports contained a total of 106 recommendations. Of these, 101 recommendations were accepted by the agencies involved, and three were matters for government. In the case of two other recommendations, which involved a number of agencies, most agencies accepted the recommendations.

The acceptance by agencies of the overwhelming majority of the Ombudsman's recommendations indicates a high degree of satisfaction with our capacity to conduct thorough, rigorous and fair investigations. In addition, a number of these investigations were undertaken at the request of the Australian Government, and one was conducted jointly with the agency in question (the AFP).



Several own motion, systemic and major investigations currently in progress will be completed in 2007–08. These include investigations into:

- issues relating to the implementation of the marriage—like relationship policy
- the quality of the notification of reasons by DIAC for decisions and review rights for refused visa applicants
- matters involving HMAS *Westralia*
- a range of issues related to implementation of Welfare to Work.

More details are provided in Chapter 7—*Looking at the agencies*.

1.5—Number of submissions to government

During the year we made seven submissions to government:

- Senate Legal and Constitutional Affairs Committee inquiry related to the proposed introduction of significant new search and seizure powers for Centrelink officers
- Senate Legal and Constitutional Affairs Committee inquiry into the provisions of the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006, in relation to controlled operations and delayed notification search warrants
- Parliamentary Joint Committee on Corporations and Financial Services regarding its inquiry into the Exposure Draft of the Corporations Amendment (Insolvency) Bill 2007
- Joint Committee of Public Accounts and Audit inquiry into taxation administration in Australia
- Australian Law Reform Commission review of the *Privacy Act 1988*
- Australian Law Reform Commission inquiry into legal professional privilege and Commonwealth investigatory bodies
- Inspector-General of Taxation review into the underlying causes and management of objections to Australian Tax Office decisions.

We also appeared before the Senate Foreign Affairs, Defence and Trade Committee regarding the performance of the military justice system.

1.6—Timely completion of reports on detainees, and government acceptance of recommendations on detainees

In June 2005 the Australian Parliament amended the *Migration Act 1958* to confer on the Ombudsman the role of reviewing the cases of people who had been in immigration detention for two years or more. By the end of June 2006, we had received 235 reports from DIAC concerning 262 people who had been in detention for two years or more. We provided reports to the Minister for Immigration on 70 cases, and the Minister had tabled responses on 66 of those reports.

During 2006–07 we received a further 222 reports from DIAC, covering a total of 290 people. We provided a further 141 reports to the Minister. A number of these reports were combined reports (for example, combined first and second reports for a person whom we had not reported on before we received their second report from DIAC). The Minister tabled responses on 133 reports.

Of the 218 recommendations or suggestions made by the Ombudsman in the 211 reports provided to the Minister as at 30 June 2007, the Minister agreed to 48% of the recommendations, disagreed with 34%, and delayed making a decision on a further 13%. On some occasions a different decision was made later. In 2% of the cases, the recommendations became irrelevant because of intervening circumstances, and 3% of the recommendations were not addressed.

The ‘Looking at the agencies—Immigration’ section in Chapter 7 provides further information on immigration-related matters.

1.7—Number of outreach activities

Our outreach program continues to have two components: to raise public awareness of our role; and to contribute to the development of the role of the Ombudsman in the Asia-Pacific region.

Raising public awareness

In March 2006, we commissioned a market research company to conduct a Public Awareness Benchmark Survey. The survey explored the level of knowledge of the role of the

Ombudsman’s office among rural and regional Australians, as well as the depth of understanding of our role held by rural and regional community leaders.

We repeated the general survey of rural and regional Australians in June 2007. The results were broadly similar to those in 2006. The survey showed a continued high level of unprompted awareness of ‘the Ombudsman’ as an avenue to resolve complaints about Australian Government departments and agencies, although the overall percentage had decreased. It also showed ‘the Ombudsman’ was now the preferred avenue to resolve complaints. We are analysing the results in more detail to help better target our outreach activities.

We conducted 116 outreach activities during the year, which covered all states and territories. We continued to focus on community information ‘gatekeepers’, to inform them of our role and to listen to their concerns and observations about government service delivery.

We continued our program of seminars for federal members and electorate staff through the year, with sessions being held in each state.

In November 2005 an Indigenous Working Group was established within the office to consider the best way of communicating with, and providing service to, Aboriginal and Torres Strait Islander people, communities and organisations. The group provided an interim report to the Ombudsman in mid-2006. The Ombudsman agreed to the report’s recommendations and we are working to implement them. More detail is included in Chapter 5—*Challenges in complaint handling*.

Role of Ombudsmen in the Asia-Pacific region

We continued our involvement in strengthening mutual support among Ombudsmen in our region. Key geographic areas for our international program involvement have been two South-East Asian neighbours, Indonesia and Thailand, and countries in the South Pacific, including Papua New Guinea, Samoa and Vanuatu. The Australian Agency for International Development provided funding for these activities. Further details about our international program are in Chapter 6—*Promoting good administration*.

OUTPUT 2—REVIEW OF STATUTORY COMPLIANCE

Timely completion of the inspecting/ reporting schedule, government and agency acceptance of and satisfaction with the quality and relevance of inspection findings and recommendations and number of inspections completed by category

The Ombudsman is required to inspect the records of the AFP, the Australian Crime Commission (ACC), the Australian Commission for Law Enforcement Integrity (ACLEI), and other agencies in certain circumstances, in accordance with three Acts as noted below. We report to each agency on the outcome of each inspection in addition to the statutory reporting requirements to the Minister or to Parliament.

At the completion of each inspection, a draft report is forwarded to the respective agency for comment, and those comments are considered in producing a final report. This procedure allows agencies to be heard before we make any findings or recommendations, and agencies are more likely to accept our position. We do not ask agencies to formally acknowledge any objections once they have received the inspection report. We understand that all of the Ombudsman's findings in reports finalised in 2006–07 were accepted by the relevant agencies.

Telecommunications interception records

Under the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI, and other agencies in certain circumstances, to ensure telecommunications interception activities and accessing of stored communications is in accordance with the provisions of the TIA Act. In 2006–07, we carried out three inspections of the AFP and two inspections of the ACC.

The TIA Act also requires the Ombudsman to report to the Attorney-General in writing before 30 September each year on the results of the inspection of each agency during the preceding financial year. In accordance with this obligation, reports to the Minister were provided for the AFP and the ACC within the required timeframe.

Surveillance device records

Under the *Surveillance Devices Act 2004* (Surveillance Devices Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI, and those state law enforcement agencies that have utilised powers within the Act, to ensure use of surveillance devices is in accordance with the Act. We carried out three inspections of the records of the AFP, two inspections of the ACC, and one each of New South Wales Police and South Australia Police.

The Surveillance Devices Act also requires the Ombudsman to make a written report to the Attorney-General bi-annually on the results of the inspection of each agency during the preceding six months. The Attorney-General tables the reports in Parliament. The results from the first AFP and ACC inspections were reported to the Attorney-General in February 2007, and the results of the other inspections will be reported to the Attorney-General within the required timeframe.

Controlled operations records

Under Part 1AB of the *Crimes Act 1914* (Crimes Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure compliance with Part 1AB. In 2006–07, we inspected the controlled operations records of the AFP on three occasions and the ACC on two occasions.

Part 1AB of the Crimes Act also requires the Ombudsman to report to the President of the Senate and the Speaker of the House of Representatives on the inspections carried out in the previous financial year, and to brief the Parliamentary Joint Committee on the activities of the ACC. An annual report for 2005–06 was presented to Parliament in December 2006 and the briefing occurred in March 2007.

Building industry taskforce records

Section 88A1 of the *Workplace Relations Act 1996* previously required the Ombudsman to review the use of coercive powers exercised by the Secretary of the Department of Employment and Workplace Relations and his delegate, the Director of the Building Industry Taskforce. An inspection pursuant to those requirements was conducted in early 2006 and a report was provided to the President of the Senate and the Speaker of the House of Representatives in October 2006. The Ombudsman is no longer required to review such matters.

The Commonwealth Ombudsman is one of the few national ombudsmen established in a federal system of government. The office covers perhaps the largest geographic area of any ombudsman. This poses challenges in handling complaints about government on a national basis. At the same time, there are benefits to be gained from the national character of the office.

From a staff of five in 1977 to a staff of 146 in 2007, the Commonwealth Ombudsman's office continues with a national structure and complaint-handling operation, by maintaining offices in capital cities throughout Australia.

The Ombudsman's eight different offices function as part of a unified national office in various ways. One of the ways national integration of the work of the office is achieved is through the complaint management system that is used to record, search and retrieve complaint information. The system enables complaint records to be transferred efficiently within the state offices as well as from one state office to another, or to a specialist team in Canberra.

The main agencies about which we receive complaints have a diversified national structure similar to our own. Complaint handling operates more smoothly if there is a good working relationship between the Ombudsman's office and the relevant government agency. This working relationship is promoted at the local level with regular meetings being held with agency complaint-handling staff to improve communication and cooperation, and to discuss complaint issues and trends.

Problems people encounter with government are not necessarily the same on a national basis. There can be regional differences: problems experienced in an office in one state are not always the same in another. Our national structure, and our close cooperative relationship with the state and industry Ombudsman offices, enables us to continue to provide an efficient and effective complaint-handling service to the general public and government.



4 management and accountability

CORPORATE GOVERNANCE

Senior executive and responsibilities

The Governor-General appointed the Commonwealth Ombudsman and Deputy Ombudsmen to five-year terms:

- Prof. John McMillan as Commonwealth Ombudsman in March 2003
- Mr Ron Brent as Deputy Ombudsman in June 2003
- Dr Vivienne Thom as Deputy Ombudsman in March 2006.

The remuneration for the Ombudsman and Deputy Ombudsmen is determined in accordance with a ruling by the Remuneration Tribunal. Note 10 in the Financial Statements details executive remuneration.

Prof. McMillan acted as Integrity Commissioner with the Australian Commission for Law Enforcement Integrity from 30 December 2006 to 22 July 2007 pending permanent filling of

the position. Dr Thom was Acting Commonwealth Ombudsman from 30 December 2006 to 29 June 2007.

The office's Executive team comprises the Ombudsman and two Deputy Ombudsmen. The Executive and six Senior Assistant Ombudsmen comprise the senior management team.

At 30 June 2007, the office's senior management team and their areas of responsibility are:

Mr Ron Brent, Deputy Ombudsman and Chief Financial Officer—main areas of responsibility:

- Corporate—Ms Elizabeth Courtney-Frost, Acting Senior Assistant Ombudsman
 - corporate services comprising finance, human resources and records management
 - governance, including work practices and procedures



Senior management team (standing from left) Elizabeth Courtney-Frost, Mary Durkin, Ray Matcham, Ron Brent, Helen Fleming and Damien Browne; and (seated from left) Vicki Brown, George Masri, Vivienne Thom and John McMillan.

- information technology and communications infrastructure
- public affairs and outreach, including management of the office's intranet and internet sites.
- Postal Industry, International, and State and Territory Offices—Mr Ray Matcham, Senior Assistant Ombudsman
 - specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme
 - management of the office's International Program and related AusAID projects
 - management and oversight of our state and territory offices (Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney), which handle complaints and undertake some specialist work.
- Social Support and Legal—Ms Helen Fleming, Senior Assistant Ombudsman
 - specialised advice and complaint handling relating to the Department of Human Services (including Centrelink and the Child Support Agency) and relevant policy departments
 - in-house legal advice and policy service to support staff in performing their functions.

Dr Vivienne Thom, Deputy Ombudsman—main areas of responsibility:

- Defence, ACT, Indigenous and Public Contact—Mr Damien Browne, Senior Assistant Ombudsman
 - complaint handling relating to the ACT Ombudsman function
 - specialised advice and complaint handling relating to the Australian Defence Force, Defence Housing Australia and the Department of Veterans' Affairs
 - specialised advice to staff and management of outreach program to Indigenous communities
 - Public Contact Team, which provides a national point of contact for all approaches to the office made by telephone, email or online.
- Immigration—Ms Mary Durkin, Senior

Assistant Ombudsman

- specialised advice and complaint handling relating to the Department of Immigration and Citizenship
- reviewing the cases of detainees who have been held in immigration detention for two years or more
- investigating immigration detention cases referred by the Minister for Immigration, concerning Australian citizens or other people lawfully in Australia who were held in immigration detention or may have been removed from Australia.
- Law Enforcement, Inspections and Taxation—Ms Vicki Brown, Senior Assistant Ombudsman
 - complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies
 - inspecting the records of law enforcement agencies and other enforcement agencies for statutory compliance, adequacy, and comprehensiveness
 - specialised advice and complaint handling relating to the Australian Taxation Office.

Corporate planning and review

During the year, the office's Strategic Plan was reviewed to build on achievements over the past three years and to reflect priorities for the period 2007 to 2010. Strategic priorities identified for 2007–08 are to:

- focus on areas of administrative concern as identified through analysis of complaint trends
- continue to build the profile of the office through outreach, relevant publications and communication activities
- build on the work practices and system changes to deliver improved timeliness, efficiency and effectiveness in managing complaints, conducting inspections and generating reports
- improve quality assurance and consistency in complaint handling.

The office's Strategic Plan informs its internal

business plans, which are prepared on an annual basis. There are clear links between the objectives and the key measures of success of the Strategic Plan and the key result areas set in the business plans for all teams, and in individual performance agreements for all staff members. As a result, performance agreements are closely linked to business plans.

Management committees

Management committees assist the Executive with decision making in key areas.

Internal Audit

As required by the *Financial Management and Accountability Act 1997*, the office has an Internal Audit Committee. The committee's role is to review, monitor and where necessary recommend improvements to internal control, financial reporting, internal audit functions, external audit processes, and the office process for monitoring compliance with legislation and government policy directives. The committee met three times during the year.

At 30 June 2007 the membership of the committee comprised Dr Vivienne Thom, Deputy Ombudsman (Chair), Ms Helen Fleming, Senior Assistant Ombudsman, Mr Ray Matcham, Senior Assistant Ombudsman, and an independent external member, Mr Joe D'Angelo, Chief Finance and Information Officer, Department of the Senate. Representatives from the Australian National Audit Office (ANAO) attend committee meetings as observers, and the office's internal auditors, WalterTurnbull, and the Chief Finance Officer, attend meetings to report on particular matters.

During 2006–07 the office issued a request for tender for internal audit services for a three-year period. WalterTurnbull was awarded the contract.

Information Technology

In previous years an Information Technology Steering Committee oversaw the development of IT strategy and governance, and identified priorities for infrastructure, application

development and maintenance, and project development. A new committee will be formed in early 2007–08 with relevant terms of reference to assist in assessing and making recommendations to the Ombudsman about major IT infrastructure decisions and major expenditure proposals.

Occupational Health and Safety

The office's Occupational Health and Safety Committee is made up of elected representatives from each state office and chaired by the Human Resources Manager who represents management. Recommendations and/or advice from the committee are provided to the Workplace Relations Committee. The committee met twice during the year. See also Appendix 1.

Workplace Relations

A Deputy Ombudsman chairs the Workplace Relations Committee. It consists of employee, management and union representatives, and is the main consultative body on workplace conditions within the office. The committee met four times during the year, and considered matters such as flexible working arrangement guidelines and whistleblowing policy and procedures.

Work Practices

A Deputy Ombudsman chairs the Work Practice Steering Committee, which includes representatives from a number of specialist teams and state offices. The committee's role is to consider and make decisions on issues related to work practice and to provide recommendations and/or advice to the Executive, where appropriate.

The committee met eight times during the year. It considered and made recommendations about a wide range of work practice and complaint management system issues. An issues log was initiated in May 2007 to seek input and feedback from all staff on issues arising out of our new complaint management system, with more than one hundred issues raised since its inception.

Corporate governance practices

Risk management

The office's risk management activities are oversighted by the Internal Audit Committee, and have been incorporated into the Ombudsman's planning and operations and the management of contractors. The office's risk management policy and procedures specify how to:

- create, maintain and continuously improve risk management standards
- establish, maintain and continuously improve a risk register
- help to prioritise and schedule risk control improvements in each of the office's cost centres
- report to the Internal Audit Committee and Executive on risk improvement and compliance
- raise awareness among staff about risk management.

The office participated in the annual Comcover Risk Management Benchmarking Survey, and we are identifying areas for improvement.

A Business Continuity Plan was drafted and circulated internally for comment and is to be finalised in early 2007–08. The plan utilises the strengths of a national office structure to respond to potential outage in one or more of the office's eight sites.

When the plan is finalised, staff will be trained in their role in the event the plan is required to be enacted. The plan will be tested and steps taken to ensure that we have the appropriate tools to successfully implement the plan, including information technology hardware and software.

Fraud prevention and control

During 2006–07 the office reviewed and updated its fraud control plan and fraud risk assessment. Appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes are in place. These meet our specific needs and comply with the *Commonwealth Fraud Control Guidelines* issued in May 2002. The risk of fraud remains low for the office.

The Internal Audit Committee oversees the implementation of the fraud control plan.

Ethical standards

The Commonwealth Ombudsman Certified Agreement 2005–2008 includes the Australian Public Service (APS) Values, as specified in the *Public Service Act 1999* s 10, and the values adopted by the Commonwealth Ombudsman's office in its Strategic Plan 2007–2010. The importance of the values is reinforced in induction documentation and training for staff, and in internal documents including the Workplace Diversity Framework and Plan, and the Harassment Prevention Policy.

The key values of the Commonwealth Ombudsman's office are: independence, impartiality, integrity, accessibility, professionalism and teamwork.

Commonwealth Disability Strategy

The office is committed to the Commonwealth Disability Strategy to ensure equality of access to the services of the Commonwealth Ombudsman for people with disabilities, and to eliminate discriminatory practices by staff. We endeavour to meet our obligations under the *Disability Discrimination Act 1992* through implementation of the Commonwealth Disability Strategy and the Ombudsman's Disability Action Plan 2005–2008 and the Workplace Diversity Framework and Plan 2007–2009.

The office's operations encompass the activities of regulator, service provider and employer.

Regulator

The Ombudsman does not directly enforce the disability discrimination legislation, but provides a complaint resolution service under statute for the Australian Government. This can include recommendations on enforcement of legislative obligations that apply to Australian Government agencies. The Ombudsman seeks to promote awareness of services in all areas of the Australian community, and provides an online complaint lodgement facility on the office's website. Ombudsman staff liaise regularly with

community organisations to promote awareness of the Ombudsman's services.

Service provider

The Ombudsman has an established internal complaint and review process, which allows complaints about the office's decisions and service quality to be resolved quickly, fairly and informally. The office's complaints and grievances mechanism is outlined in our service charter and advised to complainants in a variety of communications. We seek to promote awareness of the office's role and service in all areas of the Australian community.

In developing and maintaining the Ombudsman's website, we use the priority 1 and 2 checkpoints of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 1.0 as our benchmark. Activities to ensure compliance include testing colour contrast for the vision impaired, limiting the use of graphics, simplifying navigation and providing a site map, separating document formatting from content with style sheets, providing text equivalents for non-text elements, and improving metadata.

Employer

The Ombudsman's harassment policies and Workplace Diversity Framework and Plan aim to ensure that in working to achieve the goals of the office, the diverse background, skills, talents and views of staff are recognised, encouraged and valued.

When taken as a whole, these policies assist the office to ensure that the principles of workplace diversity are understood by staff, and are embedded in our office culture, practices and procedures.

The plan provides for the following measures to assist staff who have particular needs.

- All employment policies and procedures comply with the requirements of the *Disability Discrimination Act 1992* and are communicated in a manner that is responsive to the needs of employees.
- Employment policies and procedures are

made available in a manner that is responsive to the needs of prospective employees. Appropriate material is provided in hard copy to prospective employees when they seek details of employment opportunities, as well as on the office's website in accessible formats.

- Managers and recruiters apply 'reasonable adjustment' principles.
- The workplace diversity framework allows for a flexible approach to management of employees with special needs.
- Training and development programs consider and respond to the needs of people with disabilities and include information on disability issues where they relate to the content of the program.
- Complaints/grievance mechanisms, including access to external mechanisms, are in place to address issues and concerns raised by staff and the public.

Environmental matters

The Ombudsman is required to report on certain environmental matters under s 516A(5)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*, detailing the office's environmental performance and its contribution to ecologically sustainable development.

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently and in an ecologically responsible manner. During 2006–07 we reviewed the office's Environmental Management Policy and information material on the conservation of energy within the workplace, including the use of light, computer equipment, water management and organic recycling. The office recycles toner/printer cartridges, paper and cardboard products, classified waste and cans/tins, bottles and plastic. These strategies are communicated to staff through the office intranet and induction program.

Service charter

We continue to be committed to providing the best service possible to the community. Our service charter outlines the service that can be

expected from the office, ways to provide feedback and steps that can be taken if standards are not met.

When a complainant is dissatisfied with our conclusions and decision about a complaint, they may ask for the matter to be reconsidered, and if they are still not satisfied, for a review of their complaint. A Deputy Ombudsman will consider the information provided and decide whether or not we will review the handling of the complaint.

The Deputy Ombudsman chairs the office's internal review panel and allocates the request for review to a designated review officer who has had no prior involvement in the complaint. The review officer will look at whether the processes our staff followed were fair and adequate, and whether the conclusions they reached were reasonable and properly explained to the complainant. Only in exceptional circumstances will more than one review be undertaken.

We commenced an internal review of the office's service charter in June 2007. The review will take account of any relevant issues arising from the survey of Australian Government agencies and the post implementation review of our work practice changes—both being conducted during the period June to August 2007. An external review of the charter will be conducted in 2008.

We report on our performance against service charter standards in Chapter 3—*Performance report*.

EXTERNAL SCRUTINY

Privacy legislation

The Ombudsman's office is subject to the *Privacy Act 1988* (Privacy Act). We continually assess our compliance with the Information Privacy Principles, which determine the way the office deals with personal information.

The Ombudsman provided information to the Privacy Commissioner for inclusion in the Personal Information Digest. The Commissioner did not issue any reports about the actions or practices of the office under s 30 of the Privacy Act in 2006–07.

The Privacy Commissioner commenced an investigation during the year into an alleged breach of privacy by the Ombudsman's office. A complainant approached the Privacy Commissioner, and the Ombudsman's office has responded to the Commissioner's enquiries. The matter is still open.

The Ombudsman's office made a submission to the Australian Law Reform Commission review of privacy legislation.

Human Rights and Equal Opportunity Commission

The Ombudsman's office is subject to the jurisdiction of the Human Rights and Equal Opportunity Commission.

In 2006–07 the Commission advised the Ombudsman about a complaint it had received on the office's dealings with a complainant. The office had decided the complainant should, for a limited period, not be allowed to contact the office by telephone. The complainant was still able to write to the office, including by email. This course of action is occasionally adopted when a complainant becomes unreasonably aggressive or offensive or makes lengthy and repetitive telephone calls that do not add to the investigation, but which prevent staff from carrying on with their other work. We have responded to the Commission's enquiries and understand that the matter is still under review.

Litigation and legal issues

In 2006–07 the Ombudsman's office was the respondent in one matter brought to the Administrative Appeals Tribunal (AAT) by a complainant who had made requests under the *Freedom of Information Act 1982* (FOI Act). The Tribunal dismissed the application on account of the applicant's failure to attend and pursue the matter. The applicant sought reinstatement of the application but the AAT refused. The applicant applied to the Federal Court for review (*Zoia v Commonwealth Ombudsman* [2007] FCA 245) and was again unsuccessful. The complainant has now applied to the Full Federal Court.

In 2005–06 a former complainant instituted proceedings in the Federal Court seeking

review under the *Administrative Decisions (Judicial Review) Act 1977* of decisions not to investigate complaints he had made about the arrangements for the management of federal prisoners in state prisons. In October and December 2006 his applications against five other respondents were dismissed and a motion by the Ombudsman that the application had no reasonable prospects of success was allowed, and that application was also dismissed (*Clarkson v Commonwealth et al*, [2006] FCA 1348 and [2006] FCA 1839). In December 2006 leave to appeal was refused, other than in relation to one costs order. The Ombudsman's office understands that the applicant has applied to the High Court, both on appeal and in its original jurisdiction. Those matters are not yet resolved.

The Ombudsman was also identified in an AAT matter as a respondent in a matter related to the Australian Securities and Investments Commission. The application was subsequently dismissed.

Section 35 of the Ombudsman Act provides that the office is not compellable to provide, to a court or tribunal, information or documents obtained by the office in discharging its functions. We customarily rely on that statutory non-compellability when required by subpoena or discovery to produce information for the purposes of a legal proceeding to which we are not a party. The office is reviewing its policies, having regard to a case where a person was accused of having made a serious threat against an Australian Government agency in the course of conversations with Ombudsman's office staff.

Reports by the Auditor-General and Parliamentary committee inquiries

There were no reports on the operation of the Ombudsman's office by the Auditor-General or by Parliamentary committees.

PEOPLE MANAGEMENT

During 2006–07 the Ombudsman's office managed its employees in accordance with the conditions of our Certified Agreement 2005–2008 and a number of Australian Workplace Agreements (AWAs), as well as within our obligations under the *Public Service Act 1999*.

We further reviewed the office's suite of human resources policies and guidelines to bring them in line with the Certified Agreement and to reflect changes in office procedures and practices. In particular, we focused on:

- harassment policies and awareness
- recruitment and selection guidelines to provide flexibility with increased internal opportunities
- working from home guidelines to ensure the right balance between work and non-work life is achieved
- the Workplace Diversity Framework and Plan to ensure that workplace diversity principles are embedded in our office culture.

During the year the office conducted its first staff survey to provide an opportunity for employees to contribute their views about workplace issues and the overall performance of the office. The survey provided some important insights and helped inform the Executive in the development of corporate strategies, policies and procedures.

The survey focused on a range of topics including:

- APS values and code of conduct
- leadership
- communication and knowledge sharing
- internal and external relationship management
- recruitment and selection
- performance management
- learning and development
- harassment and bullying
- work/life balance.

The high response rate of 88% demonstrated that staff are committed to help improve the office. The report results showed that the majority of Ombudsman staff were satisfied with the office as an employer, and most staff indicated they were proud to tell others that they work for the office. In many areas we exceeded the APS State of the Service benchmarks. This level of satisfaction with our working environment reflects positively on all staff.

The report highlighted a number of areas for improvement. The senior management team sought further input from staff on possible strategies to help address these areas and how particular initiatives could be implemented. Substantial follow-up work has already been undertaken and action to respond to the survey will continue during 2007–08.

Workplace relations

The Certified Agreement 2005–2008 focuses on people, remuneration and employment arrangements, working environment and lifestyle, further streamlining of personnel practices and processes, and performance management and improvement to underpin salary increases. Conditions are provided for Senior Executive Service (SES) staff under AWAs. A total of 143 employees were covered under the office's certified agreement. (Note: as statutory officers, the Ombudsman and two Deputy Ombudsmen are not included.)

The certified agreement does not make provision for performance pay. Salary advancement through pay points within each classification is linked to performance, in accordance with the policy parameters for agreement making in the APS. SES AWAs

provide for annual salary advancement within the range based on performance, and do not make provision for performance pay. Non-salary benefits are not offered to employees.

The office's Workplace Relations Committee continues to provide a forum for discussion of issues surrounding implementation and operation of the agreement. It also provides the consultative, advisory and information-sharing mechanism between management and employees on matters affecting employment conditions in the office.

A new certified agreement is due to be negotiated and implemented before October 2008, when the current agreement expires.

Staffing profile

As at 30 June 2007, the actual number of employees was 146, including the Ombudsman and two Deputy Ombudsmen who are statutory appointees. The number of full-time employees was 125 and the number of part-time employees was 21 (14% of employees). The full-time equivalent number of employees for the year was 140.5.

During the year, 31 employees were engaged on an ongoing basis and 28 ongoing employees

TABLE 4.1 STAFFING PROFILE BY LEVEL AND GENDER AT 30 JUNE 2007 (AT 30 JUNE 2006)

APS classification and salary range	Men		Women		Total	
	Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1 \$34,250–\$37,856	0	0	0	0	0 (0)	0 (0)
APS2 \$38,762–\$42,984	0	0	0	0	0 (0)	0 (1)
APS3 \$44,152–\$47,653	0	1	1	2	1 (3)	3 (1)
APS4 \$49,208–\$53,428	2	3	20	1	22 (22)	4 (4)
APS5 \$54,885–\$58,199	5	0	12	0	17 (12)	0 (0)
APS6 \$59,280–\$68,095	16	0	17	1	33 (28)	1 (7)
EL1 \$75,994–\$82,061	15	2	20	0	35 (35)	2 (2)
EL2 \$87,649–\$99,370	6	2	11	1	17 (17)	3 (5)
SES \$114,457–\$132,757	2	0	3	0	5 (5)	0 (1)
Statutory officers	2	0	1	0	3 (3)	0 (0)
TOTAL	48	8	85	5	133 (125)	13 (21)

TABLE 4.2 STAFFING PROFILE BY LOCATION AT 30 JUNE 2007

Location	Men	Women	Total
ACT	41	67	108
NSW	3	6	9
NT	0	1	1
QLD	2	7	9
SA	1	4	5
TAS	0	0	0
VIC	6	4	10
WA	3	1	4
TOTAL	56	90	146

left the office, equating to a turnover rate of 19% (compared to 12% in the previous year). Given the nature of the office's work and the completion of some major 2006–07 budgeted priorities, the turnover is not disproportionate for this financial year.

Table 4.1 shows the numbers of employees, by gender and APS classification and salary range. Four employees on long-term leave without pay under the *Prime Minister's Directions 1999* are not included. Table 4.2 shows the office's staffing profile by location.

Twenty-one staff were employed on a part-time basis. Of these, 19 were ongoing and two non-ongoing.

Career development and training

The office's learning and development program centres on continuous improvement of organisational performance through the performance management process, and corporate and core business training and development.

In 2006–07 the office introduced a new approach when inducting new employees. The key elements focused on pre-commencement actions, a newly developed online induction program and devolved orientation responsibility to the line manager, including the provision of a mentor/coach. Feedback on this approach from new

employees and line managers was positive, with both taking a greater role in ensuring the process was completed.

The focus for learning and development this year was on workshops to improve consistency in the approach by all staff across our eight offices when dealing with complaints, focusing on difficult complainants, investigations and people management.

Key learning and development areas identified by the office and delivered included:

- investigation workshops and on-the-job training
- difficult complainants training
- working within the framework of government
- working with interpreters
- presentation skills
- performance management
- leading and working in small teams
- harassment and bullying awareness
- executive coaching.

Staff representatives delivered a variety of business-focused workshops across all office sites. This proved to be of great value with an increase in consistency in the use of the office's complaint management system and with record-keeping compliance.

The office contributes to the development of its staff by supporting staff attendance at courses, seminars and conferences identified in their personal development plans. We also recognise and put in place other development opportunities, through job rotation, special project work, higher duties, placements with other agencies and representation on work committees. These programs have been well received with many staff taking up the opportunities to further develop their skills.

The office also provides study assistance, which a relatively high percentage of staff use to undertake short or long-term courses at educational institutions.

FINANCIAL MANAGEMENT

Financial performance

Revenue received from ordinary activities was \$18.923 million in 2006–07. The office received \$17.579 million in appropriation revenue, amounting to \$0.544 million more than received in 2005–06. Additional resources of \$5.250 million over four years, including \$0.059 million in capital funding, were received during the Additional Estimates process for an increase in workload. The increase in activity results from the introduction of the Welfare to Work Programme, implementation of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* and amendments to the *Telecommunications (Interception and Access) Act 1979*.

Total expenses for the office were \$18.720 million resulting in a surplus in 2006–07 of \$0.204 million, primarily due to delay in implementing new initiatives.

The office requested and received approval to budget for an operating loss in 2006–07 of \$0.900 million. The underlying reason for the budgeted loss was due to a timing difference. During the 2005–06 Additional Estimates, the office received funding for the Palmer Implementation Plan and migration legislation amendments. We did not increase staffing sufficiently quickly to complete all of the work as originally estimated in the 2005–06 year. Work related to the referred immigration cases

was completed by the end of June 2007. There was also delay in recruiting suitably qualified staff for the new measures introduced in the 2006–07 Additional Estimates.

Financial position

The office's total equity—that is, sum of the office's assets less its liabilities—has increased by \$0.263 million due mainly to a surplus in the 2006–07 year and an equity injection.

The office's total assets increased to \$7.611 million in 2006–07 from \$6.920 million in 2005–06. The increases arose primarily out of an increase in undrawn appropriations, due to the delays in implementing the initiatives noted above. The office assets by category at 30 June 2007 are:

- receivables (amounts due to be paid to the office—66.9% of total assets).
- infrastructure, plant and equipment (24.2%)
- intangibles (non-physical assets such as software—5.3%)
- other non-financial assets (relating to prepayments—2.8%)
- cash (0.8%).

The balance sheet shows cash holdings of \$0.059 million (\$0.333 million in 2005–06). The office's appropriation receivable also increased by \$0.602 million, from \$4.089 million in 2005–06 to \$4.691 million in 2006–07.

The office's non-financial assets increased to \$2.460 million in 2006–07 (\$2.274 million in 2005–06), primarily due to office fit-out and purchases of information technology assets.

Total liabilities increased by \$0.427 million to \$4.539 million in 2006–07 (\$4.112 million in 2005–06). The change in liabilities was primarily due to an increase in employee provisions.

Purchasing

The Ombudsman's office is committed to achieving the best value for money in its procurement practices. Purchasing practices and procedures are consistent with the Commonwealth Procurement Guidelines and are set out in the Ombudsman's Chief Executive Instructions.

TABLE 4.3 EXPENDITURE ON CONSULTANCY CONTRACTS, 2004–05 TO 2006–07

Year	Number of consultancy contracts	Total actual expenditure
2004–05	6	\$122,999
2005–06	8	\$439,000
2006–07	7	\$104,395

The office published its Annual Procurement Plan on the AusTender website (as required under the Commonwealth Procurement Guidelines) to facilitate early procurement planning and draw businesses' attention to our planned procurement for 2007–08.

Consulting services

The office engages consultants when the expertise required is not available within the organisation, or when the specialised skills required are not available without diverting resources from other higher priority tasks. In accordance with procurement guidelines, consultants are selected by advertisement, panel arrangements or selective tendering. The main categories of contracts relate to information technology, financial services, human resources services, governance and legal advice.

During 2006–07 the office entered into five new consultancy contracts involving total actual expenditure of \$75,045. In addition, two ongoing consultancy contracts were active, involving total actual expenditure of \$29,350. See Appendix 5 for details of new consultancy contracts. (Details are also available at www.ombudsman.gov.au.)

Table 4.3 shows expenditure on consultancy contracts over the three most recent financial years.

Contractual provisions allowing access by the Auditor-General

The office's standard contract templates include an ANAO audit clause. The office did not sign any contracts of \$100,000 or more (including GST) in the reporting period.

Contracts exempt from publication in AusTender

No office contracts or standing offers that cost more than \$10,000 (including GST) were exempted by the Ombudsman from being published in AusTender.

INFORMATION TECHNOLOGY

We continued to improve the office's use and management of information technology to support the performance of its functions. We:

- implemented changes to the complaint management system to meet additional functional requirements
- applied enhancements to external network connectivity, including migration to a secure internet gateway service, connectivity to Fedlink for secure email communication with other Australian Government agencies, and establishing email classification capability and filtering
- applied enhancements to the office's wide area network between Canberra and state offices to improve overall performance, involving an increase from 128kbps to 768kbps.
- replaced the aging Unix local area network server environment in all offices
- provided secure VPN connectivity from the internet, enabling working from home and mobile laptop capability.

In 2007–08 we will continue to work on improving:

- backup and recovery processes and procedures and business continuity planning
- information technology workflow and change management procedures
- management of email and electronic records.

An early amendment to the Ombudsman Act in 1983 gave authority to the Ombudsman to release information in the public interest (s 35A). Some other Ombudsman offices in Australia can only release the results of an investigation by making a report to the Parliament.

The Commonwealth Ombudsman has used this power many times to publish investigation reports. The current practice of the office is to publish, either in full or in abridged form, any formal report by the Ombudsman to an agency that contains a finding of administrative deficiency. Reports are made available on the Ombudsman website.

Some published reports arose from the investigation of individual complaints or incidents—for example, the failure of an agency to provide adequate reasons, police handling of a demonstration, a government tender process, or an Australian Defence Force accident. Many other reports arose from own motion investigations undertaken by the Ombudsman into general administrative problems or systemic difficulties in agencies. Examples are reports into complaint handling in agencies, freedom of information administration, whistleblower protection, child support assessment, tax minimisation schemes, and family tax benefit.

Certain issues have cropped up on a regular basis and been reported on several times. These include immigration detention, contracting out of government services, and the use of entry, search and seizure powers.

The use of entry, search and seizure powers by agencies attracts special interest because of the difficult balance to be struck in administering and enforcing the law. Coercive powers are commonly given by legislation to government agencies so that they may ensure community compliance with the law. In doing so, the agencies should pay proper regard to the rights and privacy of people. Whether that occurs can be a fertile source of complaints to the Ombudsman.

Immigration-related issues are another common topic in Ombudsman reports, because of the sensitive issues that arise in immigration administration. Issues canvassed in published reports include the management of immigration detention centres, visa processing, compliance operations, and the supporting role played by state police and state correctional facilities.



5 challenges in complaint handling

In previous annual reports we have discussed some of the challenges faced by the office in dealing with complaints. The way that complaints are managed is no less important than the outcome of investigations. This chapter deals with some of the challenges that arose in the year, relating to the complexity of investigations, work practice changes, and making the Ombudsman's office better known to the community.

INHERENT COMPLEXITY

Some complaints are challenging by the very nature of the subject matter. For example, last year we discussed complexity in legislation as both a problem area for government and as a challenge for our office. Our investigation of the 247 referred immigration detention matters, discussed in Chapter 7—*Looking at the agencies*, is a case in point. Some of these cases required extensive investigation of complex legal and factual issues. Identifying themes across the 247 cases, and presenting those themes in six consolidated reports, was another facet of the complexity.

The discussion below picks up two other types of complexity, in one instance arising from the technical nature of the subject matter, and in the other from multiple agencies playing a role in the topic under investigation.

Technical complexity

The Ombudsman's office can receive complaints arising in all areas of government. To deal with a complaint it is necessary for the investigation staff to acquire an understanding of a particular government program or activity. This can require investigation staff to grasp complex issues of an expert or technical kind, and to embark on a detailed, forensic investigation of matters that have changed over long periods of time.

An example of such complexity arose in the complaints we received about the F-111 aircraft deseal/reseal ex gratia payment scheme, which is administered by the Department of Veterans' Affairs (DVA). The Australian Government established the scheme in response to concerns over the exposure to chemicals by RAAF aircraft maintenance workers who worked on the F-111 aircraft over a 25-year period at RAAF Base Amberley. The specific process that gave rise to these concerns was the chemical desealing and subsequent resealing of the aircraft's fuel tanks.

'This can require investigation staff to grasp complex issues of an expert or technical kind ...'

The ex gratia scheme was announced in August 2005, and since then we have received 82 complaints relating to the four deseal/reseal programs, including 75 complaints in 2006–07.

Deseal/reseal complaints presented several challenges. First, although the process to assess claims is a recent activity and simple to understand, almost all of the evidence relied upon to assess claims was old—in some cases nearly 30 years old. Much of the material that was presented by complainants was, of itself, technical as well. For example, we dealt with extracts from aircraft maintenance logs, service duty statements and performance evaluation reports, and trade proficiency certificates.

Second, each of the four deseal/reseal programs was unique. Each employed different practices, took different amounts of time, and was performed by different personnel in different physical locations. Assessment of individual complaints was made more difficult by the fact that similar work was conducted at

operational squadrons located at Amberley but was not recognisable under the payment scheme.

In addition, a number of different maintenance trades performed discrete functions as part of each overall deseal/reseal process. Some tradespeople were also employed 'out of trade'. To add to this complexity, other non-maintenance trades were also deemed to be eligible to claim under the scheme. For example, RAAF fire fighters were involved in the incineration of some of the material used in the deseal/reseal process.

To deal properly with these complaints, Ombudsman staff had to conduct considerable research and develop an understanding of the processes employed in each of the four deseal/reseal programs and the roles of the various groups involved. In some cases they needed to gain an understanding of the sequence of maintenance events unique to each program and the roles of each of the trades involved, the fuel and engine systems of the F-111, the unusual tools used by maintenance workers, and the behaviour of some chemicals used in each program.

The strategy we employed to deal with deseal/reseal complaints was to centralise our handling of these complaints to allow a specialist team to develop an extensive body of knowledge. In partnership with DVA we developed clear lines of communication and we held numerous meetings to expand our knowledge about the F-111 and refine our understanding of key issues.

Multiple agency involvement

Multiple agencies can be involved in delivering separate services in a single location, or in jointly delivering a single service. Private organisations may also be involved, either alongside or as partners in the project to deliver a service. Where multiple agencies are involved, it is particularly important that their roles and responsibilities in administering legislation, making policy, and handling complaints, are clearly spelt out and visible to the public.

In the absence of this clarity and visibility, members of the public can have difficulty in

finding their way through the maze to obtain the appropriate service, or in finding the right agency to deal with a complaint in a timely manner. In some cases, this complexity can complicate complaint handling for offices such as the Ombudsman's office.

'... members of the public can have difficulty in finding their way through the maze to obtain the appropriate service ...'

During 2006–07 we dealt with two areas that highlighted complexity of this kind. One concerned an own motion investigation we conducted into complaint handling at Australian airports. Different agencies deliver separate services at airports, such as quarantine inspection and protective security. The other area concerned complaints we received about the Welfare to Work initiatives that were introduced in July 2006. Here, responsibility for administering legislation, policy making and service delivery is divided among three separate government departments, as well as Centrelink and contracted private and not-for-profit organisations.

Complaint handling in Australian airports

This investigation examined the visibility and accessibility of complaint-handling systems in airports, inter-agency collaboration in complaint handling, and how well agencies resolved systemic issues identified through complaints. During the investigation we consulted with the Australian Customs Service; Australian Federal Police; Australian Quarantine and Inspection Service; Department of Industry, Tourism and Resources; Department of Immigration and Citizenship; and Department of Transport and Regional Services.

Overall we found that agencies could do more to make travellers aware of their right to complain and how to exercise that right. We also found that agencies could work more cooperatively in managing complaints. To this end, we made 14 recommendations, including that agencies:

- review their complaint-handling systems

to ensure they comply with Australian Standard AS ISO 10002–2006

- make complaint-handling systems more visible to passengers
- develop a joint complaint-handling mechanism at major airports
- improve their websites to make complaint information easier to locate and available in a range of formats so that no traveller is disadvantaged
- review complaint-handling information to ensure that it is available in the languages most frequently spoken by passengers travelling to Australia.

The great majority of the recommendations were accepted by all the agencies, and they all recognised the importance of dealing with complaints consistently and effectively. The investigation report is available at www.ombudsman.gov.au.

Welfare to Work

The Welfare to Work reforms made significant changes to the way income support payments are administered.

Although Centrelink continues in its role of assessing people's qualification for social security pensions and allowances and making payments, responsibility for the Welfare to Work policy and various aspects of program delivery are spread across a number of government agencies. Both Commonwealth and private sector providers deliver these programs. The involvement of a number of different agencies with different roles and responsibilities has made our complaint-resolution processes more complex and lengthy. The complex policy, service and contractual arrangements under the Welfare to Work initiatives present particular challenges to our office in dealing with complaints related to these initiatives.

Under Welfare to Work, a complaint could involve Centrelink for the payment matters, the Department of Employment and Workplace Relations (DEWR) for the policy and contracted Provider of Australian Government Employment Services (PAGES) actions, and the Department of Human Services (DHS) for the

job capacity assessment component. In the case of a job seeker with a disability, the complaint may also involve the Department of Families, Community Services and Indigenous Affairs (FaCSIA).

The involvement of multiple agencies can make it difficult for a person to resolve any issues of concern. They may be unclear as to which agency is best placed to address their concerns and the role of different agencies in dealing with their particular circumstances.

It also makes our investigations more complex. For example, in investigating a complaint about a Centrelink decision or action it is often necessary to seek details of the policy or procedural guidelines on which the decision was based. However, as Centrelink is a service delivery agency and must work within policy guidance provided by DEWR and DHS, there have been instances where our requests for documentation on a specific policy have been refused on the basis that 'it is not Centrelink's information'.

'The involvement of multiple agencies can make it difficult for a person to resolve any issues of concern.'

Similarly, questions arise about which agency is responsible for poor administration relating to flawed policies and guidelines. For example, if this office forms the view that a Centrelink decision was based on flawed policy, the question arises as to which agency is responsible: DEWR as the policyholder or Centrelink as the service delivery agency, or both. This also makes it difficult to identify which agency is best placed to achieve the appropriate remedy because in some instances three or more agencies may all have some degree of shared responsibility.

It is important that there are clear lines of responsibility and inter-agency collaboration in dealing with complaints. It is also imperative that appropriate processes to address these issues are set up at the start of the implementation of such major initiatives.

Some of these issues are discussed further in the sections on Centrelink and employment and workplace relations in Chapter 7.

RESPONDING TO COMPLAINT— HANDLING CHALLENGES

There has been considerable change in the office in recent years. A number of new functions have been acquired, such as the Immigration Ombudsman role, Law Enforcement Ombudsman role, and the Postal Industry Ombudsman role. Other major changes, described below, have also been made to the way that complaints are managed.

Work practice changes

Work practices were changed in 2005–06 to improve the effectiveness and efficiency of complaint handling. These changes included:

- redeveloping the Work Practice Manual
- introducing a Work Practice Steering Committee
- designing and implementing a new complaint management system
- creating a Public Contact Team (PCT)
- adopting a five-tier category structure for categorising and escalating complaints.

A post-implementation review commenced in 2007 to assess whether these changes met their intended objectives. An external consultant is conducting the review and is expected to provide practical solutions to any identified gaps. The review will be completed in early 2007–08.

Public Contact Team

The introduction of the PCT in early 2006 enabled complaint handling to be streamlined in the office. During 2006–07 the PCT managed some 50,000 telephone calls, and took on responsibility for the initial assessment of and (in appropriate cases) response to written complaints. Approximately 71% of all initial approaches to the office were finalised by the PCT. This freed investigation officers to focus on more complex and demanding cases.

The PCT provides an important service in being the first point of contact to the office for members of the public. We received over 33,000 approaches during the year, with over 15,000 of these being enquiries, requests for

information, and complaints outside our jurisdiction. For those matters within our jurisdiction, we dealt with nearly 14,000 without investigation.

Many people who approach the office do so because they do not know how to resolve their problem. Our surveys of public awareness have indicated that there is a reasonably high level of awareness of ‘the Ombudsman’ as an avenue to resolve problems about government agencies, and ‘the Ombudsman’ is the most commonly preferred choice for dealing with complaints about Australian Government departments and agencies. However, many people have difficulty in understanding the roles of different Ombudsmen. In addition, organisations such as Telstra frequently refer people to the Ombudsman when they ask for someone to assist them. This emphasises the importance of having good procedures in place to advise people of the most appropriate body to deal with their specific concerns.

In some cases, people’s problems cover a range of issues and different levels of government. For example, a sole parent may contact us when they find themselves in difficulty, which could involve housing issues (for example, public housing provided by a state agency, with rent deduction from Centrelink), child support issues (possibly involving the Child Support Agency and Family Court), income support issues (possibly involving Centrelink, DEWR and PAGES) and child welfare issues (involving state departments). In some cases, the situation can be so dire that the person needs some form of emergency assistance.

In these circumstances, PCT staff work hard to provide people with advice about the best avenues to pursue their problems. For example, they will advise them which state organisations, including state Ombudsmen, to contact and how. They will give them advice about how to raise their concerns with agencies such as Centrelink and DEWR, or pass these matters to our investigation staff to consider further. If the person seems to be in need of emergency assistance, PCT staff will give them contact information for relevant organisations such as the Salvation Army.

Where the PCT staff are unsure, they are able to draw on the resources of the office, including our specialist teams, to provide the best advice to the person.

Dealing with callers can be challenging. Many people who contact the office can be frustrated by their dealings with bureaucracy, and distressed because of problems that may involve children, families, health and serious financial matters. Some of the people who are most in need of assistance are not well placed to find that assistance or articulate their concerns. They may have poor levels of education or literacy, mental health or other illness, or simply be worn down by the difficulties they and their family face.

'Many people who contact the office can be frustrated by their dealings with bureaucracy ...'

In these circumstances, it is important for PCT staff to be able to deal with the caller sensitively, and help to unravel the problems so they can provide the best assistance possible. It also means it is important for our staff to be well-supported in their work and to have the necessary skills to assess a complaint and determine the most appropriate course of action. There are times when a person's initial expectations of what we can do are unrealistic. The PCT manage each call to ensure that realistic outcomes are identified and managed.

Several aspects of the way our PCT operates enable this valuable service to occur. First, we find many people who contact us are very pleased that a person answers their phone call and they do not have to navigate through a range of options with recorded messages to find the right person to speak to, or, if they write, that their initial letter or email is responded to by a telephone call. This brings a touch of humanity that some people find missing in modern life, especially if the person is feeling marginalised from society.

Second, we do not restrict the length of time our staff can spend on any one phone call—we do not have performance indicators built on strict time limits. We want to make sure that we provide the best service possible, and to

take the time to clarify a person's concerns and discuss their options with them.

Third, we do not have scripted responses. Every person is treated as an individual. We maintain consistency through training, the provision of information resources, team work and quality assurance. This enables us to give a high standard of service to each person, best suited to their circumstances.

The PCT can also provide important early warning of problems. For example, on occasions an agency's telephone system has malfunctioned and members of the public are not able to contact the agency, or an agency has sent out automatically generated letters advising that a person's benefit has ceased because the agency does not have their address, though the letter is sent to that person's address. In such situations, PCT staff contact our specialist teams who are able to make immediate contact with the relevant area in the agency involved, to advise them of the problem or to find out the status of efforts to resolve it.

'The PCT can also provide important early warning of problems.'

Complaint management system

The new complaint management system introduced in 2005–06 has been operating smoothly. Some refinements were introduced during 2006–07 to incorporate the new Ombudsman roles discharged by the office, and to improve template letters and issue strings which are used to categorise complaints and assist in statistical analysis.

Difficult or unreasonable conduct by complainants

Last year's annual report outlined our participation in a cross-agency project, coordinated by the New South Wales Ombudsman's office, to develop and trial management strategies for complainants who behave unreasonably. The project recognises categories of unreasonable conduct that place an inequitable burden on the organisation's resources and often cause distress for staff.

We are now trialling various management strategies for responding to unreasonable conduct. Staff attended one-day training sessions and were given material outlining a range of recommended responses to difficult behaviour. Staff have been asked to test these strategies when a complainant exhibits particular behaviour. The data from this trial will inform the project's conclusions and final paper.

Relations with government agencies

Our capacity to deal with complaints in an effective and timely manner depends to a significant extent on how we relate to, and interact with, government agencies. While we have surveyed people who complain to the office, it is many years since we undertook a systematic review of our interactions with agencies.

In June 2007 we commenced a survey of agencies to ascertain their views about our effectiveness and our interactions, and to identify areas where we could improve processes to lead to speedier and more effective resolution of complaints. During 2007–08 the survey results will be assessed and changes implemented as required.

New policy on administrative deficiency

Section 15 of the Ombudsman Act spells out in broad terms the grounds on which the Ombudsman can formally make a report to an agency, and ultimately to the Prime Minister and Parliament. The s 15 grounds are broader than those on which a court undertaking judicial review can declare administrative conduct to be unlawful. It has thus been common for Ombudsman offices to use broad labels such as 'maladministration', 'agency defect' or 'adverse finding' to capture the scope of conclusions in an Ombudsman investigation.

In 2006 the Ombudsman adopted a new policy on 'administrative deficiency' to provide detailed guidance on when an adverse conclusion should be recorded following an investigation of a complaint. The policy lists sixteen categories of administrative deficiency. Some of the categories apply when an error has occurred in an individual case—such as a human error, factual error, legal error,

unreasonable delay, breach of duty by an officer, or inadequate explanation of a decision. Some other categories apply where the administrative deficiency is systemic or inherent in an agency—such as a resource deficiency, inadequate training of agency staff, or an unreasonable or harsh impact of legislation or a government policy.

'... the Ombudsman adopted a new policy on 'administrative deficiency' to provide detailed guidance ...'

The early experience of the Ombudsman's office is that the new policy is effective in at least two ways. First, the clear definition of when it is appropriate to record administrative deficiency against an agency has led to more consistent practice in the office. This is important, given the large number of investigation staff, complaints and agencies that come within the Ombudsman's jurisdiction. An added requirement of the policy—that a finding of administrative deficiency be approved by a Senior Assistant Ombudsman—has introduced more rigour to the process.

A second benefit is that the conclusions in individual cases feed into the systemic work of the office, by highlighting issues that may need further examination by specialist teams. This better categorisation of the problem areas in agency decision making also sharpens attention on the remedial action that will best resolve problems. For example, the proportion of cases in which 'human error' is recorded as the basis for administrative deficiency highlights the importance of agencies apologising for errors that cause inconvenience to members of the public.

The main drawback of introducing a new policy is that it can lead in the early days to fewer findings of administrative deficiency being recorded than is probably warranted. This stems partly from occasional resistance by agencies to a new category of error or deficiency being recorded against the agency. It can also stem from the reluctance of Ombudsman staff to record such a finding when they lack experience in applying a new policy. These matters will receive further attention by the office in 2007–08.

COMMUNITY ENGAGEMENT AND PUBLIC AWARENESS

Service delivery to Indigenous Australians

In 2005–06 we reported on the establishment of an Indigenous Working Group (IWG) in the Ombudsman's office. The aim of the IWG is to develop a program of consultation with Aboriginal and Torres Strait Islander people, organisations and communities, with a dual focus on improving our services and identifying key issues that arise in the delivery of government services to Indigenous people and communities.

The IWG prepared an interim report in mid-2006 outlining a range of initiatives, including:

- *refining the consultation process*: identifying and testing consultation options that can be used by specific teams in the office, as part of a broader office planning and reporting process
- *own motion investigations*: identifying and undertaking own motion investigations in areas of specific concern to Indigenous people and communities
- *Indigenous employment strategy*: building an effective secondment program in the

office, as a step in developing an Indigenous recruitment strategy

- *partnerships with existing contact networks in Indigenous communities*: establishing direct contact points between investigation officers and Indigenous communities, that can facilitate complaint handling and training
- *targeted outreach*: through radio and print media, and direct consultation
- *internal management*: improve data capture within the office about approaches from Aboriginal and Torres Strait Islander people, and provide training in Indigenous cultural awareness for all staff.

The Ombudsman endorsed the findings and recommendations of the IWG interim report. Implementation of the recommendations began in 2007, although progress has been slower than we would have hoped. A key step towards implementation has been our commitment to developing a Reconciliation Action Plan (RAP). We are currently working with Reconciliation Australia on our draft RAP, which embodies many of the initiatives outlined above. We hope to launch the RAP later in 2007.



Ombudsman office staff visiting the remote community of Nguuu in the Tiwi Islands.



Ombudsman staff among participants in the Sydney Good Service Forum.

Outreach to regional and rural areas

The office has an active program of outreach to regional and rural Australia. A main objective of the program is to target key stakeholders so that services provided by the Ombudsman's office are better known and used.

Awareness survey

In 2006 we contracted a market research company to survey people in regional and rural Australia, to establish a benchmark for the level of public awareness of the office. The survey was repeated in 2007.

The 2007 survey showed that people's unprompted awareness of 'the Ombudsman' had increased from 27% to 33%, and 'the Ombudsman' was now their most commonly preferred choice for dealing with complaints about an Australian Government department

or agency. There was a lower level of prompted awareness of the Commonwealth Ombudsman, with 64% indicating they have heard of the Commonwealth Ombudsman, compared to 74% in 2006. As found in the last survey, many people appeared to have difficulty distinguishing between the roles of various Ombudsman offices.

The results of this awareness survey will be used in the coming year to better target our outreach activities and communication.

Outreach activities

In 2006–07 we conducted 116 outreach activities across all states and territories, continuing our aim of conducting or participating in an average of at least one focused outreach activity each week during the year.

We continued to target community information 'gatekeepers' in rural and regional Australia, to inform them of our role and to listen to their concerns and observations about government service delivery. In recognition of the role played by local members in resolving complaints about Australian Government agencies, we placed a particular emphasis in 2006–07 on engaging with federal parliamentarians and their staff. Information sessions for electorate staff of state and federal members of parliament were held in all states during the year.

'... we conducted 116 outreach activities across all states and territories ...'

In our Immigration Ombudsman role, we conducted roundtable discussions with migration agents, community groups and other immigration stakeholders in all state capital cities.

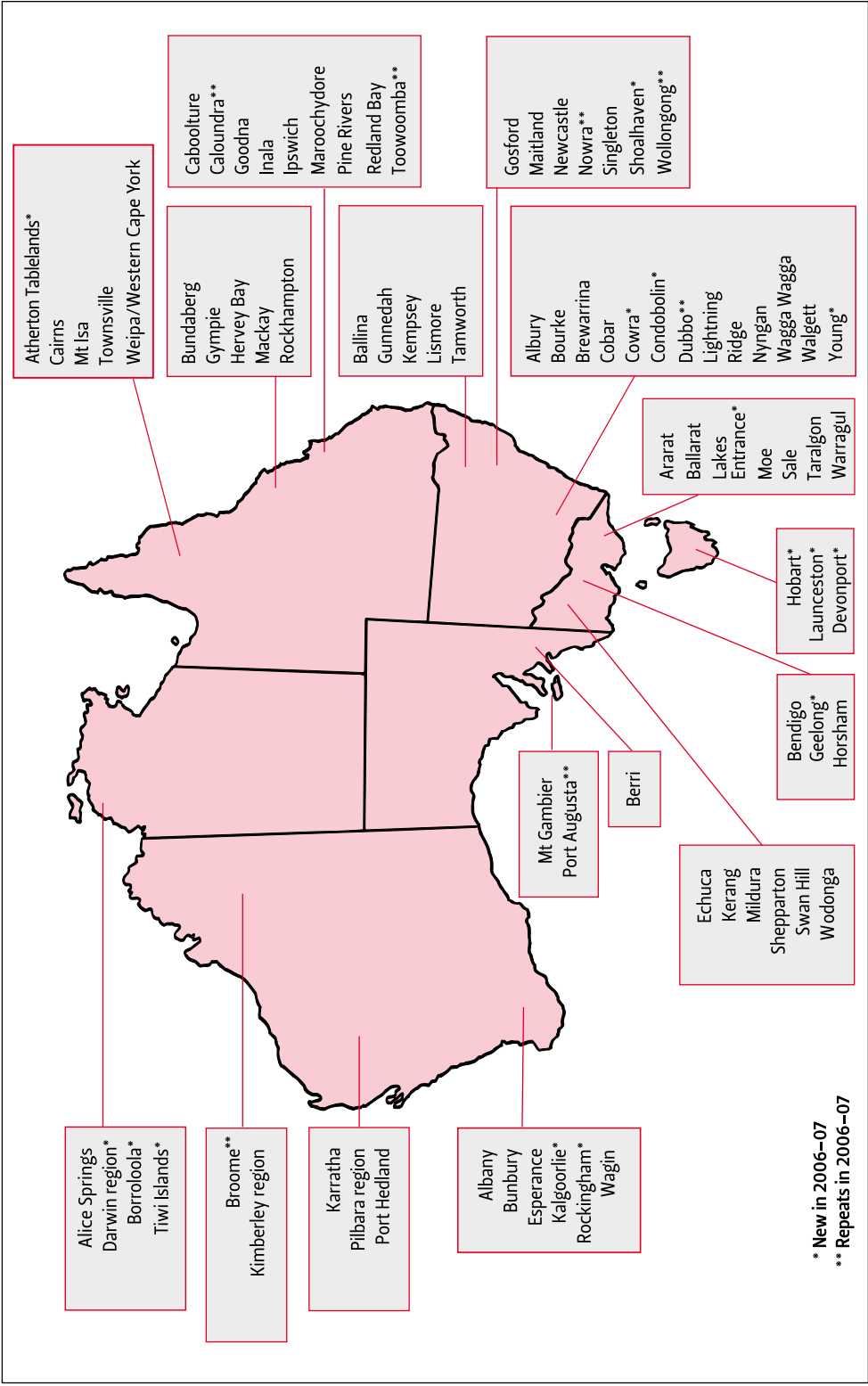
Other highlights included a visit by senior staff to Indigenous communities in the Western Cape York area of North Queensland and

around Darwin, and visits to the regional centres of Alice Springs, Cowra, Dalby, Dubbo, Nowra, Port Augusta, Toowoomba, Wollongong, and Young, as well as to smaller communities on the Atherton Tablelands in Queensland.

In June 2007 we undertook a major outreach visit to Tasmania, attending functions coordinated by the Tasmanian Chamber of Commerce and Industry and the Hobart Community Legal Centre in Hobart, Launceston and Burnie. Although the number of people attending some functions was not high, feedback indicates that our visit was appreciated by the participants. From our perspective, the opportunity to engage with both the business and community sectors was valuable.

Towards the end of the financial year we undertook limited targeted advertising in 117 regional and rural newspapers to support our outreach activities. The small advertisements promoted our contact details. We are analysing the results of this advertising in order to help better target our outreach activities in future.

AREAS VISITED DURING OUTREACH ACTIVITIES IN 2004–05 TO 2006–07



* New in 2006–07
** Repeats in 2006–07

The same issue can crop up in different agencies at different times. Over the past ten years the Ombudsman has reviewed the complaint-handling processes of Australia Post; the Australian Broadcasting Authority; the Australian Broadcasting Corporation; the Australian Federal Police; Australian Taxation Office; Centrelink; Child Support Agency; Department of Employment, Workplace Relations and Small Business; Department of Health and Aged Care; Job Network; Migration Agents Registration Authority; National Gallery of Australia; and complaint handling in airports.

We identified deficiencies in complaint-handling processes and procedures and made recommendations to improve them. This included better training for staff who deal with complaints, improving complaint forms to make them more easily understandable, and reviewing complaint management and quality assurance mechanisms.

The importance of managing and dealing with complaints from clients has been recognised by government. All agencies now have a service charter and many have dedicated complaint-handling units.

Problems stemming from inaccurate advice and unrecorded oral advice is another issue that has arisen in multiple agencies and been reported on by the Ombudsman.

People rely on oral advice from government agencies and expect that a record will be kept by the agency. Many people do not realise that if they don't ask the right question, they may not get the answer they need. When people rely on the advice given and it proves to be incorrect or inaccurate for their circumstances, they may experience financial loss. If there is no record to back up their assertion as to the advice given, they will face difficulty in obtaining a refund or appropriate compensation.

The Ombudsman has also publicly released three reports on the administration of the *Freedom of Information Act 1982* by government agencies. The reports raised concerns about how agencies handled FOI requests, and stressed the importance of agencies demonstrating their commitment to FOI.



promoting good administration

6

A core objective of an ombudsman's office is to move beyond the individual problems highlighted in individual complaints, and to foster good public administration that is accountable, lawful, fair, transparent and responsive.

An individual complaint may highlight issues that are systemic in nature, such as the provision of inadequate or misleading advice on a particular aspect of government service delivery, or the application of a policy that is inconsistent with an agency's governing legislation.

An issue that arises in an individual complaint about a specific agency may open a window onto similar issues in other areas of government administration.

Through thirty years of experience in dealing with individual complaints, the Ombudsman's office has built a broad base of knowledge about government administration and the ways in which good, and poor, administration can have an impact on people. We draw on this experience to promote improvements in public administration through a variety of mechanisms.

'An issue that arises in an individual complaint about a specific agency may open a window onto similar issues ...'

This chapter discusses some of the ways the Ombudsman's office has promoted good administration. We made submissions to a number of parliamentary and other government inquiries. We also initiated or participated in projects that aim for systemic reform in areas such as the use of automated decision making and protection of internal whistleblowers. Own motion investigations undertaken by the office are described in other chapters, and briefly

noted in this chapter. Cooperation with other oversight agencies, and with Ombudsman offices in Australia and the Asia-Pacific region, enables joint projects to be undertaken, best practice experience to be shared, and a mutual support network to be developed.

SUBMISSIONS, REVIEWS AND RESEARCH

Parliamentary committees and submissions

The Acting Ombudsman and staff made a submission and appeared before the Senate Legal and Constitutional Affairs Committee concerning its inquiry into the provisions of the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006. The Bill, which was not enacted, would have given significant new search and seizure powers to Centrelink officers.

We made a submission to the same committee, and appeared before it, in relation to its inquiry into the provisions of the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006. Our comments related to controlled operations and delayed notification search warrants.

We also made a submission to the Parliamentary Joint Committee on Corporations and Financial Services regarding its inquiry into the Exposure Draft of the Corporations Amendment (Insolvency) Bill 2007, and a supplementary submission to the Joint Committee of Public Accounts and Audit inquiry into taxation administration in Australia. We appeared before the Senate Foreign Affairs, Defence and Trade Committee in relation to its review of the implementation of reforms to Australia's military justice system. More details about this review are

provided in the 'Defence section' of Chapter 7—*Looking at the agencies*.

We provided submissions to the Australian Law Reform Commission inquiry into legal professional privilege and Commonwealth investigatory bodies, and into its review of the *Privacy Act 1988*.

Whistleblowing project

Our office continued its leading role in the national research project, *Whistling While They Work: Internal Witness Management in the Australian Public Sector*. This three-year collaborative project is the first national study of the management of whistleblowers and other internal witnesses. The project aims to describe and compare organisational experience under varying public interest disclosure regimes across the Australian public sector.

By identifying and promoting current best practice in workplace responses to public interest whistleblowing, the project will use the experiences and perceptions of internal witnesses and first and second level managers to identify more routine strategies for preventing, reducing and addressing reprisals and other whistleblowing-related conflicts.

'The project aims to describe and compare organisational experience under varying public interest disclosure regimes ...'

During 2006–07 the project conducted three major surveys. The first survey involved the distribution of a questionnaire 'Workplace Experiences and Relationships' to approximately 23,000 randomly selected employees across 117 Commonwealth, New South Wales, Queensland and Western Australian public sector agencies. Over 7,600 responses were received, providing the project with a comprehensive dataset.

The second survey covered 15 public sector 'case study' agencies, including four Australian Government agencies. This phase involved distributing a questionnaire to employees who had volunteered (on a confidential basis) to describe their experiences of providing

information about alleged or suspected wrongdoings in their workplaces. It was followed by the distribution of questionnaires to employees within the agencies, who were either specifically selected on the basis that their work role may have involved them dealing with the internal reporting of wrongdoing, or randomly selected because of their managerial responsibilities.

The third survey was directed at 27 'integrity agencies' across the four jurisdictions. The term 'integrity agency' is used here to describe agencies that have an independent or whole-of-government responsibility to ensure and promote public integrity in their jurisdiction, with direct reference to public sector whistleblowing. This survey covered agency practices and procedures for receiving, investigating and managing reports from public sector employees about wrongdoing in the sector, and the experience of individual staff members dealing with issues and cases involving public sector employees who had reported wrongdoing.

Some data collection is continuing, and it is expected the data analysis and reporting will continue into 2008.

In addition, in November 2006 an issues paper, *Public Interest Disclosure Legislation in Australia: Towards the Next Generation*, written by the project's leader, Dr AJ Brown, from Griffith University, was released. A joint foreword to the paper by the Commonwealth, New South Wales and Queensland Ombudsmen drew attention to the importance of developing a national and coherent approach to the design of whistleblower protection laws. The paper is available on our website at www.ombudsman.gov.au.

Automated assistance in administrative decision making

Australian Government agencies are turning increasingly to computer systems to automate or assist in the administration of programs. Automated systems that are properly constructed and implemented have the potential to improve the efficiency, accuracy and consistency of many government administration processes.

Our office, together with the Australian Government Information Management Office, the Australian National Audit Office (ANAO) and the Privacy Commissioner, was involved in the publication of the *Automated Assistance in Administrative Decision-making Better Practice Guide*. The guide was jointly launched in April 2007 by the Ombudsman and the Secretary of the Department of Finance and Administration, Dr Ian Watt.

The guide was developed by the AAADM Working Group, which involved sixteen Australian Government agencies. The Ombudsman was pleased to see the cooperative approach taken in the development of the guide, with a wide range of agencies making a significant contribution to the content.

The guide aims to assist public officials understand how key administrative law and public administration principles apply to automated systems that are used to assist with administrative decision making. Transparency and accountability are particularly important in this regard, and are key components of the better practice guide. The guide includes the following key principles.

- The underlying rules contained in the automated system should accurately capture the relevant legislative and policy provisions as well as the relevant procedures.
- Matters of judgement or discretion should be carefully considered to ensure that there is no inappropriate restrictive modelling in the automated rule base, and that discretionary decisions are capable of scrutiny and review.
- The underlying rules of automated systems should be readily understandable and publicly available.
- Automated systems should have the capability to automatically generate an audit trail of the decision-making path. This capability should also be able to generate statements of reasons or notification letters, and be available for external scrutiny.

‘... to assist public officials understand how key administrative law and public administration principles apply to automated systems ...’

Maintaining these principles benefits individuals who are affected by administrative decisions that may have been automated or assisted by automation. Adherence to these principles also enables external review agencies like the Ombudsman to investigate such administrative decisions more easily.

COOPERATION WITH OTHER OVERSIGHT AGENCIES

The Ombudsman’s office can be considered to be one part of the ‘integrity’ arm of government. It is one of a number of independent statutory agencies that discharge a ‘watchdog’ role in relation to the public sector. Some of those agencies have a role similar to the Ombudsman of receiving and investigating complaints from the public, initiating inquiries into systemic issues in government administration, or auditing compliance by agencies with legislative requirements. Examples are the Inspector-General of Intelligence and Security (IGIS), the ANAO, the Privacy Commissioner, and the Australian Commission for Law Enforcement Integrity (ACLEI). Given our similar objectives of overseeing and improving government administration, we continue to look for ways to work cooperatively with these agencies, to complement each other’s work and to avoid unnecessary duplication of effort.

Australian Commission for Law Enforcement Integrity

ACLEI was established in December 2006 to detect, investigate and prevent corruption in the Australian Crime Commission, the Australian Federal Police and other prescribed Australian Government agencies with law enforcement functions. We meet as required to share information and discuss issues of mutual interest.

Inspector-General of Intelligence and Security

The Ombudsman and the IGIS continued to work together during the year, discussing common issues that arose in the handling of complaints about Australian Government agencies. For example, a number of complaints in the immigration area relate to delays in processing visa applications due to the time involved in undertaking external security checks. In some cases the check is conducted by the Australian Security Intelligence Organisation, over which the IGIS has jurisdiction. We liaised with the IGIS and refined our contact and referral procedures relating to the investigation of such cases.

Human Rights and Equal Opportunity Commission

During the year the Ombudsman and the President of the Human Rights and Equal Opportunity Commission agreed upon a protocol for complaint handling between our agencies to reduce duplication of effort. We also agreed on a procedure to coordinate visits to immigration detention centres to maximise the opportunities for detainees to raise issues of concern, while reducing the impact on the day-to-day operations of the centres.

Privacy Commissioner

In November 2006 the Ombudsman and the Privacy Commissioner signed an agreement to enable greater cooperation when dealing with privacy-related complaints. The aim of the agreement is to facilitate exchange of information and avoid unnecessary duplication

between the two offices. The agreement allows for the exchange of relevant information where both offices are considering the same issue; joint investigation; and the referral of complaints to the other office if it is relevant and the complainant consents.

Inspector-General of the Australian Defence Force

The Ombudsman works closely with the Inspector-General of the Australian Defence Force (IGADF) to ensure the most appropriate agency takes carriage of issues within their particular areas of responsibility. This approach has proven effective in dealing with persistent complainants, in finalising complaints that have become protracted, and in avoiding investigation of the same complaint issues by both organisations.

In the past year we have participated in joint training activities. Senior staff from our office regularly gave presentations at IGADF training courses. Similarly, at the invitation of the IGADF, we observed the practices employed during IGADF military justice audits, which are conducted at military units throughout Australia. This experience increased our understanding of military justice issues that the IGADF encounters and provided us with some ideas about how we could use similar techniques and methods in our own Defence investigations.

In April 2007 the IGADF also co-hosted a series of familiarisation visits for Ombudsman staff to Defence facilities around Australia. The visits helped our staff develop a better understanding of Defence issues, such as the pressure which can arise from an increased operational tempo, and the conditions in which many Defence personnel live and work.

Administrative Review Council

The Ombudsman is an ex officio member of the Australian Review Council, established by the *Administrative Appeals Tribunal Act 1975* Part V. The Council provides advice to the government on administrative law issues and reform. During the year the Ombudsman was a member of the Council's sub-committees responsible for reports on coercive information gathering powers, and complex business



The Ombudsman, John McMillan, and the Privacy Commissioner, Karen Curtis, at the signing of a complaint-handling protocol.

regulation, and for the development of a series of Best Practice Guides to Decision Making (to be launched in August 2007). The work of the Council is covered in a separate annual report prepared by the Council.

Meetings with other oversight bodies

We continued to work cooperatively with other oversight agencies by participating in multi-agency forums on issues of mutual interest.

In September 2006 we participated in a forum 'Responding to the Anti-Terrorism Legislation' jointly hosted by the Equal Opportunity Commission of Victoria, the Institute for International Law and the Humanities of the University of Melbourne, and the Federation of Community Legal Centres. Our staff gave a presentation on the role of the Ombudsman in relation to federal counter-terrorism law.

In February 2007 the Acting Ombudsman participated in a Police Accountability Round Table hosted by the Victorian Office of Police Integrity, to discuss police oversight and corruption prevention.

We also met during the year with the Inspector-General of Taxation, and provided information to his office to assist in its inquiries.

OWN MOTION AND MAJOR INVESTIGATIONS

The Ombudsman can conduct an investigation as a result of a complaint to the office or on his own motion. During 2006–07 we publicly released 13 reports on own motion or major investigations.

Seven of the reports covered cases referred to the office by the Australian Government concerning the immigration detention of 247 people by the Department of Immigration and Citizenship (DIAC). Other reports dealt with:

- the ATO's administration of garnishee action
- Strand I funding decisions by the Australian Film Commission
- the Migration Agents Registration Authority's complaint-handling process
- the management of complaints about unacceptable behaviour in the Australian Defence Force

- complaint-handling systems in airports
- a review of AFP ACT Policing's Watchhouse operations.

Further details on most of these reports are provided in Chapter 5—*Challenges in complaint handling* and Chapter 7—*Looking at the agencies*, and all are available on our website at www.ombudsman.gov.au.

In 2007–08 we expect to finalise a number of other own motion investigations and commence some new ones, as detailed in Chapter 7.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

Under our international program we continued to work with colleagues in other Ombudsman offices to improve public sector capacity in the Pacific, Papua New Guinea (PNG), Thailand and Indonesia. The program assisted Ombudsmen in the region to develop management strategies tailored to their specific challenges through placements, short advisory visits, and ongoing dialogue.

Over the last twelve months, our programs focused on activities to broaden the social impact of high quality complaint investigation services.

- In Indonesia we continued working to extend access to the National Ombudsman Commission (NOC) to more people in more areas.
- Our work with the PNG Ombudsman Commission helped to reinforce cooperative relationships with other law and justice agencies, contributed to better use of information technology and helped reduce complaint backlogs.
- In the Pacific we strengthened our existing network of Pacific Island Ombudsmen and began to expand opportunities for those Pacific countries currently without an ombudsman.
- We completed a successful three-year partnership with the office of the Thai Ombudsman. In this final year, we supported activities to strengthen community outreach, to improve use of information technology and to reduce complaint backlogs.



Governor of Central Kalimantan, A. Teras Narang, SH, Deputy Commonwealth Ombudsman Dr Vivienne Thom, and the Chief Ombudsman of the NOC Antonius Sujata (centre), meet in September 2006 to finalise the establishment of a Provincial Ombudsman.

Our work in PNG, Samoa and Thailand has built institutional capacity on a number of levels, giving individuals an opportunity to extend their professional skills, while also supporting larger scale institutional and sectoral change.

PNG Ombudsman Commission police oversight project

The impact of the Twinning Program on the Ombudsman Commission of Papua New Guinea has been encouraging and very obvious. One area where the program has had a visible strategic impact is on the relationship between the Ombudsman Commission of Papua New Guinea and law enforcement agencies.

**Mr John ToGuata, Director of Operations,
Ombudsman Commission of PNG**

A particular project of great importance in which the office has been involved is the PNG Ombudsman Commission Police Oversight Project. One step in this project was a placement in Canberra of Mr John Hevie, the PNG Ombudsman Commission manager responsible for overseeing the investigation of complaints about the Royal Papua New Guinea

Constabulary. Mr Hevie observed our procedures for overseeing investigation reports of the AFP and the way our staff work collaboratively with the AFP in resolving complaints.

On his return to PNG, Mr Hevie was responsible for finalising the memorandum of agreement between the Ombudsman Commission and the Royal Papua New Guinea Constabulary. A senior investigator with our Law Enforcement Team worked with the Police Oversight Project during a placement to PNG to assess the resource implications and possible implementation issues of a range of oversight models.

On 1 June 2007 the Police Oversight Project entered a new stage in PNG with the signing of a memorandum of agreement between the Commissioner of Police and the Chief Ombudsman for an Ombudsman Oversight Mechanism for Complaints Against Police. The agreement aims to regain the public's confidence in investigation of complaints against police personnel and represents a heightened commitment between the two agencies to work together in the best interests of the public.

The Pacific Ombudsmen Network

During the year we participated in a forum with the Ombudsmen, or their representatives, from the Cook Islands, New South Wales, New Zealand, PNG, Samoa, Solomon Islands, Tonga and Vanuatu. The forum focused on building the framework for more regional cooperation in the Pacific Island Forum states.

Mr Maiava Inlai Toma, Ombudsman of Samoa has stated:

'Samoa has been directly assisted by the office of the Commonwealth Ombudsman under the umbrella of the 'Pacific Ombudsmen Network' since the earliest days of the Network's establishment. Activities have focused on strengthening identified needs of the Ombudsman's office. I have absolutely no complaints about the quality, either of the specific assistance given or of the people that were involved in its delivery. I would like to emphasise however that the benefit to us of involvement in the Network has been much more than functional improvements that may have been designed into the actual activities. The physical existence and operation of an Ombudsman office in a country that is not a mature democracy does not necessarily mean very much. In my

own country, the priority task all along has been to achieve understanding, acceptance and respect for the Ombudsman function by the Government and by the people to be served by the Ombudsman. In this endeavour the existence of the Network and membership in it has been invaluable.

'It has to be borne in mind that conventional ombudsmanship is not something that one makes up as one goes along or brings about by a wave of a magic wand. Acceptance and respect for it has to be freely given for it to realise its potential as a powerful yet friendly tool for fairness and good governance that is indispensable in today's democratic society. Pacific countries are striving for this ideal and they are spurred on by the achievements and successes in neighbouring countries where the ombudsman function is strong and well established. Involvement at the personal level with fellow ombudsmen from those jurisdictions and the latter's own demonstrated interest in the strivings of the struggling Pacific Islands ombudsmen generate immense encouragement and reassurance. It is vital in my view that the Network be maintained as we know it today and that it be at the centre of regional efforts and developments in our area of interest.'



The Pacific Ombudsmen Network—meeting in Sydney in May 2007. Back row (from left) Mr Greg Andrews (Assistant NSW Ombudsman), Dr Stephen Ranck (Commonwealth Ombudsman office), Mr John Belgrave (New Zealand Ombudsman), Maiava Inlai Toma (Ombudsman of Samoa), Mr Pilimisololo Tamoua (Senior Investigator, Ombudsman of Tonga), Mr Ila Geno (Chief Ombudsman of Papua New Guinea); front row (from left) Mr Ron Brent (Deputy Commonwealth Ombudsman), Mr Joe Poraiwai (Principal Investigator, Ombudsman of the Solomon Islands), Ms Janet Maki (Ombudsman of the Cook Islands) and Mr Peter Taurakoto (Ombudsman of Vanuatu).

Case Handling at the Office of the Thai Ombudsman

The Thai Ombudsman office has learned a great deal from the thirty-year experience of the Commonwealth Ombudsman ... Thai Ombudsman staff who received training came back with a fuller understanding of the Ombudsman's task and operational systems. More than 70% of the officers who participated in the partnership program with the Commonwealth Ombudsman have subsequently been promoted to senior investigator and senior officer positions, and continue to support organisational development in their new roles. We hope that the relationship between the two offices will continue well into the future.

Ms Roypim Therawong, Deputy Section Head, Technical Support Division, Office of the Thai Ombudsman

During the year we hosted staff from the Thai Ombudsman office. They participated in 'train the trainer' seminars, covering issues such as dealing with difficult complainants, investigation planning, mediation and negotiation. On their return to Thailand a fortnightly training program was implemented for all Thai Ombudsman staff. The training manual was translated and published in the Thai Ombudsman Journal. More than 1,500 copies were distributed to schools, universities, institutes, government and non-government organisations, spreading the benefit of this program beyond the office to the general public.

COOPERATION AMONG AUSTRALIAN OMBUDSMEN

As described in last year's annual report, we have a close working relationship with the large number of public and private sector Ombudsman offices in Australia and the Asia-Pacific region.

The Ombudsman is a member of the executive of the Australian and New Zealand Ombudsman Association Inc (ANZOA), an association of some industry and public sector Ombudsman offices. During 2006–07 ANZOA projects included identifying and addressing systemic issues, internal review of complaint



Thai Outreach Team study visit to Australia: (from left) Kuhn Kanching, Kuhn Ying and Kuhn Dararat with a member of Citizens Advice Bureau ACT.

handling in ombudsman offices, statistical significance of ombudsman complaint data, learning and development programs for ombudsman staff, and liaison with ombudsman associations in other countries. The ANZOA members are organising a national conference, 'The role of the ombudsman—yesterday, today and tomorrow', to be held in Melbourne in April 2008.

There was also regular contact and meetings between Ombudsmen and staff of Commonwealth, state and territory Ombudsman offices. An example is a joint project between the offices on dealing with difficult or unreasonable conduct by complainants, discussed in Chapter 5—*Challenges in complaint handling*.

oversight of Australian Government agencies

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The office's advertising and marketing activities of 2007 are a long way from those of the early days, when the office was promoted through a small number of radio and newspaper ads and the Ombudsman appearing on three television programs—*Four Corners*, *Willesee at Seven*, and *The Mike Walsh Show*. The first pamphlet setting out what the Ombudsman does and how to complain was released in June 1978, and was followed in 1979 with an information pamphlet in 21 languages.

The Ombudsman's office embarked upon one of its first advertising programs in 1980, with a cartoon on 750,000 milk cartons throughout the ACT. Billboards with similar cartoons were also created for use when conducting outreach visits to rural Queensland. A few bureaucrats at the time were said to be unhappy that a government agency was advertising its services in such a way—they felt the Ombudsman was promoting an image of public servants as lazy and inefficient!

Today the office approaches advertising in a somewhat different way through a variety of mediums. Outreach visits are regularly made to regional and rural centres; information on our services is available via our website at www.ombudsman.gov.au; and brochures, posters and fact sheets are provided to a variety of community organisations in 36 languages. The Ombudsman and staff also speak at conferences and seminars throughout Australia, distributing promotional items such as pens and stress balls branded with the Ombudsman logo as constant reminders of the office.



looking at the agencies

7

The majority of approaches and complaints received about Australian Government agencies within the Ombudsman's jurisdiction (77%) concerned the following six agencies:

- Australia Post
- Australian Taxation Office
- Centrelink
- Child Support Agency
- Department of Employment and Workplace Relations
- Department of Immigration and Citizenship.

This chapter focuses on particular issues that arose during 2006–07 in investigating complaints, and in dealing with the agencies more broadly. It also looks at other specialised areas of our work:

- dealing with complaints by current and former members of the Australian Defence Force (Defence Force Ombudsman)
- dealing with complaints about the Australian Federal Police, including under the role of Law Enforcement Ombudsman
- the broader Immigration Ombudsman role
- the handling by agencies of freedom of information requests.

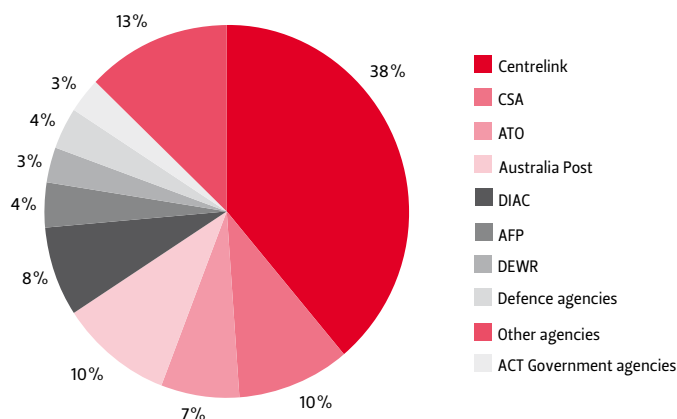
The 'Other agencies' section of this chapter provides information about some of the range of complaints received about other agencies.

The chapter concludes with a section 'Monitoring and inspections' which summarises the work undertaken for Output 2—*Review of statutory compliance in specified areas*.

The number of approaches and complaints we receive about specific agencies usually reflects their level of interaction with members of the public. In general, the higher the number of direct transactions an agency has with members of the public, the more potential there is for things to go wrong. While we see only a very small proportion of complaints compared to the number of decisions and actions taken by agencies, those complaints can shed useful light on the problems people can face in dealing with government and areas for improving administration. The figures given for numbers of approaches and complaints include a small number of matters that are out of jurisdiction for the Ombudsman.

Figure 7.1 shows the number of approaches and complaints received in 2006–07 about agencies within the Ombudsman's jurisdiction. Detailed information by portfolio and agency is provided in Appendix 4—Statistics.

FIGURE 7.1 APPROACHES AND COMPLAINTS RECEIVED ABOUT AGENCIES WITHIN JURISDICTION, 2006–07



australian taxation office

The Ombudsman has been investigating complaints about the Australian Taxation Office (ATO) since 1977 when the office commenced operation. In 1995 the Ombudsman was also given the title of Taxation Ombudsman following recommendations of the Joint Committee of Public Accounts and Audit (JCPAA), to give a special focus to the office's handling of complaints about the ATO. The committee's recommendations recognised the imbalance that exists between the powers of the ATO and the rights of taxpayers.

The Taxation Ombudsman is assisted by a Senior Assistant Ombudsman, a specialist Tax Team, and generalist complaint investigation teams located in our state offices. Following changes to our office's work practices during this reporting year, the Tax Team put greater emphasis on addressing a range of general taxation administration issues, providing advice to our investigation officers on tax complaints and issues, and maintaining a productive working relationship with the ATO.

During 2006–07 we continued to build on our previous efforts to encourage review and improvement in ATO tax administration, as well as improving our own handling of complaints.

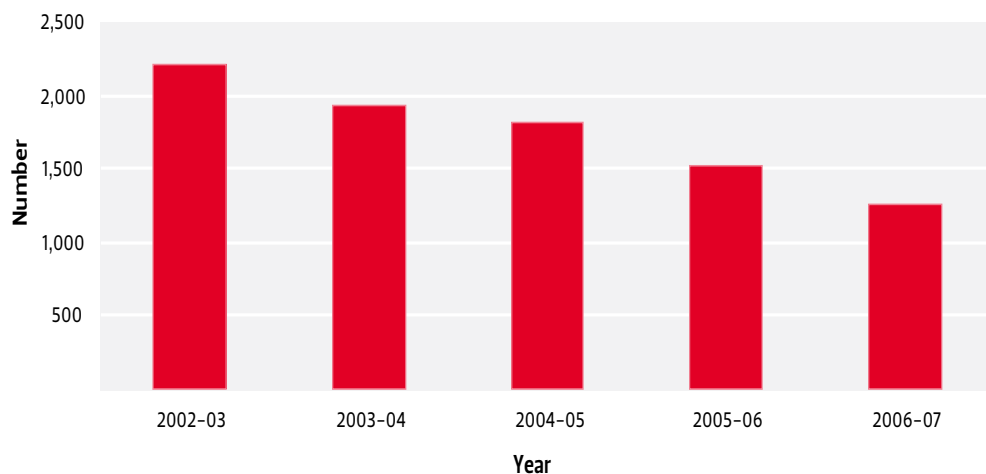
A particular highlight is our initiation of an ongoing program of project work focusing on aspects of tax administration. We hope this will encourage the ATO to review its own processes where this is not already being done. We also trust this will provide a higher level of assurance about the health of the tax system.

COMPLAINTS OVERVIEW

In 2006–07, the Ombudsman received 1,261 approaches and complaints about the ATO, compared to 1,523 in 2005–06. We believe the continuing decrease in the number of complaints about the ATO indicates that the ATO's improvements to its own internal complaint handling system are enhancing the handling of taxpayer complaints. The office finalised 1,272 complaints, of which 187 (15%) were investigated.

During 2006–07, we received complaints about a range of ATO activities and products, including superannuation guarantee, lodgement and processing, interest and penalty remission decisions and the conduct of audits. Complaints about ATO debt recovery action, and the accuracy, clarity and timeliness of ATO advice continued to dominate. The

FIGURE 7.2 AUSTRALIAN TAXATION OFFICE APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07



number of complaints arising from mass-marketed scheme decisions continued to decrease as the ATO nears finalisation of scheme settlement cases.

TAX ENVIRONMENT

In an increasingly complex tax environment, there will always be a need for effective review and complaint-handling mechanisms to assist individuals who consider they have been wronged in some way by the ATO. In addition to statutory objection and appeal rights regarding assessment and related decisions, it is important to have an effective system for handling complaints about the ATO to provide assurance about the health of the tax system, and to indicate where possible problems may exist or arise.

'In an increasingly complex tax environment, there will always be a need for effective review and complaint-handling mechanisms ...'

The Ombudsman acknowledges that the ATO has worked hard to establish fair and responsive remedial mechanisms that can remedy mistakes that do occur. Very few of the complaints we examined raised concerns of broader systemic or other significance to this office, and we receive few complaints alleging institutional bias or bad faith. Most of the complaints we receive relate to 'simple errors', such as concerns about delay or ambiguity in ATO correspondence, accounting errors, relatively straightforward disputes about tax assessments or a taxpayer's level of debt. Often these illustrate the difficulties people have understanding ATO processes and their own obligations. In this regard, tax complaints are no different to many other types of complaints we receive.

COMPLAINT ASSISTED TRANSFER PROJECT

Our usual practice is to suggest to complainants that they first attempt to resolve their concerns directly with the ATO because we consider the agency should have the

opportunity to correct any perceived problems. To test the effectiveness of this practice we conducted a survey of tax complainants in 2005. The survey identified a low take-up rate of our advice by taxpayers.

In January 2007 we began a trial of directly assisting the transfer of tax complaints to the ATO. The objective was to assist and encourage complainants who may be uncertain or uncomfortable about complaining directly to the ATO. The assisted transfer process enables taxpayer concerns to be raised with the ATO in the most effective and efficient way possible. We also reassure complainants that they can come back to our office if dissatisfied with the outcome from the ATO.

In May 2007 we assessed the assisted transfer trial and adopted it as a standard work practice during initial handling of tax complaints. We are confident this change provides a more effective complaint service for many of our tax complainants.

EXTERNAL PROJECT WORK

Towards the end of 2005 we implemented a forward work program of external tax projects. Those projects not completed in 2006–07 will be carried forward for completion in 2007–08, and other new projects will also commence.

Our external projects generally examine the systemic issues that arise from individual tax complaints. We aim to assess the health of specific areas of tax administration, to identify potential problem areas in ATO administration and make recommendations where appropriate.

In designing the project program, we were conscious of the work of the Inspector-General of Taxation and the Australian National Audit Office (ANAO) and have attempted to avoid or minimise overlap by identifying areas that complement their work. We aim to work closely with these oversight bodies in improving tax administration. The unique perspective that we can bring to these broader projects, gained primarily through handling individual complaints, is a balanced

consideration of the impact that government administration can have on individuals.

‘Our external projects generally examine the systemic issues that arise from individual tax complaints.’

External projects we initiated and reported on during 2006–07 included release from tax debts on the basis of serious hardship, debt payment arrangements, aspects of the general interest charge, use of garnishee powers, compromise of tax debts, tax issues for Indigenous communities, review of ATO correspondence, the ATO mass communication strategy and 30% child care rebate.

External projects awaiting completion include superannuation guarantee, ATO audit activity on work-related expenses, lodgement compliance, penalties and prosecution. We also plan to commence a project on call management capability and delivery towards the end of 2007. The objective of this project is to review the effectiveness of ATO call centre operations with a focus on the ATO’s client service procedures that are designed to ensure tax officers find the right person if they themselves cannot assist a taxpayer with their problem.

We also have an ongoing outreach project focused on tax agents, to help and encourage them to raise issues of concern with this office.

Not surprisingly, debt recovery action leads to a significant proportion of complaints received about the ATO. In 2006–07 around 15% of all complaints related to ATO debt collection activities. For this reason, our external project work this year had a particular focus on aspects of the ATO’s debt collection practices.

Issues dealt with in the external projects conducted in 2006–07 are outlined below.

Debt payment arrangements

This project examined the ATO’s approach to administering arrangements to pay tax-related liabilities by instalments. In the context of overall ATO debt activities, our office receives relatively few complaints about payment arrangements. In the complaints we examined, some taxpayers perceived that the ATO was inflexible, particularly in its reluctance to agree to new arrangements following taxpayer default, and where there were changes to a taxpayer’s circumstances, including those involving compassionate or compelling personal matters.

In our report to the ATO, we recognised it is reasonable for the ATO to have regard to factors such as compliance history and risk to revenue. However, we did note that the ATO needs to continue to take care to ensure its decision-making processes provide an appropriate balance between its debt recovery obligations and the need to give genuine, proper and realistic consideration to an individual taxpayer’s circumstances. We suggested to the ATO that they may wish to consider making their guidelines more explicit in relation to the weight they afford to a taxpayer’s history of non-compliance when negotiating payment arrangements.

We also suggested that the ATO consider establishing a system for internal review of ATO payment arrangement decisions. Legislation does not provide for a formal system of objections and appeals, but it is open to the ATO at an administrative level to allow taxpayers to request review of adverse ATO decisions.

Use of garnishee powers

Where a tax-related liability is payable, the Commissioner of Taxation may issue a notice requiring a person who owes money to the taxpayer to pay that money to the Commissioner instead. A third party is treated

as owing money in various circumstances, including where that person holds money for or on account of the taxpayer—for example, a bank.

Although only a small number of our complaints relate to ATO garnishee action, we recognise that the impact of garnishee action on an individual can be significant. Taxpayers often see garnishee action as being premature, intrusive and unwelcome.

We examined the ATO's approach taken to garnishee action as reflected in approximately 60 complaints received between July 2003 and June 2006. A public report was prepared (*Australian Taxation Office: Administration of garnishee action* (Report No 1/2007)).

We generally found the ATO had acted reasonably in taking garnishee action, acting only after other attempts to recover a debt had been unsuccessful.

We suggested to the ATO that it might be opportune to review its policy and practices, paying particular attention to:

- development of a specific practice statement about garnishee action
- better documentation of reasons for taking garnishee action
- the adequacy of reasons provided to debtors at the warning and notice issue stages
- the adequacy of guidance to ensure the issue of garnishee notices does not affect the taxpayer's ability to appeal
- better statistical data
- complaints about garnishee action.

'We generally found the ATO had acted reasonably in taking garnishee action ...'

The ATO welcomed our suggestions and will consider them as part of its ongoing commitment to listen and respond to community feedback. The ATO Chief

Operating Officer has arranged for the best practice capability in the Debt business line to undertake a review of their administration of garnishee action including communication activities. The aim is to develop a framework of delivery based on our suggested themes.

Compromise of tax debts

The ATO defines 'compromise' to mean a permanent agreement not to pursue recovery of the balance of a tax debt. The Commissioner of Taxation's power to compromise is implied from his general responsibility to administer tax law. While we receive few complaints from taxpayers who consider that the ATO has unreasonably refused to compromise their debts, we felt that this was an area worthy of closer examination.

On the whole, we were satisfied that the ATO's processes and guidelines around compromise were appropriate, but made two general suggestions to the ATO for improvement. We suggested that the ATO could include more and/or better explanations in its publicly available information about the nature and limits of compromise, including those circumstances where it may be considered appropriate for the Commissioner to exercise his compromise power. Secondly, we flagged that appropriately edited examples of successful compromise cases might provide useful assistance to taxpayers contemplating applying for compromise.

Administration of the General Interest Charge

The administration of the General Interest Charge (GIC) was selected as a project because it generates a significant number of complaints to our office each year. The taxation legislation gives a discretion to the ATO to remit the GIC after it has been imposed as required by legislation. A taxpayer must apply for remission. The GIC also plays a significant role across a wide range of the

ATO's activities, particularly its compliance and debt recovery programs.

The primary focus of this project was to assess our complaint data to identify key issues arising about the ATO's administration of the GIC. We identified three discrete themes—the level of GIC and its imposition, the 'adequacy of reasons' in communicating remission decisions, and the provision of advice.

In providing feedback to the ATO, we acknowledged that the ATO has a difficult task administering a penalty that some taxpayers consider punitive and unjust. We also acknowledged that the ATO has established clear policies on GIC remission to guide its decision makers in the exercise of the Commissioner's discretion to remit the GIC, and generally the ATO appears to do so fairly and reasonably.

We noted that there might be more the ATO can do to help taxpayers better understand how GIC operates, how it is imposed, and how taxpayers might seek its early remission. The knowledge that a taxpayer can seek remission

at an early stage in his or her dealings with the ATO could help improve community confidence in the ATO, as well as lead to a reduction in complaints. We also encouraged the ATO to continue to develop quality assurance processes and training to ensure ATO decision makers properly understand the law and policy with respect to remission of GIC.

'... the ATO has a difficult task administering a penalty that some taxpayers consider punitive and unjust.'

We will continue to work with the ATO to address some of the issues identified in our review and may revisit this issue in the future.

THE YEAR AHEAD

In 2007–08, we look forward to expanding and developing the initiatives we identified in 2005–06 and carried over into 2006–07. We will continue with a work program of internal and external projects to improve our handling and understanding of tax complaints.

centrelink

Centrelink continues to be the agency about which the Ombudsman receives the highest number of approaches and complaints. This is not unexpected given the high volume of transactions and the complexity of the services and payments it provides on behalf of a number of Australian Government agencies.

As discussed in Chapter 5—*Challenges in complaint handling*, where a number of agencies have involvement in administering legislation, setting policy, and service delivery, it can be problematic to establish the basis of problems and their resolution—a complaint about service delivery might equally be about the policies and legislation. For this reason, a number of issues discussed in this section about Centrelink also relate to other agencies, such as the Department of Employment and Workplace Relations.

In 2006–07 we received 6,987 approaches and complaints about Centrelink, compared to 7,333 in 2005–06. This represents a decrease of 5%. There has been a steady decrease in complaints about Centrelink over the past five years, as shown at Figure 7.3.

During 2006–07 we investigated 17% of the 6,877 approaches and complaints finalised, with the most common issues being claims for payment, cancellation or suspension of payments, and changes to payment rates.

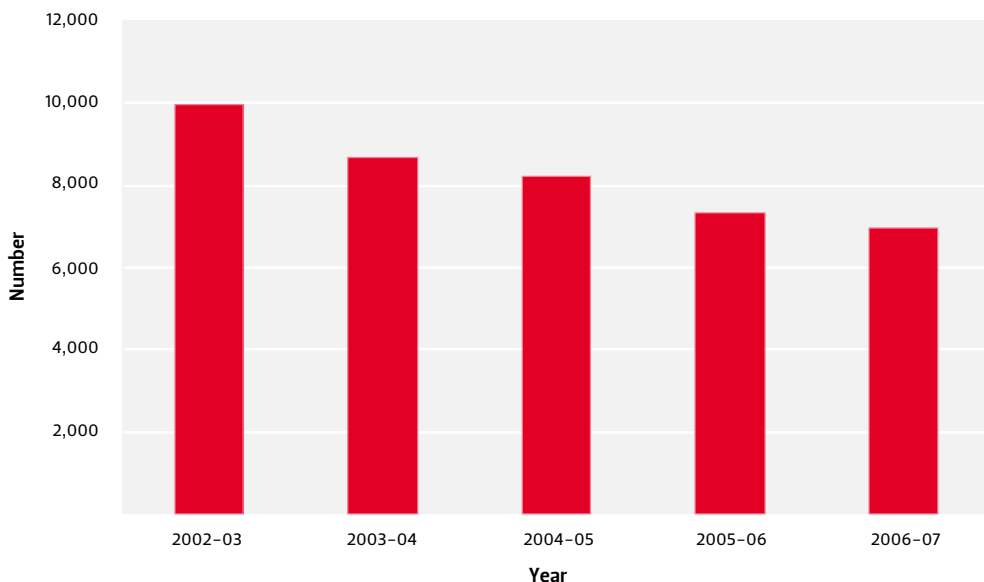
WELFARE TO WORK

On 1 July 2006 Centrelink commenced the Government's Welfare to Work reforms, which made significant changes to the way income support payments are administered. The reforms include stricter participation requirements and compliance measures for people in receipt of activity-tested payments such as Newstart Allowance (NSA), and new assessment processes for disability support pension (DSP) claims.

We identified some key areas of concern in complaints we have received about the implementation of the Welfare to Work initiatives. The following issues are discussed in further detail below:

- eight-week non-payment periods
- suspension of payments without making a decision

FIGURE 7.3 CENTRELINK APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07



- timeliness of decision making
- denial of appeal and review rights
- combination of non-entitlement and non-payment periods
- dealing with seriously ill customers.

Eight-week non-payment periods

Centrelink customers who receive activity tested payments—that is, who need to complete certain activities and report these to Centrelink in order to receive their payment—have always faced penalties for failure to comply. Before Welfare to Work, these penalties took the form of ‘breaches’, where a person’s payment rate could be reduced or payments could be suspended entirely or for a period of time, depending on the level of non-compliance.

Under Welfare to Work, the system of ‘breaches’ was replaced by ‘participation failures’. A ‘participation failure’ is imposed when a person does not meet one of the conditions of payment under their participation or activity test requirements, such as missing a scheduled appointment with a Provider of Australian Government Employment Services (PAGES), without a reasonable excuse. If a person has three such participation failures in a 12-month period, an eight-week non-payment period will apply, during which time the person does not get any income support payment.

There are also ‘serious participation failures’ where one event triggers an eight-week non-payment period. Serious failures include refusing a suitable job offer, voluntarily leaving employment, being dismissed from employment due to misconduct or failing to attend full-time Work for the Dole.

Centrelink’s National Participation Solutions Team is responsible for investigating the incident(s) that led to the third or serious failure, and deciding whether a non-payment period should apply. As part of the decision-making process, Centrelink staff consider whether the person facing a non-payment period meets the ‘exceptionally vulnerable’ test for financial case management (for example, has a medical condition requiring treatment or prescription drugs) or has

vulnerable dependants (for example, children). If Centrelink decides that a person meets the vulnerability criteria, they may be considered for financial case management. In this case, the person’s essential expenses are paid over the course of the non-payment period by a third party community organisation or Centrelink’s financial case management team. A customer may appeal the participation failure(s) or serious failure decision(s) that have resulted in an eight-week non-payment period through the normal Centrelink appeals process, and can request continued payment pending the outcome of the review.

Not surprisingly, these forms of intervention have led to complaints to this office. In considering these complaints, we have identified broader issues about administration of Welfare to Work, and about differing interpretations of policies and procedures, that we will explore more fully as systemic investigations in 2007–08. Some of these broader issues are discussed below.

‘... we have identified broader issues about administration of Welfare to Work, and about differing interpretations of policies and procedures ...’

Suspension of payments without making a decision

We received some complaints where Centrelink had withheld payments for eight weeks when there was only a ‘possible failure’—that is, before Centrelink had made a decision that three participation failures or one serious failure had occurred without reasonable excuse. Centrelink has advised that it will attempt to make contact by phone or letter prior to payments being withheld. In the cases investigated, the people found out that their payments had been withheld when they attempted to lodge their fortnightly forms and were told that Centrelink could not accept them as they were on a payment withholding period. When they asked why Centrelink had not notified them or how they could appeal the decision, Centrelink’s response was that a formal notification could not be issued, as a formal decision had not yet been made.

This process is a serious concern and the subject of a systemic investigation on which we will report in 2007–08.

Timeliness of decision making

In some cases described above as cases of ‘possible failure’, there has been a delay of up to eight weeks to make a decision that a person has actually incurred the third or serious failure. This can leave the person in dire circumstances. During the withholding period the person has no review or appeal rights, is unable to seek payment pending review, and is not able to access financial case management even if they might otherwise have been eligible.

Although there are clear timeliness standards for Centrelink decision-making, complaints to this office highlight instances where there appear to have been lengthy delays in decision making. Again, this is an issue we will consider more fully in our program of systemic investigations in 2007–08.

Denial of appeal and review rights

Our investigations have highlighted cases where Centrelink has withheld payments before a decision was made, and later decided that the person had a reasonable excuse for the ‘serious failure’ or ‘participation failure’ and thus should not have had their payment withheld. However, because of the delay in making the decision about whether a non-payment period should be imposed, the person concerned has been forced to survive without a basic social security payment and no means of earlier resolution, because all appeal

avenues were unavailable until a ‘reviewable’ decision was made. While arrears are paid for the period that the person was not receiving a social security payment, this comes after the person has had to overcome issues such as eviction notices and loss of utilities such as electricity and telephone.

The case study *Action without a decision* illustrates the types of issues that can arise in relation to suspending payment without making a decision, timeliness of decision making, and denial of appeal and review rights. These are areas that we will continue to monitor closely over the next year.

Combination of non-entitlement and eight-week non-payment periods

A person can have a non-entitlement period imposed during which their payment remains unpaid until they have completed an agreed activity or requirement. For example, a non-entitlement period may be applied where a person has not contacted the required number of employers to canvass employment as agreed. Non-entitlement periods continue until the person complies with the requirements.

Continued non-compliance attracts participation failures with people potentially accumulating three participation failures during a non-entitlement period and therefore attracting the eight-week non-payment period penalty in addition. An eight-week non-payment period is generally meant to begin in the payment period immediately after the regular fortnightly payment has been made, but in some cases the non-payment

action without a decision

CASE STUDY

Centrelink withheld Mr A's income support payment following three participation failures, but before making a formal decision about whether or not the failures should apply. During this period Mr A did not have access to review rights and was not considered for financial case management for seven weeks. When Centrelink finally examined Mr A's circumstances, it determined that he had been eligible for financial case management for the entire non-payment period due to his medical condition which required treatment with prescription medication. However, as no formal decision had been reached, the referral for financial case management had not occurred.

period is added on to the non-entitlement period—sometimes without the person being notified as there has been no formal decision. This results in people being penalised for a total of ten to twelve weeks without any income support.

We have sought all the relevant policy and legislative documentation on the issues above from both Centrelink and DEWR. Should this information support our initial views that there are inconsistencies in policy and program delivery, the Ombudsman will report on this systemic investigation in 2007–08.

Dealing with seriously ill customers

One of the new initiatives requires that a person who applies for a Centrelink payment due to an illness or disability that prevents or reduces their capacity to engage in paid work must undertake a job capacity assessment. This assessment examines the person's medical condition to determine what, if any, capacity they have to undertake paid employment. If the person is assessed as having the capacity to work 15 or more hours per week, they must engage in some form of

work which may be voluntary, paid, or a combination of both, as part of the condition for payment. People with partial capacity will, as a rule, be granted NSA rather than a DSP.

In order to qualify for the DSP, amongst other things a person must meet three criteria—their medical condition must be treated, be stabilised and be expected to persist for longer than 24 months. The job capacity assessment is used to determine if they meet these criteria and what, if any, work capacity they have.

Approaches to this office during the year indicated that, in referring people for job capacity assessments for DSP claims, Centrelink can overlook the difficulties people with serious illness can have in undertaking these formal testing processes. The case studies *Incapacity for job capacity assessment* and *'Failure' to attend interview* (page 69) demonstrate the types of problems that have arisen.

We are considering whether these cases and others point to potential systemic issues which we should investigate.

incapacity for job capacity assessment

CASE STUDY

Ms B was undergoing chemotherapy for leukaemia when she applied for a DSP. Centrelink correctly rejected Ms B's claim as she did not meet the legislative requirements, and placed her on an interim NSA payment. She was advised that in order to assess her ongoing qualification for NSA, she had to undergo a two-hour job capacity assessment. Despite explaining that it would be difficult for her to attend an interview as she was still receiving chemotherapy and had recently undergone surgery, Centrelink booked a job capacity assessment appointment for Ms B. When Ms B did not attend, as she was in hospital at the time, Centrelink cancelled her interim payment.

Ms B made several unsuccessful attempts to be placed on some form of income assistance, as she was no longer able to support herself and was unable to meet the job capacity assessment requirement at the time. As a result of our investigation, Centrelink acknowledged that it could have undertaken a file assessment of Ms B's medical condition. Centrelink subsequently made such an assessment, and placed Ms B on NSA with a medical exemption from job search activities. Ms B had endured several months of trauma and financial uncertainty before her case was resolved.

Centrelink has advised that the Job Capacity Assessment referral guidelines now state clearly that if a customer is in hospital a file assessment should be requested.

ONGOING ISSUES

Internal review

For several years we have received approaches and complaints about Centrelink's internal review processes. We have highlighted these issues with Centrelink and in our annual reports. While we note the continued improvement in complaint trends regarding Centrelink, we remain of the view that revision of internal review processes could assist in the timely and effective resolution of complaints.

The social security law sets out that a person who is unhappy with a Centrelink decision is entitled to have a review by an Authorised Review Officer (ARO). Although not provided for in the legislation, Centrelink's default review procedure includes a review by the original decision maker before the matter is referred to an ARO. This continued practice of referring review requests for consideration by

the original decision maker before directing them to an ARO puts people through an extra step. This can create protracted delays, as the case study *To review or not to review* demonstrates.

In a 2004–05 audit of Centrelink's review and appeals system, the ANAO raised similar issues as those highlighted by this office. The ANAO conducted a follow-up audit and published its final report in May 2007. The report includes a recommendation that Centrelink ensures its customers are made aware they have a legal right to have a decision reviewed by an ARO without a review by the original decision maker first. Centrelink agreed to this recommendation.

We believe that having reviews conducted by an ARO in the first instance will significantly improve the consistency and timeliness of decisions and we will continue to monitor the situation.

'failure' to attend interview

CASE STUDY

Mr C, who suffered from severe epilepsy, was required to attend his local Centrelink office for a review of his DSP. While waiting in line, Mr C had an epileptic seizure and paramedics were called. While the paramedics were attending to Mr C, Centrelink staff called his name, as he was next in the queue. The paramedics advised the Centrelink officer that the man on the stretcher was the person concerned and that they were in the process of stabilising him before taking him to hospital.

Mr C was hospitalised for several days. On his return home he found that Centrelink had sent him a letter advising that his DSP had been suspended because he had failed to attend an interview at his local office. After several unsuccessful attempts to have Centrelink overturn the decision, Mr C approached us. As a result, Centrelink reinstated Mr C's DSP and back-paid him to the date of the cancellation. Centrelink also discussed alternative DSP review options with Mr C.

to review or not to review

CASE STUDY

Ms D sought review of a decision to raise an overpayment debt against her. She made numerous requests to have the matter reviewed by an ARO as she believed that the original decision maker was biased against her. After 17 months of inaction by Centrelink, Ms D approached this office. When we asked Centrelink about the delay, we were given an undertaking that the review would be given priority and would be referred to an ARO. However we later became aware that, despite the delays already encountered, the matter was first referred to the original decision maker before it was eventually escalated to an ARO.

Banning

Last year we reported that Centrelink would implement new national guidelines on 'banning' difficult customers from Centrelink offices.

Centrelink confirmed that the guidelines addressing 'alternative servicing arrangements' were released to its network in February 2007, with the expectation that all areas and their respective call centres and customer service centres would be trained in their intent, content and application.

In May 2007 we received a complaint from a customer who had recently been 'banned' from attending all Centrelink offices for a period of three months. Our investigation identified that staff from two separate Centrelink offices, both of which had attended the training on the new guidelines, chose to deliberately ignore the instruction given by Centrelink's National Office.

The relevant officers acknowledged that they were aware of the instruction to implement the new guidelines for dealing with difficult customers, but had opted to ignore them as they were 'guidelines'. They decided that it was preferable to apply a policy document from another department, which was not authorised for use by Centrelink staff. The policy they chose to use had no alternative servicing arrangement requirements, which left the customer with no way to contact Centrelink.

Centrelink was responsive in dealing with this matter. Centrelink provided alternative servicing arrangements to the customer and indicated that it would contact him to review his circumstances and those that led to the original ban.

In the Welfare to Work environment, payment is dependent on fortnightly reporting to Centrelink. A failure to report may result in non-entitlement and non-payment periods. This office acknowledges that it is often challenging to deal with people who exhibit difficult and aggressive behaviour. However, it is imperative that alternative servicing arrangements are offered in these circumstances. This ensures that people are not denied payments because they have no way of contacting Centrelink.

Since the release of its guidelines, Centrelink has been working with the Ombudsman's office to identify and remedy any instances of non-compliance.

Further work is being undertaken in Centrelink to clarify and emphasise with employees those aspects of the guidelines that are mandatory and those that will remain subject to the discretion of senior managers. This work, expected to be completed in the latter part of 2007, will emphasise that the discretionary areas of the guidelines are determined by the individual customer's circumstances rather than arbitrary Centrelink decision. Centrelink is also integrating occupational health and safety staff support principles and activities into the guidelines, to provide staff with a comprehensive view of the most appropriate interventions in working with customers.

Correspondence with customers

We continue to receive complaints about Centrelink's decision letters, templates and standard letters. A common complaint is that decision letters do not offer adequate, or even any, reasons as to why or how a particular decision was reached. Without a clear explanation, a Centrelink customer may lack the necessary information or understanding to make an informed choice about whether to seek a review of the decision.

'We continue to receive complaints about Centrelink's decision letters, templates and standard letters.'

In one case a customer wrote to Centrelink requesting a review of a decision to raise a carer payment debt. Centrelink sent the person a manually written letter affirming the decision. However, the letter contained a number of grammatical errors that affected the clarity of its advice and did not include the table that it referred to. If provided, the table would have shown all the payments that were made to the person's partner that had affected the rate of carer payment. There were also extensive extracts from the relevant legislation with no explanation as to how this applied to the person's circumstances. In response to our

investigation, Centrelink agreed to review the matter again, and to provide the customer with a better explanation of reasons and an apology.

In July 2006 the Hon. Joe Hockey, then Minister for Human Services, tasked Senator Richard Colbeck with leading a review of Department of Human Services forms and letters, including those of Centrelink. We welcome this much-needed focus on the quality of Centrelink's letters and hope that this will result in a decrease in complaints relating to unclear, ambiguous or misleading correspondence.

Own motion investigations

In September 2005 the Ombudsman commenced an own motion investigation into the policy guidelines used by Centrelink in assessing 'marriage-like relationships' under the social security law. We aim to publish the final report of this investigation early in 2007–08.

We also began an own motion investigation into the administration of the Pension Bonus Scheme in March 2006. In our 2005–06 annual report we anticipated this investigation would be finalised in late-2006. Due to the prioritisation of other work, it has not yet been completed. In light of the measures announced

in the 2007–08 Federal Budget, which make the scheme more flexible, we are currently considering whether it remains necessary for us to continue with this report.

EMERGING ISSUES

Cross-agency approaches

The complex policy, service and contractual arrangements under the Welfare to Work initiatives, involving multiple agencies, present particular challenges to our office in dealing with complaints related to these initiatives. For example, when we decide not to investigate a complaint, it is generally on the basis that the person has not raised their complaint with the relevant agency in the first instance. However, the situation is no longer so straightforward, as it can be difficult for us to identify the most appropriate agency to which we should refer the complainant. It also complicates our complaint handling. Chapter 5—*Challenges in complaint handling* provides more details about the issues which arise.

'... it can be difficult for us to identify the most appropriate agency to which we should refer the complainant.'

inflexible procedures

CASE STUDY

Mr E lodged a claim with Centrelink for the DSP. Mr E was granted NSA pending the outcome of his DSP claim, and was referred for a job capacity assessment. Due to an administrative error, the job capacity assessor was not asked to provide an impairment rating to inform the DSP decision. This meant that Centrelink was unable to use the assessment in determining Mr E's DSP claim.

Centrelink acknowledged that Mr E should have been referred for an assessment of his impairment level as well as his work capacity. Centrelink stated that the job capacity assessment system, which is administered by the DHS but uses the DEWR information technology system, did not allow Centrelink to refer Mr E for another assessment within 28 days of the original assessment.

When we contacted the DHS, we were advised that the restrictions around the timing of job capacity assessments were built into DEWR's record-keeping system on which job capacity assessments are scheduled. The DHS acknowledged that the rigidity of the system had the potential to disadvantage people in situations such as Mr E's. The DHS advised that it has negotiated with DEWR and the mandatory delay has been removed.

An example of the cross-agency issues that can arise is described in the case study *Inflexible procedures* (page 71). In this case, a simple administrative error had the potential to delay the assessment of a person's claim for a disability support pension for a further 28 days due to rigidities in the bureaucratic system. Our investigation staff had to negotiate with three separate government agencies to resolve the matter.

Mental health issues

Dealing with people with mental health issues has become a focus for a number of departments and agencies that deal with the public, including both Centrelink and the Ombudsman's office. A number of complaints received over the past year highlighted the need for agencies to adapt service models to handle this client group effectively: treating them in the same manner as other customers often sees them fall between the cracks.

For example, in 2006–07 we handled an approach from a man with an anxiety disorder. His relationship with Centrelink had broken down to the point where he had become so distrustful of their actions that he would make multiple complaints to this office in anticipation that Centrelink was going to make a mistake with his payment. He expected our office to take on the role of a de facto advocate and to make all contacts with Centrelink on his behalf. Our investigation indicated that although there might have been an initial problem with Centrelink, the major issues could be attributed

to the fact that he refused to remain in contact with Centrelink.

Another emerging issue is how Centrelink deals with people with undiagnosed mental illness or episodic illnesses. The new Welfare to Work requirements make it a challenge for Centrelink to appropriately service this vulnerable customer group, particularly where the person has no insight into their condition, even when staff recognise that mental illness may be a factor.

These issues are brought into sharp focus in cases where a person with an undiagnosed mental health condition applies for an income support payment and has to undergo a job capacity assessment to determine work capacity. Often the person has no medical evidence supporting their claim or, in a number of cases, the person refuses to accept that they might have a mental illness. The result is that the person is granted an activity-tested payment such as NSA instead of the more appropriate DSP, and then has difficulty in complying with the required activities. This places the person at risk of having their payments suspended or cancelled with the resultant issues that arise such as homelessness.

Given the number of people we see who are falling between the cracks, it is becoming increasingly evident that, at present, the social security system does not always provide sufficient flexibility to enable staff to effectively service these people.

child support agency

The Child Support Agency was established in 1988 to administer the Child Support Scheme, which provides for the assessment, collection and disbursement of child support. The scheme was implemented to require compulsory payment of child support based on the comparative incomes and caring responsibilities of both parents.

The Child Support Scheme operates under two pieces of legislation—the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* (Child Support Assessment Act). Together, these Acts enable the registration of child support cases, calculation of child support assessments, enforcement of child support collection and disbursement of payments received. Payees are those parents entitled to receive child support, while payers are those responsible for paying child support.

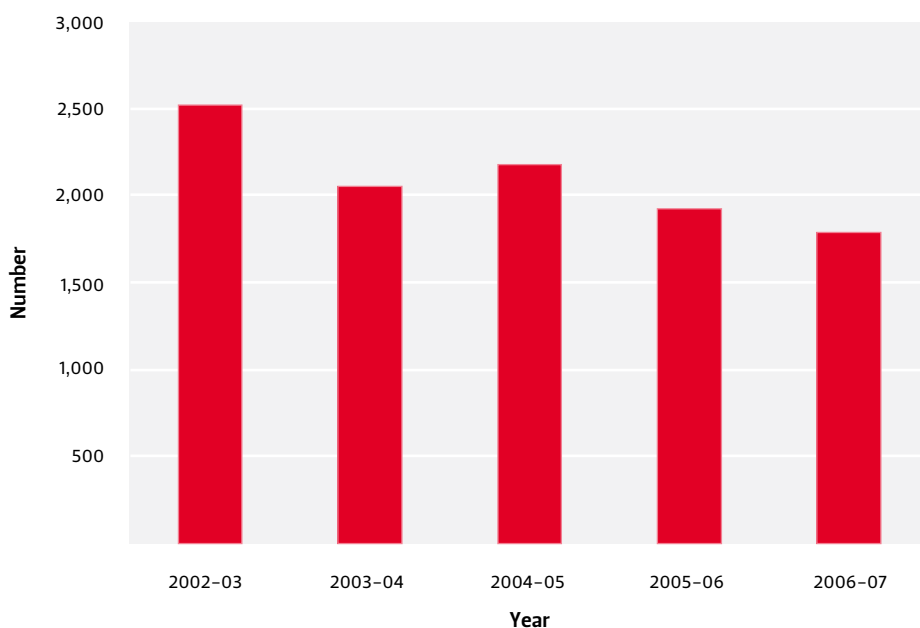
In 2006–07 the Ombudsman received 1,790 approaches and complaints about the CSA, compared to 1,927 in 2005–06. Figure 7.4 shows the trend in approaches and complaints about the CSA over the past five years. We

investigated 29% of the 1,779 approaches and complaints finalised in 2006–07.

The CSA and the Child Support Scheme continued to be a topic of much discussion in 2006–07, following the government's acceptance of the majority of the recommendations contained in the 2005 report of the Ministerial Taskforce on Child Support. Stages 1 and 2 of the child support reform package were implemented on 1 July 2006 and 1 January 2007, respectively.

From our perspective the most notable of the changes was the introduction of a right of appeal about child support matters to the Social Security Appeals Tribunal (SSAT). Prior to 1 January 2007, if parents wished to seek review outside of the CSA, it was necessary for them to make an application to a court with family law jurisdiction. Given the time and cost such an application involved, many parents would disregard this option and raise their disagreement through a complaint to the Ombudsman. Although it is difficult to accurately assess the reasons for the decrease in complaints to this office about the CSA in

FIGURE 7.4 CHILD SUPPORT AGENCY APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07



2006–07, the introduction of the SSAT as a no-cost review mechanism may have contributed to this reduction.

The final and most significant part of the reforms, which is the new child support formula, will be implemented from 1 July 2008. During 2007–08 our focus will be on training our investigation staff about the changes and remaining abreast of developments as further information becomes available.

The main themes that featured in approaches and complaints in 2006–07 were the consistency of decisions made through the 'change of assessment in special circumstances' process, and service delivery issues in the form of delays and the quality of advice provided to customers. A brief description of our handling of these topics follows.

'The main themes that featured in approaches and complaints ... were the consistency of decisions ... and service delivery issues ...'

CONSISTENCY OF CHANGE OF ASSESSMENT DECISIONS

The Child Support (Assessment) Act sets out a statutory formula for calculating the rate of child support payable, taking into account the relative incomes and caring responsibilities of

both parents. Although this formula was devised on the basis of research into the general costs of raising children, the Act provides for an alternative assessment mechanism where the child/children or either parent has special circumstances that are not readily recognised by the child support formula.

In order to be satisfied that a change to the assessment is warranted, the CSA must find that one of ten reasons involving the special circumstances of the child/children or either parent make the formula assessment unfair. Under Reason 8 a departure from the assessment may be warranted where the income, earning capacity or financial resources of one or both parents is not accurately reflected by a strict application of the formula.

During 2006–07 we received a number of complaints regarding the treatment of depreciation expenses in assessing the income of self-employed parents under the 'change of assessment' process. The case study *Change of assessment* illustrates the complexity of some of the processes.

In response to this and other complaints, the CSA undertook to provide additional guidance to decision makers about the treatment of depreciation expenses in the 'change of assessment' process.

change of assessment

CASE STUDY

Mr F, the payer, complained that in the course of assessing his child support income under the 'change of assessment' process, the CSA included the value of the depreciation expenses claimed against his business income. This decision resulted in Mr F's child support income being tripled and, in turn, his child support liability being increased significantly. After unsuccessfully objecting to the CSA's decision, Mr F appealed successfully to the Federal Magistrates Court and his child support assessment was reduced.

Mr F lodged a claim with the CSA for reimbursement for his legal costs. He complained to the Ombudsman when the CSA refused the claim. In examining the CSA's compensation decision we formed the view that, in completely disregarding the payer's depreciation deduction as an expense and adding the full amount back as income, the CSA's 'change of assessment' and objection decisions demonstrated a lack of understanding of general accounting principles. They also created a situation such that Mr F had little choice but to appeal the outcome.

The CSA accepted our view and offered compensation to Mr F.

SERVICE DELIVERY

The CSA had approximately 742,000 active cases at 30 June 2006, 47% of which were registered for collection of child support by the CSA. With such a large volume of active customers, CSA staff are required to provide services and advice to a sizeable section of the Australian public.

In 2006–07 we received a number of complaints about the CSA's service delivery which centred around two main themes—delays, and the accuracy and completeness of advice.

Delays

Complaints about delays focused on three central areas:

- the CSA's core business of assessing (under the formula and the 'change of assessment' process), collecting and disbursing child support
- responding to customer complaints and correspondence
- decision making, specifically in relation to compensation claims and requests under the *Freedom of Information Act 1982*.

As CSA has a well-developed complaint-handling system, we often refer such complaints back to CSA in the first instance. In one case we investigated, a CSA customer complained about the CSA's failure to respond to his freedom of information (FOI) request after more than three months and several written requests for an update. When our office contacted the CSA, they acknowledged that one of their FOI units was experiencing difficulty in processing requests within the statutory timeframe as a result of a staffing shortage.

In response to our investigation the CSA apologised to the complainant and gave an undertaking that his FOI request would be prioritised for completion. We understand that the area involved has subsequently been allocated additional staff in an effort to ensure similar delays do not recur.

Incomplete and inadequate advice

The Child Support Scheme is a complex and often daunting system for its customers to navigate, meaning that parents may often choose to make important financial decisions based primarily on the advice given to them by CSA staff. During 2006–07 we received a number of complaints where CSA customers claimed to have been disadvantaged by incomplete or inadequate advice.

In one complaint, a payee claimed he was contacted by CSA staff who asked if he would be willing to 'discharge' the child support arrears owing to him. This suggestion appeared to have been framed as a gesture of goodwill that would increase the likelihood of the payer meeting her future responsibilities. The payee agreed to discharge the arrears amount, reducing the payer's balance to nil.

'The Child Support Scheme is a complex and often daunting system for its customers ...'

The payee was subsequently advised that, as a result of new information about the payer's circumstances, his past child support assessments had been significantly reduced. This retrospective adjustment meant the payee was not only no longer entitled to the arrears amount he had discharged, but that he was also found to have been overpaid. The overpayment situation would not have occurred if the arrears amount had not been discharged, because the two amounts could have been offset against one another.

Our investigation led us to conclude that the CSA had not provided the payee with sufficient information about the possible ramifications of discharging the arrears to enable him to make a fully informed decision. At the conclusion of our investigation the payee advised he intended to pursue compensation from the CSA for his lost entitlement to child support.

defence

Defence-related approaches and complaints fall into two categories: the Defence Force Ombudsman jurisdiction, covering employment-related matters for serving and former members of the Australian Defence Force (ADF); and the Commonwealth Ombudsman jurisdiction, covering complaints about administrative actions of the Department of Defence, the Department of Veterans' Affairs (DVA) and Defence Housing Australia (DHA).

In 2006–07 we received 670 defence-related approaches and complaints, compared to 750 in 2005–06. This represents an 11% decrease in approaches and complaints.

DEPARTMENT OF DEFENCE

We received 106 approaches and complaints about the Department of Defence (compared to 138 in 2005–06). The Fairness and Resolution Branch (FRB) within Defence has continued to assist our investigation of complaints by facilitating access to information, files and personnel across the various Defence areas that fall within our jurisdiction.

Westralia investigation

In March 2007 the Minister for Defence wrote to the Ombudsman, requesting that we consider an own motion investigation into matters involving HMAS *Westralia*. This followed allegations in the press and Parliament that Defence was warned in February 1998 about HMAS *Westralia* being in grave danger from the faulty fuel lines that caused the fire onboard *Westralia* on 5 May 1998.

In April 2007 the Acting Ombudsman initiated an own motion investigation into the allegations of Defence's forewarning about the fire and the appropriateness of the Defence response, with particular reference to the procedural competence and integrity of the Inspector-General of Defence's area at the time.

We expect to report on the outcome of this investigation in 2007–08.

AUSTRALIAN DEFENCE FORCE

We received 252 approaches and complaints from serving and former members about the actions and decisions of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force (RAAF) (compared to 303 in 2005–06).

TABLE 7.1 DEFENCE-RELATED APPROACHES AND COMPLAINTS RECEIVED, 2003–04 TO 2006–07

Agency	2003–04	2004–05	2005–06	2006–07
Australian Army	230	190	169	145
Defence Housing Australia	24	28	29	36
Department of Defence	175	165	138	106
Department of Veterans' Affairs	198	216	276	256
Royal Australian Air Force	90	69	80	57
Royal Australian Navy	76	78	54	50
Other (see breakdown for 2006–07 in Appendix 4)	9	12	4	20
Total	802	758	750	670

These approaches and complaints were based on employment-related matters resulting from a person serving or having served in the ADF. Complaints can be about access to entitlements associated with conditions of service, promotion, posting, return of service obligation, termination of enlistment or appointment, pay and allowances, medical categorisation, debt management and the internal handling of complaints by Defence.

We have observed greater timeliness in the way Defence handles complaints from serving members, with fewer complaints made to our office about delays. In addition, relatively few complaints to our office became protracted over the last year. As an indicator, we currently have no ADF-related complaints more than eight months old.

We note the positive effect recent quality assurance mechanisms have had on the ADF's redress of grievance process. A recent initiative includes FRB providing advice to commanding officers and managers on the proposed plan of action for handling each complaint shortly after the complaint has been made. This enables complaints to be investigated and resolved in a timely manner and at the lowest possible level.

Defence has also demonstrated a willingness to involve our office in ADF training courses and seminars where we can share our views about developing good administrative practices and effective decision making with commanders and administrators in the field. Such joint outreach activities allow us to raise awareness among ADF members about their right to complain to our office and how our role relates to internal ADF complaint mechanisms.

Review of reform to the Australian military justice system

Our office appeared before the Senate Foreign Affairs, Defence and Trade Committee on a number of occasions in the last year in relation to the committee's inquiry into the reforms to the Australian military justice system. This inquiry followed an earlier committee inquiry into the effectiveness of the military justice system (the Senate Foreign Affairs, Defence and Trade References Committee's *Inquiry into*

the effectiveness of Australia's military justice system (2005)).

During our appearance before the committee in February 2007, we noted improvements in the way that Defence had interacted with our office during the past year. We also noted:

- closer ties between our office and other oversight bodies such as the Inspector-General of the Australian Defence Force
- the historical nature of the higher profile cases that had attracted significant media attention during the earlier committee inquiry
- a decreasing trend in the number of complaints we receive about the ADF.

We emphasised to the committee that, based on the perspective that our investigations bring, we were satisfied that the systems in place to support military justice appeared to function in a reasonably effective manner.

'... we noted improvements in the way that Defence had interacted with our office during the past year.'

We also noted the work undertaken by Defence in implementing the recommendations from the committee's earlier inquiry and the joint 2004 Redress of Grievance Review conducted by our office and Defence (*Review of Australian Defence Force Redress of Grievance System 2004* (Report No 01/2005)). We expressed the view that Defence continues to demonstrate a commitment to implementing the recommendations accepted from both reviews by October 2007.

ADF handling of unacceptable behaviour complaints

In August 2006 we initiated an own motion investigation into the way the ADF deals with complaints about unacceptable behaviour such as bullying and harassment. Our investigation focused on the effectiveness and accessibility of the system in place to manage, investigate and provide awareness training for internal complaints about unacceptable behaviour.

Our investigation took the form of desktop reviews of files at a number of Defence units around Australia. At the same time we also conducted a series of focus group discussions with Defence personnel to gauge the level of understanding and acceptance of the systems in place.

Our investigation revealed that generally there was a clear sense of awareness by Defence personnel of the systems in place to report and manage complaints about unacceptable behaviour. This view was expressed by both commanders and representatives of the general service population. While this was a positive result, our investigation also highlighted areas for improvement including:

- aspects of record keeping
- annual awareness refresher training
- data collection and reporting
- the role of inquiry officers and equity advisers
- quality assurance.

We are pleased to report that Defence has accepted all of the recommendations.

DEPARTMENT OF VETERANS' AFFAIRS

The Department of Veterans' Affairs provides a wide range of services to nearly half a million Australians. The services DVA administers include service pensions, age pensions, income support supplement and allowances, disability and war widows' and widowers' pensions, allowances, special purpose assistance, Defence Service Home Loans Scheme assistance and Repatriation Health Cards.

During 2006–07 we received 256 approaches and complaints (compared to 276 in 2005–06). In last year's annual report we referred to our concerns about delays in investigating complaints about DVA. We have continued to meet with DVA at a number of different levels, which has helped improve the flow of information between our offices, although timeliness remained an issue in some cases.

In last year's annual report we reported on complaints to our office about the F-111 aircraft deseal/reseal ex gratia payment scheme. Since August 2005, when the scheme was announced, we have received 82 complaints relating to the four deseal/reseal programs. There are currently

six outstanding deseal/reseal cases that demonstrate a degree of complexity not evident in other related complaints. The issue of the complexities experienced in handling these complaints is discussed in Chapter 5—*Challenges in complaint handling*.

The consultation between our office and DVA about the scheme has generally functioned well. While the administration of the scheme presented certain challenges, the deseal/reseal issue serves as a good example of the effective way our office and DVA have been able to interact to obtain briefings, seek information about a case or have a decision reconsidered.

'... the deseal/reseal issue serves as a good example of the effective way our office and DVA have been able to interact ...'

One case brought to our attention by DVA highlights the range of evidence considered by DVA as part of their assessment of deseal/reseal ex gratia payment scheme claims.

A retired RAAF maintenance worker applied for recognition under the scheme. Initially DVA did not accept that the claimant could demonstrate that he had participated in one of the four deseal/reseal programs to a degree which would support recognition under the scheme. The claimant sought a reconsideration of this decision and supplied more evidence which saw him granted a lesser degree of recognition. However, the claimant continued to feel that his service in the RAAF entitled him to a higher level of recognition.

He sought a further reconsideration and on this occasion presented a 'stubbie' holder which was given to him as a present when he was posted from the deseal/reseal section. DVA recognised that this evidence was genuine as a number of other long term deseal/reseal workers had also been presented with similar mementos at the time. DVA advised that it was therefore reasonable to accept the claimant's involvement and he was granted the higher level of recognition.

It is encouraging to note DVA's openness to different kinds of evidence when considering a claimant's eligibility and the lengths it went to in this case to reconsider the claim further.

Military Rehabilitation and Compensation

In late 2005 DVA briefed our office on proposed changes to the structure of the department, to be introduced on 1 July 2006. These changes were necessitated by the changing demographic of DVA's client base. The emphasis of DVA's service delivery had shifted from a more traditional notion of a veteran and the veterans' community as reflected by Second World War veterans, to a more diverse group that increasingly includes younger servicemen and women, both serving and recently separated from the ADF.

This changing demographic has been reflected in the type of complaints we have received, with an increase in complaints about military rehabilitation and compensation (MRC) claims in 2006–07. A common cause of complaint in MRC matters is delay. In early 2007 we received an approach from a lawyer, representing a number of clients, complaining about delays in the processing of 51 MRC claims. We felt it appropriate to approach DVA to investigate not just these 51 claims, but to also initiate a project looking more broadly at possible systemic issues in the handling of MRC claims by DVA.

DVA was open and cooperative in its response to our enquiries, and we welcomed their willingness to acknowledge the need for improvements in certain areas. DVA advised us of a range of initiatives it has put in place to address a backlog of older cases and to improve processing times into the next financial year.

Some examples of the initiatives underway include simultaneous processing of some claims for initial liability and permanent impairment under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). We also understand a trial screening team is improving timeliness by ensuring claims are processed under the appropriate Act (SRC Act or the more recent *Military Rehabilitation and Compensation Act 2004*), where it is not immediately clear which Act applies.

We also note DVA's introduction of a Single Access Mechanism (SAM) to improve the timeliness for access to a former member's service records with the Department of Defence, when assessing an initial liability claim. The time taken to access relevant records has reduced from several months to an average of 12 days. SAM staff now have access to Defence records held on Defence's human resource system. This allows DVA to gather basic service details for a claimant within a few working days. Previously this took considerably longer.

DVA also acknowledged there were undue delays in its handling of some of the individual matters we had brought to its attention, and agreed to write to those claimants to apologise. DVA's response on both these individual cases and the broader issues was sufficient for us to decide not to take the matters further, but we agreed to meet regularly to monitor the progress and achievements made in the MRC processing area.

DEFENCE HOUSING AUSTRALIA

Defence Housing Australia (DHA) is contracted by Defence to provide housing and relocation services for members of the ADF. The DHA sources land, undertakes land development and construction of houses, and raises funds in the private capital market through sale and leaseback. It also provides property maintenance and manages leases with property lessors. Defence has also contracted the DHA to calculate and process allowances and entitlements for ADF personnel who are moving to a new posting as part of the relocation process. The housing policies and entitlements are determined by Defence and administered under contract by the DHA.

We received 36 approaches and complaints about the DHA (compared to 29 in 2005–06). The few complaints we received centred on issues of entitlement and relocations. We continue to resolve complaints about the DHA reasonably quickly as a result of effective contact arrangements with the agency.

employment and workplace relations

We received 567 approaches and complaints about the Department of Employment and Workplace Relations (DEWR) in 2006–07, compared to 418 in 2005–06. Figure 7.5 shows the trend in approaches and complaints about DEWR over the past five years. We investigated 20% of the 559 approaches and complaints finalised in the year.

The increase over the last year is indicative of the major role DEWR plays in the government's Welfare to Work initiatives, which commenced in July 2006. Although Centrelink delivers the majority of the payments and services associated with Welfare to Work, DEWR has responsibility for developing and implementing the policies underlying the income support system.

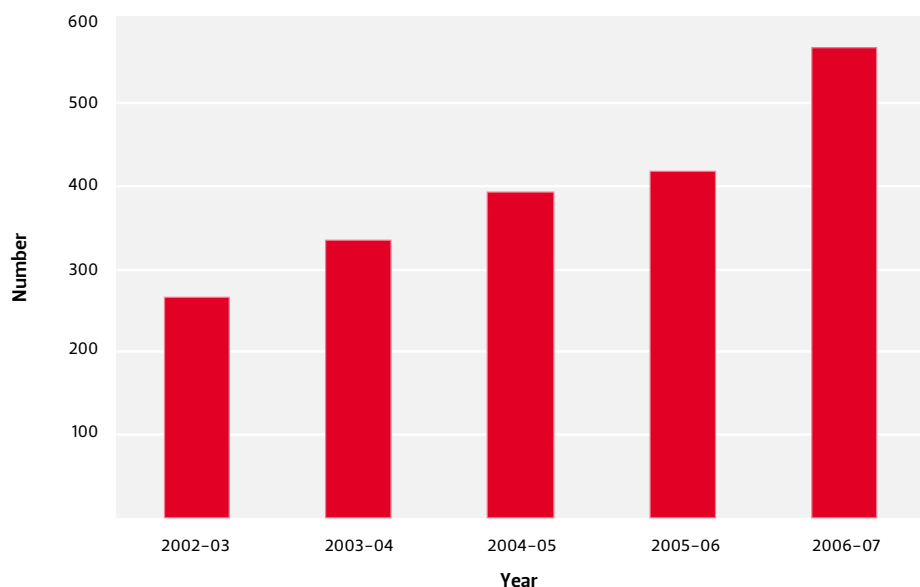
Issues about employment programs managed by DEWR, primarily the Job Network, accounted for the majority of complaints about DEWR in 2006–07. A large number of these complaints focused on the relationship between job seekers and their designated Provider of Australian Government Employment Services (PAGES).

CHANGING PAGES

PAGES (Job Network) remains the Australian government's largest employment service for unemployed job seekers. Most job seekers will receive job search support services for an initial period of three months. Those who remain unemployed after three months will proceed into Job Network Intensive Support services where intensive job search training is provided. Job seekers with a disability have access to a range of services, including PAGES, Disability Open Employment and Vocational Rehabilitation Services, to help them find work consistent with their capacity.

Job seekers generally remain with one PAGES for the duration of their unemployment period. If a jobseeker stops using Job Network services they will normally recommence with the same PAGES if they re-register within 12 months. It is generally expected that, by remaining with the same PAGES, a stronger relationship can be developed because the PAGES will be more familiar with the needs of the jobseeker. Jobseekers may transfer to their current PAGES

FIGURE 7.5 DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07



at a different site if they relocate, or if there is agreement between the PAGES and the job seeker.

A job seeker may transfer between PAGES in limited circumstances, including where:

- the job seeker has changed address to a location not serviced by their current PAGES
- there is agreement between the new and old PAGES and the job seeker
- there is an 'irretrievable breakdown' in the relationship between the job seeker and the PAGES.

The relationship between a PAGES and a job seeker is deemed to have irretrievably broken down when:

- it appears there is no chance that the job seeker will receive the employment services that are outlined in the job seeker's Preparing for Work Agreement
- the job seeker or any staff member of a PAGES is likely to be harmed as a result of a continuing relationship: 'harm' may include violence or harassment, or a lack of sensitivity to the cultural needs of special needs groups such as Indigenous job seekers and job seekers from culturally and linguistically diverse backgrounds.

In these instances DEWR is responsible for investigating and actioning any requests for transfers between PAGES on the grounds of an irretrievable breakdown. DEWR will do so only when it is satisfied that all reasonable action has been taken by the PAGES to resolve any problems. In one case we investigated, there was a long history of conflict and the jobseeker had approached another PAGES who was willing to provide services. However, the jobseeker was unable to establish an irretrievable breakdown had occurred, because DEWR's investigation of the jobseeker's complaint had not brought all of the relevant circumstances to light. We are considering whether such complaints point to any wider systemic concerns about transfer arrangements.

WORK FOR THE DOLE

We continue to receive complaints related to Work for the Dole programs. The case study *Injured* shows how problems can arise for people injured in the course of participating in the programs.

'We continue to receive complaints related to Work for the Dole programs.'

injured

CASE STUDY

Mr H contacted our office about difficulties he was experiencing in obtaining compensation from DEWR for an injury he sustained while participating in a Work for the Dole program. Mr H advised that, although he had contacted DEWR and its insurer numerous times over two years, he had received minimal assistance in meeting the costs of the essential medical treatment for his injuries.

A two-year time limit applied to several forms of medical treatment and assistance under the insurance cover for Work for the Dole participants. As Mr H's medical issues were not fully resolved, he had an ongoing need for some of the medical assistance affected by the limitations to the insurance cover.

In the course of our investigation DEWR's insurer negotiated a compensation payout to the complainant, which discharged DEWR's liability against any future claims for his injuries. As a result of this investigation, some possible areas for DEWR to improve its handling of claims from people injured in Work for the Dole programs were identified.

EMERGING ISSUES

Closing of CDEPs

In February 2007 the Minister for Employment and Workplace Relations announced changes to the Community Development Employment Projects (CDEP) program. CDEP is a program for unemployed Indigenous people, providing paid activities which contribute towards the local community and are aimed at developing skills and improving employability to assist people to move into employment outside CDEP programs. Indigenous Employment Centres are attached to some CDEP organisations. The Indigenous Employment Centre's role is to help CDEP participants find long-term jobs and provide ongoing support in the workplace.

The CDEP program will no longer operate in urban and major regional centres where unemployment is below 7% from 1 July 2007. In addition to this, all Indigenous Employment Centres ceased operating from 30 June 2007.

Any major policy change in service delivery areas can be expected to generate increased complaints. Monitoring such complaints can provide valuable information on whether there are genuine problems that need to be addressed. Early intervention to address those problems can be important in safeguarding the interests of members of the public who are affected by the changes

'Any major policy change in service delivery areas can be expected to generate increased complaints.'

Removal of remote area exemptions

People can be exempted from job search activity requirements for up to 13 weeks and sometimes longer, depending on their individual circumstances. Remote area exemptions have historically been granted for longer periods in areas where people have little or no access to a labour market or a labour

market program. Remote area exemptions are being gradually removed across Australia over the next four years. Monitoring complaints in this area may also provide a window into potential difficulties resulting from this policy change.

ONGOING ISSUES

Last year we noted that the number of approaches about the General Employee Entitlements and Redundancy Scheme (GEERS) had declined markedly following the introduction of improved processes—most notably more detailed decision notification letters. The total number of approaches about GEERS has continued to decline significantly this year, both in terms of total numbers and as a percentage of approaches about DEWR. We closed 71 approaches regarding GEERS in 2006–07, compared to 121 in the previous year, and we investigated a smaller number (25 in 2006–07, 43 in 2005–06).

In last year's annual report we indicated that we expected complaints about Trades Recognition Australia (TRA) to increase as TRA was preparing to process a larger number of applications to meet higher skilled migration targets. While applications to TRA increased from 20,000 in 2005–06 to 30,000 in 2006–07, the number of complaints to our office about TRA has not risen accordingly. We finalised twice as many approaches about TRA in 2006–07 (39) as in 2005–06 (20), but investigated a smaller number (9, compared to 16 in 2005–06).

Both of these examples reflect how complaint investigation, particularly in the early years of a program, can stimulate program changes that benefit members of the public. Early intervention of this kind is more likely to happen when there is a robust and constructive relationship between our office and the administrators of a scheme.

immigration

In 2005 amendments to the *Migration Act 1958* (Migration Act) gave the Ombudsman the statutory responsibility to review the circumstances of people held in immigration detention for two years or longer. Later in that year, amendments to the *Ombudsman Act 1976* (Ombudsman Act) conferred the title of Immigration Ombudsman on the Commonwealth Ombudsman. This section outlines the wide range of work we undertook in relation to immigration during 2006–07.

COMPLAINTS OVERVIEW

The number of approaches and complaints to the Ombudsman about the Department of Immigration and Citizenship (DIAC) stabilised in 2006–07. We received 1,379 approaches and complaints, compared to 1,300 in 2005–06. Figure 7.6 shows the trend in approaches and complaints over the period 2002–03 to 2006–07. We finalised 1,440 approaches and complaints with 40% investigated.

Complaints about DIAC fall into three distinct areas:

- visa issues—complaints relating to processing and decisions relating to visa

applications, and complaints about visa cancellations

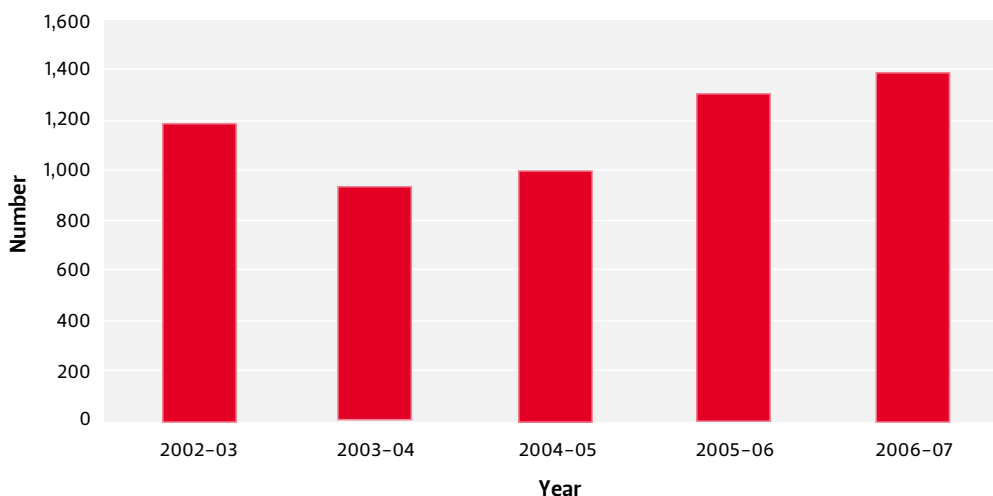
- immigration detention issues raised by or on behalf of detainees
- other issues—such as freedom of information applications and citizenship processes.

Complaints about visa processing can raise complex issues stretching over a number of years, as the case study *Parent visa application delays* (page 84) shows.

Visa cancellation complaints can range from the relatively straightforward to the very complex. In some cases, DIAC decisions to cancel visas are not subject to review, making it especially important that DIAC officers follow due process in making a cancellation decision. The case study *Airport turnaround* (page 84) shows a case where DIAC set aside a non-reviewable cancellation decision following our investigation.

An increasing proportion of complaints about visa-processing delays relate to the time taken by DIAC to obtain and assess security clearances from other government agencies including the Australian Federal Police, the

FIGURE 7.6 DEPARTMENT OF IMMIGRATION AND CITIZENSHIP APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07



Department of Foreign Affairs and Trade, and the Australian Security Intelligence Organisation (ASIO). Our investigations to date have identified that the delay in some cases was beyond the control of DIAC. In 2006–07 we closed 13 complaints where this was an issue. In some cases we have been able to refer the complaint to the Inspector-General of Intelligence and Security (IGIS). IGIS oversees the operations of ASIO and is able to consider why a matter is protracted. We are also seeking to establish liaison protocols with other agencies so that in future such complaints can be resolved as quickly as possible.

OWN MOTION INVESTIGATIONS

Administration of s 501 of the Migration Act

In early 2006 we released a report of an own motion investigation DIAC's administration of s 501 of the Migration Act (Report No 01/2006). Since then we have liaised regularly with DIAC regarding progress in implementing the report recommendations.

In December 2006 the Secretary of DIAC advised that 'the Department has made significant progress in addressing the deficiencies that your report identified ... and has initiated a broad and comprehensive programme of reform aimed at

parent visa application delays

CASE STUDY

Ms J approached our office in 2003 raising concerns about DIAC's processing of parent visa applications which had been lodged in 1996. When Ms J approached us again in 2005 she identified some further concerns. The applications had been made prior to a legislative change in December 1996 that altered the order of processing for parent visa applications.

Our investigation found that Ms J had been given a queue date of 4 December 2002, when the primary criteria had been considered as satisfied. However, health checks had been completed in 1996. We raised our concern with DIAC about the delay in finalising the applications in 1996 and the decision to assess the applications against criteria introduced in December 1996 rather than those in place at the time the applications were lodged.

DIAC subsequently advised us that arrangements had been made to change the queue date and to recommence processing the applications. It was estimated that, if the remaining criteria were met, the visas would be granted in 2006–07.

airport turnaround

CASE STUDY

A man complained on behalf of his son's partner, Ms K, who had arrived in Australia on a tourist visa. Ms K's visa was cancelled during the immigration clearance process when DIAC staff formed the view that Ms K may not comply with the conditions of the visa. Ms K was required to leave Australia immediately.

In our investigation we listened to the taped record of interview conducted prior to the cancellation of the visa and reviewed the relevant documentation. Our investigation established that adverse information had been provided by a third party and taken into account in the decision-making process. The information had not been put to Ms K so that she could respond, as required by s 57 of the Migration Act.

We raised our concern with DIAC about the process undertaken to cancel the visa. DIAC agreed to set aside the decision to cancel the visa and to apologise to Ms K. In addition, DIAC agreed to consider any request for compensation.

improving the overall management and resourcing of character decision making'. DIAC also advised that a centralised processing centre had been established, with a view to improved consistency in s 501 visa cancellation decision making.

In response to one recommendation in the report, DIAC agreed to review the cancellation decisions for individuals who were still in immigration detention and/or awaiting removal. DIAC expects to finalise this review in early 2007–08. We continue to monitor the implementation of the recommendations made in the report. The case study *Sole parent* shows a positive outcome for one person whose case was reviewed.

Management of a frail aged visitor

The 2005–06 Ombudsman annual report advised of the outcome of an investigation, *Department of Immigration and Multicultural Affairs: Management of a frail aged visitor to Australia* (Report No 05/2006). DIAC accepted all the recommendations in the report, and has implemented measures to improve communication with, and treatment of, DIAC clients. To date the changes include:

- improvements in procedures for referring clients to Health Services Australia for medical assessments
- improvements in health policy advice and fit-to-travel guidelines when assessing whether a person is fit to travel from Australia
- review of DIAC guidelines for the issue of bridging visas and waiver of visa condition 8503 (no further stay)
- improvements in information and instruction to DIAC officers about dealing sensitively with clients who are frail, have special needs or medical conditions, or whose immigration status is complex and/or potentially vulnerable.

DIAC has also canvassed the issue in a bridging visa review, which is under consideration by the Minister.

Migration Agents Registration Authority

In response to a number of complaints, we conducted an own motion investigation into the complaint-handling process of the Migration Agents Registration Authority (MARA). The report (Report No 05/2007), released in June 2007, recognised that MARA's complaint-handling processes had improved significantly in the previous 12 months. The report noted there was much still to be done by MARA to ensure that those most vulnerable are aware of MARA's complaint-handling system and have appropriate access to it, and that both

sole parent

CASE STUDY

Mr L arrived in Australia in 1982 when he was 10 years old. His resident return visa was cancelled under s 501 of the Migration Act in April 2002. Mr L was detained from May 2002. At the time Mr L was detained he had custody of his 10-year-old son, whom he cared for with the assistance of the child's grandmother.

DIAC's review of the cancellation process identified that in making the decision to cancel Mr L's visa, the decision maker had not given adequate weight to a primary consideration—the best interests of the child. The Ombudsman report on s 501 cases highlighted the need to ensure that information presented to decision makers is complete and up-to-date. In relation to the best interests of the child, the report recommended that an independent assessment be undertaken by a qualified social worker/psychologist on the impact on a child of the possible separation from or removal of its parent from Australia.

As a result of the review, DIAC recommended to the Minister that Mr L be granted a permanent visa. DIAC advised us in December 2006 that the Minister had granted Mr L a resident return visa using the discretionary powers provided in s 195A of the Migration Act. Mr L was released from detention when the visa was granted.

complainants and agents can have confidence in the outcomes achieved. MARA accepted the recommendations in the report.

Current and future own motion investigations

We are conducting an own motion investigation into DIAC's notification of reasons for decision and review rights to refused visa applicants. The investigation is assessing whether decision makers are meeting their legislative obligations to inform applicants of the criteria on which an application was refused and the availability of relevant review rights. We are also assessing how effectively this information can be understood and responded to by a diversity of clients. The report will be released early in 2007–08.

'We are conducting an own motion investigation into DIAC's notification of reasons for decision and review rights ...'

We have developed a program of own motion investigations for 2007–08 that includes examination of DIAC's Safeguards program, the administration of debt waivers and debt write-offs, and issues regarding police responses to allegations of assault or other criminal activity at Villawood Immigration Detention Centre.

DETENTION ISSUES

Staff from our offices conducted regular complaint-taking sessions at the mainland immigration detention centres (IDCs). Staff also regularly attended Client Consultative Meetings, Food Delegates Meetings and Community Consultative Group Meetings. These meetings provide an opportunity to monitor complaint and systemic issues and their resolution. Regular attendance at the IDCs enabled our staff to better appreciate the detention environment and provide an effective complaint service to detainees. These regular visits will continue in 2007–08.

In addition, staff visited and inspected five mainland IDCs, two immigration residential housing centres, and a motel where unaccompanied illegal foreign fisher minors are accommodated.

Our aim was to visit and examine the detention facilities with particular emphasis on assessing the provision of detention services and whether such services were being delivered in accordance with detention standards. We examined a range of services including reception and discharge procedures, property storage and recording, complaint-handling and incident-reporting systems, food preparation and storage, access to health services, and the provision of meaningful activities. We interviewed DIAC, GSL (Australia) Pty Ltd (GSL), health services and kitchen staff. At the end of each visit we provided feedback to centre management, and to DIAC's and GSL's national offices on selected issues. In 2007–08 we will commence visits to people in community detention as well as unannounced visits to IDCs.

Health remains an important complaint and oversight area. In 2006–07 we closed 93 complaints that raised one or more health issues. It is apparent from our investigations that detainees generally have appropriate access to a range of health services at IDCs following significant reforms in this area.

For example, one complaint we received concerned a person who had been transferred from an IDC to a hospital for psychiatric treatment. The complaint made on the person's behalf centred on potential complications arising from the treatment. We investigated the complaint and made enquiries of the treating doctors with DIAC's assistance. We were satisfied that the treatment was carefully considered and evaluated by the treating doctors, and was administered with the person's consent.

More options for alternative forms of immigration detention have led to a reduction in the number of people in IDCs. However, a greater proportion of people now in the IDCs have a criminal background and have had their visas cancelled under s 501 of the Migration Act. From complaints and visits to IDCs we have become aware that this is having an adverse effect on the day-to-day experience of people in detention with incidents of assault, theft of personal items and bullying being reported.

COMPLIANCE

As part of the Immigration Ombudsman function, we are implementing a comprehensive program of monitoring and inspecting DIAC's compliance activities. By adopting a more proactive role, we aim to provide a higher level of independent oversight and earlier identification of problems. During 2006–07 we conducted a pilot study of the process used to remove people from Australia. We have commenced a full program of inspections/monitoring of DIAC administration in this area. We are also developing a wider inspection and monitoring program for DIAC compliance activity, with emphasis on DIAC's identification and location of unlawful non-citizens and those who have breached their visa conditions.

'... we are implementing a comprehensive program of monitoring and inspecting DIAC's compliance activities.'

During the year we undertook an investigation into the administrative actions of compliance officers in relation to the death of a South Korean national during compliance activity in Sydney in July 2004. Our investigation identified serious administrative shortcomings in many areas of the DIAC compliance action—specifically record keeping, the search warrant administrative process, the execution of warrants and the clarity around the circumstances of escorting someone to other premises rather than detaining them under the Migration Act. We note that these issues have been raised in other recent inquiries, and are being addressed in DIAC's current reform program.

DIAC has introduced new descriptors in its primary database system to more accurately reflect the reason for a person's release from immigration detention when they are lawful. In March 2007 DIAC provided us with its first consolidated report relating to individuals released under the new descriptors in the year to February 2007. The report showed further examples of many of the problems identified in the 247 referred immigration detention cases. However, DIAC has generally been responsive

in addressing each case. We will continue to receive consolidated reports for examination every six months. Our office will also continue to monitor DIAC's use of these descriptors and may look into some cases in more detail if appropriate.

REFERRED IMMIGRATION DETENTION CASES

During 2006–07 we completed our investigation of 247 immigration detention cases referred to the Ombudsman by the Australian Government in 2005 and 2006.

The investigation of these cases involved reviewing DIAC's paper files, database records and the detention dossier for each person. In some cases, we sought responses to specific questions and conducted interviews with DIAC officers, clients, their representatives or other agencies. Extensive analysis was undertaken of DIAC's policies and procedures, and briefings were sought on a range of issues. Each investigation was reported in a case analysis, which outlined the sequence of events, discussed areas of concern and identified areas of potential administrative deficiency. In the majority of cases we recommended that DIAC consider whether a remedy should be provided to acknowledge or redress any suspected unlawful action.

'... we completed our investigation of 247 immigration detention cases referred to the Ombudsman ...'

The issues arising from the investigation of the 247 individual cases formed the basis of six consolidated public reports and individual public reports on two of the cases. Those reports highlight areas of systemic failure in DIAC administration and compliance activity and recommended a combination of administrative, systems-based and policy changes within DIAC.

Published reports

The first report, released in March 2006, related to the immigration detention of Mr T (Report No 4/2006). Mr T, an Australian citizen, was detained on three separate occasions for a total of 253 days after the police referred him

to DIAC. The report highlighted significant problems faced by DIAC in managing cases of people with mental illness.

A further three reports were released in December 2006. One dealt with the detention of a person referred to as Mr G, who was an Australian resident and also suffering from a mental illness (Report No 6/2006). The second report was the consolidated report into mental health and incapacity, where a person was suffering from poor mental health or incapacity at the time of their detention (Report No 7/2006). The third consolidated report—children in detention—dealt with cases where a child was taken into immigration detention (Report No 8/2006). It highlighted significant problems regarding DIAC's management of cases involving children.

The remaining consolidated reports were finalised in June 2007. These reports dealt with the following issues.

- Detention process (Report No 7/2007)—cases where DIAC's decision to detain a person under s 189 of the Migration Act was problematic.
- Data problems (Report No 8/2007)—where a data error contributed to a person's detention.
- Notification issues including cases affected by the Federal Court decision in *Chan Ta Srey v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 134 FCR (Report No 9/2007). This report dealt with two topics. One topic was cases where a person was detained after DIAC refused their visa application or cancelled their visa, but did not notify the person correctly. The other dealt with cases where a person affected by the Srey decision was wrongly taken into detention or not released from detention in a timely manner.
- Other legal issues (Report No 10/2007)—cases where a person was detained following the cancellation or refusal of their visa, and the decision was later set aside, or where a person was detained and then released while subject to a deportation order.

The case study of Mr A in the report on 'Other legal issues' related to a permanent resident whose permanent residence status ceased following a

DIAC error. He was subsequently detained for more than three years. We recommended that DIAC review the circumstances of his case and consider the actions of its staff and whether there were lapses in professional standards in relation to the way his case was managed. The report also recommended that DIAC give consideration to proposing a legislative amendment to allow variation of decisions based on legal or factual error.

DIAC cooperated fully with the investigations into these cases. Generally DIAC has agreed with the recommendations in the consolidated reports and is undertaking a significant reform process to address many of the issues identified. The Ombudsman will continue to monitor DIAC's progress in implementing these recommendations and DIAC's handling of the individual cases. All the reports are available from the Ombudsman website at www.ombudsman.gov.au.

'The Ombudsman will continue to monitor DIAC's progress in implementing these recommendations ...'

REPORTING ON PEOPLE HELD IN IMMIGRATION DETENTION FOR TWO YEARS OR MORE

Under the Migration Act the Ombudsman is required to review the cases of people held in immigration detention for two years or more. Section 486O of the Act provides that the Ombudsman, upon receiving a report from DIAC, is to provide the Minister with an assessment of the appropriateness of the arrangements for the person's detention.

DIAC's report must be provided to the Ombudsman within 21 days of a person having been in detention for two years. If the person remains in detention, new reports to the Ombudsman are to be prepared at six-monthly intervals. The Ombudsman is required to undertake an assessment, even if the person has since been released from detention.

The Ombudsman's report on a person is to be provided to the Minister as soon as practicable and the Minister is required to table the report in Parliament, suitably modified to protect privacy, within 15 sitting days. A copy of the report with

identifying details deleted, together with the Minister's tabling statement, is published on the Ombudsman's website.

Progress on the oversight function

As at the end of June 2007, this function had been operating for two years. The priority remains focused on preparing reports for people in IDCs, families with children in detention, people who have a significant illness, people on temporary visas and people with other compelling reasons for an early report.

We conduct face-to-face interviews with those in detention wherever possible, especially in relation to the initial report. Telephone interviews are generally conducted for the subsequent interviews as well as in situations where a person has been granted a permanent visa and is no longer in detention.

'We conduct face-to-face interviews with those in detention wherever possible ...'

Table 7.2 sets out the number of s 486N reports the Ombudsman received from DIAC in relation to long-term detainees, including the second, third, fourth and fifth reports for people who remain in detention.

From the introduction of the function until the end of June 2007, the Ombudsman had provided 211 reports to the Minister, of which 199 had been tabled in Parliament. A number of the reports provided to the Minister were combined reports—for example, combined first and second reports for someone on whom we

had not reported before we received their second s 486N report from DIAC.

One third of the people covered in the reports were citizens of the People's Republic of China, 10% were citizens of Iran, 8% were citizens of Afghanistan, and 8% were citizens of Vietnam.

Significant mental health issues are a continuing area of concern for long-term detainees and 40% of the reports completed by the Ombudsman raised this issue.

Analysis

A total of 218 recommendations were made in the 211 reports sent to the Minister, with about 40% of the reports containing no recommendation. The following statistics are based on an analysis of the responses in the Minister's statements tabled in the Parliament:

- 48% of the Ombudsman recommendations or suggestions were agreed to by the Minister
- 34% were not agreed to by the Minister
- 13% of time sensitive recommendations or suggestions were delayed or postponed by the Minister
- 3% of the recommendations were not addressed
- 2% of the recommendations had become irrelevant due to intervening circumstances.

On some occasions a decision providing a different outcome followed the tabling statement.

TABLE 7.2 REPORTS UNDER S 486N OF THE MIGRATION ACT RECEIVED BY THE OMBUDSMAN, 2006–07

	Number of reports	Number of people reported on
Initial s 486N reports	87	110
Second s 486N reports	52	71
Third s 486N reports	52	72
Fourth s 486N reports	21	27
Fifth s 486N reports	10	10
Total	222	290

The lack of detail in Ministerial tabling statements may mean that it will not be possible to provide a similar analysis of the s 4860 report recommendations in future.

FREEDOM OF INFORMATION

In 2004–05 and 2005–06 we reported on significant delays in the processing of FOI requests by DIAC, and the strategies that were being implemented to address the situation.

Whilst DIAC has increased the resources within the area and introduced a range of initiatives aimed at improving FOI processing, the situation has still not improved to the degree we expected. The processing of many FOI requests far exceeds the statutory timeframe. At 30 June 2007 there were 2,793 FOI requests outside the statutory timeframe, compared to 1,101 at 30 June 2006. This continues to be unsatisfactory.

We are aware that DIAC has recently conducted an internal audit into their management of FOI requests and it is expected that the final report will identify opportunities to streamline processes or reduce the number of FOI requests received. It is also expected that a recent amendment to the Migration Act will mean that individuals no longer need to use FOI to access their international movement records. This should reduce the FOI workload.

DIAC is continuing to provide our office with regular two-monthly reporting on progress in dealing with the backlog. We will continue to monitor the number of FOI requests outside the statutory timeframe. In the meantime, we accept complaints about FOI delays and may investigate individual complaints if we consider that a particular matter should be given priority, or that a complaint raises a special area of concern in relation to DIAC's handling of requests.

INPUT TO DEPARTMENTAL PROCESSES AND PROCEDURES

We were pleased to be invited by DIAC to provide comment on draft departmental documents on numerous occasions. For example, with Dr Vivienne Thom as a member of the Values and Standards Committee and the

College of Immigration Board, we have commented on a wide range of proposed training modules for compliance and detention officers attending the College.

We also commented on a range of DIAC policy and information documents, including the s 501 Handbook, detainee information material, DIAC's Compliments and Complaints Policy, DIAC's Stakeholder Engagement Practitioner Handbook and a discussion paper on measures to improve settlement outcomes for humanitarian entrants.

These opportunities allowed our office to reinforce issues raised during the investigation of complaints, including the need for improved record-keeping practices, the importance of effective proof of identity procedures, and the need to provide interpreters during interviews.

It has been pleasing to have the opportunity to contribute comments to the policy and information products under development for the introduction of DIAC's revised Compliments and Complaints Policy. The revised policy indicates that DIAC is committed to becoming more responsive to the needs of customers and to improving customer service through responding to customer complaints and feedback.

As an observer on DIAC's Detention Health Advisory Group, the office was invited to comment on new overarching health policies, including the Detention Health Framework and Detention Health Standards devised by the Royal Australian College of General Practitioners. DIAC also invited us to comment on various other draft detention documents, including the request for tender exposure drafts for detention services and detention health services, and detention complaints and visits policies.

'... DIAC is committed to becoming more responsive to the needs of customers and to improving customer service ...'

Ombudsman representatives attended community stakeholder consultation sessions held by the Immigration Detention Advisory Group (IDAG) in Darwin and Melbourne. We will also attend the IDAG community stakeholder consultation sessions scheduled for later in 2007 in Adelaide, Brisbane, Perth and Sydney.

law enforcement

The Commonwealth Ombudsman deals with complaints made about the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). This year there was considerable change in the legislation under which the office undertakes this role, with the repeal of the *Complaints (Australian Federal Police) Act 1981* (Complaints Act) and amendments to the *Australian Federal Police Act 1979* (AFP Act) and the Ombudsman Act. A complete list of the relevant legislation is contained in Table 7.3.

During 2006–07 the Commonwealth Ombudsman became the Law Enforcement Ombudsman with the commencement of new legislation that also brought new responsibilities to the office. Despite these changes the core work of dealing with complaints from members of the public about AFP members continued, along with several special and own motion investigations.

AUSTRALIAN FEDERAL POLICE

The majority of the Ombudsman's law enforcement work in 2006–07 related to complaints from members of the public about the actions of members of the AFP. This year 60% of all complaints were made about AFP members acting in their ACT community policing role. Our work in this area is described in more detail in the ACT Ombudsman Annual Report 2006–2007, available at www.ombudsman.act.gov.au.

The remaining 40% of complaints relate to the work of the AFP in national and international operations. The most common issues raised by complainants include:

- inappropriate behaviour
- misuse of authority
- failure to act
- harassment
- discourtesy.

This year complaints have been dealt with under two different legislative regimes. The relevant provisions of the *Law Enforcement (AFP Professional Standards and Related*

Measures) Act 2006 commenced on 30 December 2006, repealing the Complaints Act and replacing it with Part V of the AFP Act and amendments to the Ombudsman Act. The Complaints Act remains in force for complaints made before 30 December 2006. These legislative changes have had a significant impact on how the Ombudsman's office works and the statistics that are provided in this report. These changes are discussed further in following sections.

Implementation of the Law Enforcement Ombudsman function

The Law Enforcement Ombudsman is a new role vested in the Commonwealth Ombudsman as part of a broader reform of the system for handling complaints made about the AFP. The intention of the reform is to highlight the special role of the Ombudsman in dealing with complaints against the AFP, while creating a more flexible and responsive complaint-handling process that better meets the needs of all stakeholders.

'The Law Enforcement Ombudsman is a new role vested in the Commonwealth Ombudsman ...'

The reforms include the removal of the system for joint handling of complaints by the AFP and the Ombudsman, which was the central feature of the Complaints Act. Under the new model the AFP has primary responsibility for dealing with all complaints. Minor matters are allocated to local area management to resolve and serious matters are dealt with by the AFP's Professional Standards team.

The Ombudsman has an enhanced investigatory and inspection role, and is no longer involved in the resolution of all complaints. The Ombudsman continues to be notified by the AFP of all serious misconduct matters: these are defined as 'Category 3' matters in s 40RP of the AFP Act. The Ombudsman may also investigate any complaint against the AFP, including the AFP's handling of any case, under the Ombudsman Act.

TABLE 7.3 LEGISLATIVE BASIS FOR COMMONWEALTH OMBUDSMAN OVERSIGHT OF LAW ENFORCEMENT ACTIVITIES

Legislation	Function
Complaints	
<i>Australian Security Intelligence Organisation Act 1979</i>	Investigate complaints about AFP members relating to detention of suspected terrorists and about questioning warrants
<i>Complaints (Australian Federal Police) Act 1981</i>	Investigate complaints lodged prior to 2007 about AFP members in international, national and community policing roles Monitor the practices and procedures of the AFP
<i>Ombudsman Act 1976</i>	Investigate complaints about the AFP, ACC and CrimTrac
<i>Australian Federal Police Act 1979</i>	Define categories of AFP conduct matters, jointly with the Commissioner of the AFP Receive notification of serious misconduct matters from the AFP
<i>Witness Protection Act 1994</i>	Investigate complaints from people placed on the National Witness Protection Program or from unsuccessful applicants
Inspections	
<i>Australian Federal Police Act 1979</i>	Report to the Parliament on the adequacy and comprehensiveness of the AFP's complaint handling
<i>Australian Crime Commission Act 2002</i>	Report to the Parliamentary Joint Committee on the Australian Crime Commission about the ACC's involvement in controlled operations
<i>Crimes Act 1914</i>	Report to Parliament on the adequacy and comprehensiveness of controlled operations records
<i>Surveillance Devices Act 2004</i>	Inspect records for compliance with the Act
<i>Telecommunications (Interception and Access) Act 1979</i>	Inspect compliance with the record-keeping requirements of the Act

For the purposes of complaints management under the AFP Act, conduct is divided into four categories, of which the highest is conduct giving rise to a corruption issue (s 40RK). The three other categories are minor management or customer service matters, minor misconduct and serious misconduct. The principles for determining the kind of conduct that falls within these three categories were agreed on by the AFP Commissioner and the Ombudsman and set out in a legislative instrument made under s 40RM of the AFP Act (see *Australian Federal Police Categories of Conduct Determination 2006*, Legislative Instrument F2006L04145 at www.comlaw.gov.au). Allegations of corruption against AFP officers are now referred both by the Ombudsman and the AFP to the Law Enforcement Integrity Commissioner. The role of the Integrity Commissioner is discussed later in this section.

As Law Enforcement Ombudsman, the Commonwealth Ombudsman has a new responsibility to review the administration of the AFP's handling of complaints, through inspection of AFP records. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the Minister. The results of these reviews must be provided

to Parliament on an annual basis, pursuant to s 40XD of the AFP Act.

Work is continuing on developing an administratively efficient process for the examination of the AFP's investigations into serious issues of conduct and practice. The AFP elected not to enter into an arrangement under s 8D of the Ombudsman Act for jointly dealing with such issues, and the absence of such an arrangement means that effective examination of these issues must be by separate Ombudsman investigation.

REVIEW OF COMPLAINT HANDLING

In 2007 we commenced reviewing the administration of the AFP's handling of complaints. We inspected AFP records of finalised complaints made under Part V of the AFP Act during May and June 2007. A report on the adequacy and comprehensiveness of the AFP complaint system will be tabled in Parliament.

Complaints received

The change in the complaint-handling system means that the statistics in this report are not comparable with those of previous years. In 2006–07 we received a total of 694 approaches and complaints about the actions of AFP members (801 in 2005–06).

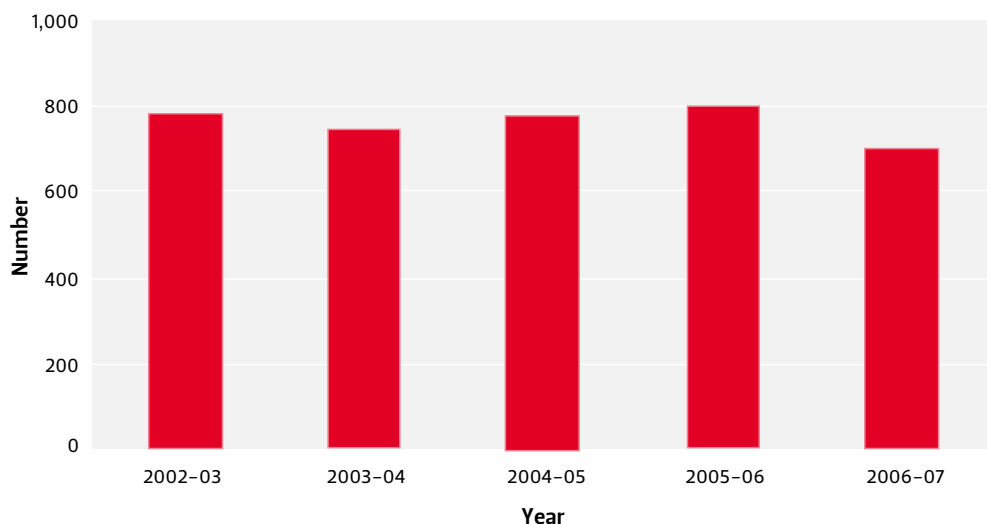
We received 517 complaints under the Complaints Act. This is a sharp increase of 47% compared to complaints received during the same six-month period in 2005 (351). Complaints relating to ACT Policing accounted for 61% of this increase and complaints relating to areas of Commonwealth responsibility represented the remaining 39%. The reason for the increase is not readily ascertainable.

We also received 177 complaints under the Ombudsman Act after 30 December 2006.

As noted above, under the new complaint-handling arrangements, the AFP is required to notify the Ombudsman of serious misconduct issues. The AFP notified the Ombudsman of 125 Category 3 complaints in the first half of 2007.



The Ombudsman, Prof. John McMillan, and the AFP Commissioner, Mr Mick Keelty, signing a legislative instrument on categories.

FIGURE 7.7 AUSTRALIAN FEDERAL POLICE APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07

Complaints finalised

We finalised 745 complaints and 886 complaint issues in 2006–07. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in different outcomes. The following statistics cover AFP community policing, including in the ACT, as well as AFP national and international policing.

Complaints made under the Complaints Act

We finalised 591 complaints containing 729 complaint issues under the Complaints Act.

Of the 729 issues finalised, a large number (275 or 38%, compared to 48% in 2005–06) related to minor discourtesy or service delivery failures and were referred to the AFP's workplace-resolution process. This process allows members of the public to provide feedback about their interaction with police; provides AFP members with the opportunity to acknowledge and learn from minor mistakes; and facilitates a more timely and flexible response to complaint issues than does formal investigation.

Of the 275 issues referred for workplace resolution, 191 issues (69%) were successfully

conciliated with the complainant. The AFP forwarded reports to the Ombudsman for consideration in relation to the remaining 84 issues (31%) where the complainant was not satisfied with the AFP's attempts to conciliate the matter.

'... a large number ... related to minor discourtesy or service delivery failures ...'

We decided not to investigate 349 issues after receiving the complaints directly or after considering the AFP's initial evaluation of the complaint. The lower proportion of complaints subjected to workplace resolution reflects the increased proportion of complaints that we considered did not warrant further action in light of the AFP's initial evaluation. The Ombudsman made additional enquiries of the AFP on 43 issues and later decided that further action was not required.

Sixty-two complaint issues were investigated by the AFP and reviewed by the Ombudsman's office (compared to 87 in 2005–06). Of these issues, 16 were substantiated, 9 were incapable of determination and 37 were unsubstantiated.

Our review of AFP investigation reports suggests that there was a comprehensive investigation and analysis in most cases, with reasonable and appropriate recommendations for remedial action. On a few occasions an investigation report was returned to the AFP for further action—such as a quality assurance review of the report, further clarification of a particular issue, or consideration of a broader issue. We also worked with the AFP to ensure that, where appropriate, the investigation outcome considered systemic issues and included a response from the AFP directly to the complainant.

Complaints made under the Ombudsman Act

We finalised 154 approaches containing 157 issues under the Ombudsman Act, with 145 issues being in the Ombudsman's jurisdiction. Under the new legislative arrangements, we have adopted the policy that we take with other Australian Government agencies—that a complainant should contact the relevant agency about a complaint before asking the Ombudsman to conduct an investigation. As a result, we referred the complainant to the AFP or another oversight or advice body in relation to 120 issues (76%) and decided that the remaining 37 issues (24%) did not warrant investigation. Some investigations commenced during the period are yet to be completed.

Time taken to finalise complaints

Overall, 81% of complaints about the AFP under both legislative regimes were finalised within six months of receipt (compared to 88% in 2005–06). The remaining 19% of complaints (144) took more than six months to finalise (compared to 12% in 2005–06).

Concerned about the delay in finalising many AFP complaints, we analysed the cases to identify the causes. The analysis revealed that the Ombudsman's office finalised complaints made under the Ombudsman Act in an average of 23 days. Complaints jointly managed with the AFP under the Complaints Act took an average of 150 days to finalise, comprising 107

days for the AFP to prepare a report to the Ombudsman, and 43 days for the Ombudsman's office to consider that report.

There was a delay in some instances between the AFP receiving a complaint and notifying it to the Ombudsman. There were also delays from when the Ombudsman notified a complaint to the AFP and the AFP advised us how they intended to deal with it. The AFP informed us that these delays resulted from a backlog in the evaluation of new complaints, which had subsequently been resolved. Weekly meetings were held between the AFP and the Ombudsman's office to discuss these and other issues.

In the next financial year we will work with the AFP to resolve the remaining 169 complaints made under the Complaints Act and to reduce our own consideration times.

'Weekly meetings were held between the AFP and the Ombudsman's office ...'

OWN MOTION AND SPECIAL INVESTIGATIONS

ACT Policing Watchhouse operations

In February 2007, at the request of the AFP, we conducted a joint review with the AFP of City Watchhouse operations in the ACT. The report, which was published in June 2007 (Report No 6/2007), is described more fully in the ACT Ombudsman Annual Report 2006–2007. The review recommended many changes in Watchhouse procedures, as well as a more far-reaching consideration of the way in which the Watchhouse is operated and staffed.

Among the matters covered by the report were:

- the policies and procedures applicable to Watchhouse operations
- physical conditions for staff and detainees
- surveillance systems
- training of AFP members working in the Watchhouse

- management and control of detainees, including the use of force
- care of persons with special needs
- oversight, supervision and management of Watchhouse staff
- complaint management.

The AFP accepted all the recommendations, with one being a matter for consideration by the ACT Government. The steering committee oversighting the review will meet by December 2007 to report on progress in implementing the review recommendations. The report is available on our website at www.ombudsman.gov.au.

Review of management of property and exhibits

In last year's annual report we noted that we were considering conducting an investigation into the AFP's management of property and exhibits. Some of the issues that were to be taken up in this investigation related to the AFP's management of property while a person was in ACT police custody. These have now been addressed in the report on ACT Policing Watchhouse operations. As a result, we decided not to pursue a separate investigation on property and exhibit handling at this time.

Security vetting

We conducted an own motion investigation into AFP security vetting procedures during 2006–07. In the investigation we examined issues such as whether natural justice was properly observed in security vetting decisions, whether security vetting policies were applied consistently to international security vetting applications, and whether there was excessive delay in the vetting process.

The investigation revealed that since 2006 the AFP had improved its security vetting practices and had addressed the main problems raised in complaints to the Ombudsman. The process for conducting a review and observing natural justice had been amended to comply with good administrative practice, and the policy for

conducting international enquiries had been clarified and structured to enable it to be applied more efficiently and consistently. The AFP had also introduced deadlines for processing security vetting applications to reduce delays, and increased the training requirements for AFP security vetting staff.

Special investigations

Ombudsman staff are progressing two special investigations under the Complaints Act. One investigation is examining whether a 'directed' interview conducted between AFP Professional Standards officers and an AFP member (as a result of a conduct issue) was biased due to an alleged 'perceived or actual conflict of interest' held by one of the AFP Professional Standards officers involved in conducting the interview. The second investigation revolved around the interview technique used by some AFP Professional Standards officers when investigating conduct issues. This special investigation has been completed and a report provided to the AFP for comment.

AUSTRALIAN CRIME COMMISSION

Complaints about the ACC are managed under the Ombudsman Act. While the ACC is not required to notify complaints to the Ombudsman's office, the ACC notifies us about significant matters, allowing us to consider whether further investigation by Ombudsman staff is warranted.

In 2006–07 we received nine approaches about the ACC (the same as in 2005–06). We finalised eight approaches, three of which were complaints within the Ombudsman's jurisdiction. Some of the other approaches were from people seeking to report criminal activity in the community. We gave these people the contact details for the ACC.

One complaint was referred to the ACC for its consideration. An independent officer (arranged through the ACC) investigated this complaint, which related to an allegation that ACC officers executing a search warrant in

Melbourne had stolen \$20,000 in cash from the premises being searched. A full investigation of this matter was conducted by the ACC and we reviewed the final investigation report. The investigation included examination of videotapes recorded during the execution of the search warrant. The investigation uncovered no evidence to suggest that any ACC or AFP officers involved in the search warrant execution had removed any item from the premises without authority or without an official seizure receipt.

Another complaint centred on matters relating to security protection being provided to a witness. After some investigation of this matter we decided not to take any further action as the ACC had already provided an appropriate remedy to the complainant.

The other complaint within jurisdiction centred on matters that had allegedly occurred many years ago and had been before the courts some years ago. We decided not to investigate this matter as an investigation so long after the event would have been problematic and was unlikely to achieve the remedy sought by the complainant.

AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

An important change in 2006–07 was the creation of the new position of Law Enforcement Integrity Commissioner, assisted by the Australian Commission for Law Enforcement Integrity (ACLEI). The *Law Enforcement Integrity Commissioner Act 2006* commenced on 30 December 2006. The core function of the Integrity Commissioner is to investigate and report on corruption in the ACC and the AFP.

The Ombudsman can refer allegations of corruption against law enforcement officers to the Integrity Commissioner. In 2007 the Ombudsman referred two allegations of corruption to the Integrity Commissioner. One related to the AFP and the other to the ACC.

Discussions were held in 2007 between the Ombudsman's office and ACLEI to clarify arrangements between both offices for cooperation and referral of complaints and allegations. It is expected that there will be a close working relationship between the Ombudsman's office and ACLEI.

postal industry

The Postal Industry Ombudsman (PIO) started operating on 6 October 2006. The PIO is a new role for the Commonwealth Ombudsman, and is the office's first function that routinely investigates complaints about private sector organisations.

The PIO scheme is a voluntary scheme which postal operators or courier companies can choose to join. Australia Post is automatically a member. At the start date, five businesses had joined the scheme, and two more joined shortly after. At 30 June 2007, the members of the PIO scheme were:

- Australia Post
- Cheque-Mates Pty Ltd
- D & D Mailing Services
- Dependable Couriers & Taxi Trucks Sydney Pty Ltd
- Federal Express (Australia) Pty Ltd
- The Mailing House
- Mailroom Express Pty Ltd
- Universal Express Australia Pty Ltd.

The scheme was officially launched in July 2006 in Sydney by the Minister for Communications, Information Technology and the Arts, Senator the Hon. Helen Coonan.

Speakers at the launch were Senator Coonan, the Managing Director of Australia Post, Mr Graeme John AO, and the Commonwealth and Postal Industry Ombudsman, Prof. John McMillan.

In 2006–07 our office worked on raising the profile of our new function in the broader community. We focused particularly on providing information about the PIO to those who, in turn, give advice to members of the community. We began a program of writing to all federal, state and territory parliamentarians during 2006–07, and talked to organisations that help consumers—for example, the state and territory bureaus of consumer affairs.

From 6 October 2006 to 30 June 2007, the PIO received 1,018 approaches and complaints. The number of approaches and complaints to our office, and investigations undertaken by the PIO, are shown in Table 7.4 (page 99).

COMMONWEALTH JURISDICTION

The PIO can only investigate complaints about postal services, and where the action complained of occurred on or after 6 October 2006. Other complaints about Australia Post can be investigated by the Commonwealth



Mr Graeme John, Senator Coonan and Prof. McMillan at the launch of the PIO Scheme.

TABLE 7.4 APPROACHES AND COMPLAINTS RECEIVED, AND INVESTIGATIONS, BY THE PIO, 2006–07

	Australia Post	Private Postal Operators	Total
Number of approaches and complaints received	1,017	1	1,018
Investigations commenced	381	1	382
Investigations completed	290	0	290

The PIO did not commence any investigations on his own initiative in 2006–07. There were no occasions on which the PIO made a requirement of a person under s 9 of the Ombudsman Act to provide documents or information; and no formal recommendations for remedial action have been made under s 19V of the Act. The PIO did not transfer any complaints to the Commonwealth Ombudsman under s 19N(3) of the Act.

Ombudsman. This includes complaints about non-postal issues—for example, Australia Post’s banking or billpay services.

In 2006–07 the Commonwealth Ombudsman received 802 approaches about Australia Post, in addition to the approaches received by the PIO referred to above. The 802 approaches comprised approaches about Australia Post made before 6 October 2006, and approaches about non-postal issues made after that date.

AUSTRALIA POST COMPLAINTS

Australia Post deals with a high volume of transactions—on average, it handles some 21 million items every working day and delivers mail to approximately 10.3 million delivery points.

We received significantly more approaches and complaints about Australia Post in 2006–07 compared to previous years, with a total of 1,819 approaches and complaints compared to 1,327 in 2005–06. One reason may be the start of the PIO, with increased publicity about our office’s role in handling Australia Post complaints. Another reason may be changes in the use of the postal system. Although overall mail volumes remain steady, the proportion of parcel transactions has increased in recent years. This seems to be driven by an increase in consumers purchasing by email or over the internet, from suppliers both in Australia and overseas. It is possible that postal customers are more likely to notice, and complain about, a service failure by Australia Post in relation to

parcels than in relation to letters such as bank statements.

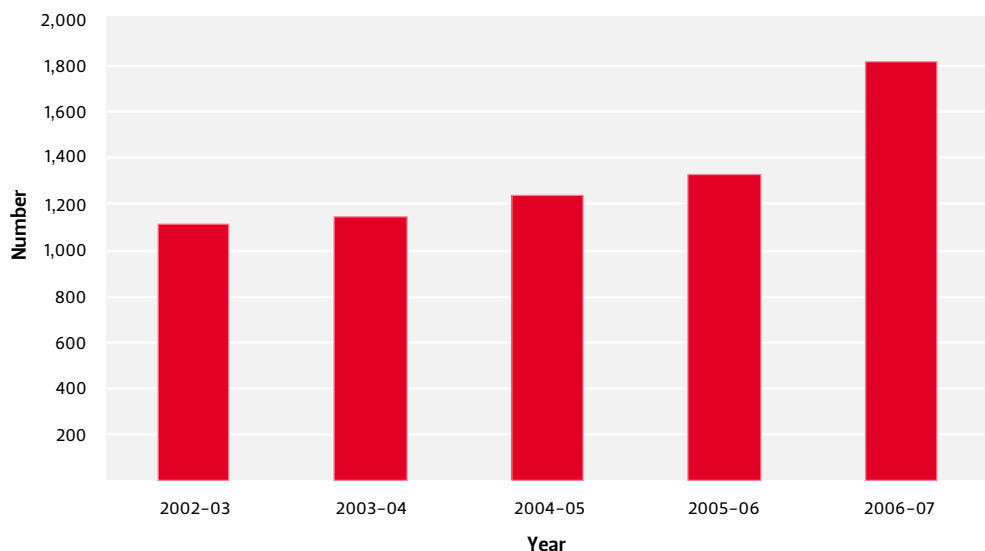
As well as complaints about items lost or damaged in the mail, other complaint themes included the express post service (for example complaints about service failure and the limited nature of the ‘guarantee’), registered post (including complaints about signatures for items being accepted from people who were not entitled to them), and the method of mail delivery (ranging from complaints about mail being left in the rain, to a complaint alleging the fumes from the postie’s bike polluted the caller’s house).

The number of approaches and complaints to our office about Australia Post (received by both the PIO and the Commonwealth Ombudsman) is shown in Figure 7.8 (page 100).

Recurring problems

As consumers become more likely to complain, it is increasingly important that Australia Post gives a high quality initial response to customer problems. Postal customers are encouraged to contact an Australia Post Customer Contact Centre (CCC) if they have an enquiry or a complaint. The CCCs handled on average 75,000 calls per week nationally during 2006–07.

During the year we noticed that some ongoing complaints are not always handled well by the CCCs. Although staff of the CCCs are generally able to handle and resolve one-off issues,

FIGURE 7.8 AUSTRALIA POST APPROACH AND COMPLAINT TRENDS, 2002–03 TO 2006–07*

* 2006–07 figures for Commonwealth Ombudsman and PIO combined.

recurring or ongoing problems are not always identified and managed in an appropriate manner.

We found that postal customers experience a high degree of frustration if problems continue after a complaint to a CCC. A particularly troubling area is when a customer is having problems with delivery and is concerned about mail not being delivered. The customer may not know what mail they should have received and cannot tell if there was a delivery failure. It can be difficult for Australia Post to regain the trust of an addressee after ongoing delivery problems.

‘We found that postal customers experience a high degree of frustration if problems continue ...’

Over the year our office was able to assist Australia Post to identify and focus on recurring problems experienced by individuals, and to put in place longer-term solutions to solve the core cause, as shown in the case studies *On the boundary* (page 101) and *Unwanted redirection* (page 101).

Dilution of responsibility

Australia Post is a large organisation, with approximately 35,000 staff. Many of the complaints to our office involve actions by different parts of Australia Post. In order to find out why a problem occurred, and whether changes can be made to prevent it happening again, it is often necessary for several different operational areas of Australia Post to be involved.

Although a customer’s initial contact is with a CCC, the resolution of the problem and notifying the customer of the outcome will often become the responsibility of the local delivery centre. If another area of Australia Post is also involved—for example, the sending post office—it can become difficult for a customer to keep track of the progress of their complaint.

We assisted complainants negotiate their way through Australia Post to someone who was able to help them and resolve their problem. As much of Australia Post’s work is done locally, our office has found that face-to-face contact with local representatives is invaluable in improving postal services, as the case study *Indirect delivery* (page 101) demonstrates.

on the boundary

CASE STUDY

Ms M complained to us about mail regularly arriving 8 to 10 days after it was sent. She had approached Australia Post two years earlier, and the problem was fixed for about 12 months, but had recurred.

We established that the problem occurred because Ms M lived on the boundary of two delivery areas, and her address appeared twice in the address database. Mail sorted to the incorrect delivery area was then resent to the correct delivery area, resulting in the delay.

As a result of the complaint to our office, Australia Post put in place new processes for dealing with mail to this address, eliminating the double handling and the consequent delay. Australia Post was also able to give Ms M information on how to read the markings on her mail to see where the mail had been, and gave both Ms M and any affected neighbours a direct number to call to deal with future problems.

unwanted redirection

CASE STUDY

Mr N approached our office on behalf of his business, complaining that for the last month the bulk of the mail addressed to his business had been returned to sender for various reasons such as 'left address' or 'delivery refused'. Mr N said this was causing cash flow difficulties for his business. He had contacted Australia Post more than 25 times, but the problem continued.

It transpired that a redirection in place for a previous business in the premises had been wrongly applied to Mr N's business mail. As a result of our investigation, the relevant operations manager contacted Mr N and obtained a list of all company and personal names that received mail at that address. This was given to the delivery officer, and an alert placed in the relevant redirections folder. Australia Post also put in place a short-term automatic diversion for all mail at that address until the new processes were fully operational.

indirect delivery

CASE STUDY

Mr O complained about a problem with his mail going via another delivery centre before being redirected to the correct delivery area. He believed this was because his area had an incorrect postcode. He approached his local post office and delivery centre about the problem in 2003 and 2004.

Mr O initially complained to us in May 2006. As a result of our investigation, Australia Post changed the local procedures to ensure that mail was correctly transferred for direct local delivery. Mr O returned to our office in July concerned that the amount of mail he was receiving had decreased significantly. He had not been able to contact anyone who was able to say what was going on.

Our office was able to help Mr O and the local delivery manager make contact. The delivery manager explained the new delivery network changes to Mr O, and how the changes should solve his concerns.

other agencies

Each year we receive approaches and complaints about more than 100 Australian Government departments and agencies. There are a number of agencies about which we generally receive 50 to 200 approaches and complaints each year. These agencies are shown in Table 7.5.

While we may receive only a small number of complaints about some agencies, they can sometimes highlight important issues in public administration. This section gives an example of the range of complaints with which we dealt. It also outlines some complaints which raised broader issues of public administration.

AUSTRALIAN CUSTOMS SERVICE

In 2006–07 we received 123 approaches and complaints about the Australian Customs Service, compared to 121 in 2005–06. As with last year, the primary source of complaints about Customs were issues associated with passenger processing. Complaints tended to relate to baggage inspections, routine questioning by Customs officers, the imposition of duty and/or the seizure of prohibited goods.

The case study *Damaged souvenir* (page 103) shows how we were able to help resolve a complainant's concerns in relation to baggage inspection.

Our office also continued to receive complaints about passenger duty free concessions. Some complainants argued that the current concessions have not been adequately publicised since their implementation in 2005. Other complainants suggested that the current by-laws relating to the concessions are inflexible, in that they do not allow for the partial disposal of amounts that exceed the duty free limits.

In most instances, our office was able to provide these complainants with a better explanation of how the concessions are now applied, and to confirm whether Customs had applied the by-laws correctly in respect of their particular goods. We will continue to monitor how Customs publicises the concessions and responds to these types of complaints.

During the year, our office also engaged in a number of visits to Customs' sites, including

TABLE 7.5 AGENCIES ABOUT WHICH A MODEST NUMBER OF APPROACHES AND COMPLAINTS ARE RECEIVED, BY NUMBER RECEIVED, 2002–03 TO 2006–07

Agency	2002–03	2003–04	2004–05	2005–06	2006–07
Telstra	152	118	128	231	228
Australian Securities and Investments Commission	91	126	138	188	192
Department of Foreign Affairs and Trade	63	118	88	140	155
Medicare Australia	135	158	191	156	123
Australian Customs Service	79	80	91	121	123
Department of Health and Ageing	92	119	117	138	113
Australian Bureau of Statistics	43	64	53	60	105
Comcare	124	122	99	89	97
Family Court of Australia	85	120	104	98	64
Insolvency and Trustee Service of Australia	49	93	80	76	60

Passenger Processing and Container Examination facilities. Through an improved understanding of how Customs manages its operations, our office will be better equipped to deal with complaints about Customs and its associated processes.

AUSTRALIAN FILM COMMISSION

There are a number of agencies about which we usually receive very few, if any, complaints. However, the complaints we receive can sometimes illustrate broader issues of public administration. One such matter arose involving the Australian Film Commission (AFC).

In May 2007 the Ombudsman released a report *Australian Film Commission: Investigation into the assessment of film funding applications* (Report No 2/2007). After dealing with a complaint from a person that he had not been given an adequate explanation as to why his application for film funding was rejected, we identified some broader procedural and policy issues which appeared to warrant further examination. The report of the investigation recommended the AFC review its policy and procedures for the assessment of funding applications. The recommendations proposed that the AFC should:

- adopt and publish a definitive set of weighted criteria for the assessment of applications for each funding program
- ensure that the assessment process has regard to all the criteria, funding recommendations are ranked according to the criteria, and proper documentation is maintained
- provide a statement of reasons to unsuccessful applicants upon request

- develop and disseminate comprehensive guidelines on conflict of interest for all those involved in the assessment process.

While the subject matter of this report (film funding) was agency-specific, similar principles are applicable across all areas where applications are subject to a competitive assessment process. The Ombudsman's report drew attention to earlier reports of the Administrative Review Council and the ANAO that dealt with the administration of grants and funding applications. The number of complaints in such grant funding areas can be low, yet single complaints can identify important issues that need careful attention. This is important in meeting the community expectation that the management of competitive grant processes by Australian Government agencies will be accountable, transparent and grounded in objective and rational decision making processes.

'... single complaints can identify important issues that need careful attention.'

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Australian Securities and Investments Commission (ASIC) has responsibilities in the areas of company registration and regulation of the corporate sector. We received 192 approaches and complaints about ASIC in 2006–07, compared to 188 in 2005–06.

damaged souvenir

CASE STUDY

When Mr P arrived home from a trip to Asia, he noticed that a wooden souvenir he brought back had been damaged. Mr P was concerned that the damage may have occurred during a routine baggage inspection by a Customs officer at Melbourne Airport. Following an investigation of Mr P's complaint, Customs was able to provide our office with CCTV footage of the actual inspection. The footage showed that the item had not been mishandled or damaged by the Customs officer. To further alleviate Mr P's concerns, our office was able to facilitate a private viewing of the footage for Mr P at Customs House.

Registry function complaints

The most common theme of these complaints continued to be about late fees imposed on companies. Many of these complaints were dealt with by explaining to the complainant the way in which the late fee system works. Where a deadline for filing a document or paying a fee is missed, a late fee is applied automatically by operation of the relevant legislation. The company concerned can apply for the fee to be waived.

Usually ASIC will only waive the fee where the circumstances that led to it being imposed were beyond the control of the company, its officers or agents. We have accepted that it is reasonable for ASIC to apply this policy.

We considered a number of complaints that ASIC had not sent electronic company statements in advance of a company's annual review date, causing the company to fail to pay its annual review fee on time. In the complaints that we investigated, we did not find grounds to be critical of ASIC.

We also received some complaints about registration of company names. The relevant regulations are specific as to what company names may or may not be registered. Complaints are sometimes made to us when a person is dissatisfied with ASIC's decision to register a company with a particular name. An example is shown in the case study *Same name*.

Corporate watchdog complaints

We continue to receive complaints that ASIC has declined to investigate allegations made to it of breaches of the corporations legislation, or has refused to advise people what regulatory action it intends to take.

ASIC takes the view that complaints made to it are a source of information about corporate wrongdoing, which it analyses as part of its functions. ASIC considers that the legislation does not impose a responsibility on it to pursue any particular complaint, however well-founded. ASIC has advised us that it seeks to direct its resources to those matters that best meet its regulatory priorities.

Often, a person complaining to ASIC about the actions of a corporation or liquidator will have a right of action in the courts. Although people may have difficulty in affording court proceedings, this is only one matter to be considered by ASIC in deciding whether to pursue a matter on behalf of an individual.

During 2006–07 we investigated a number of the complaints made to us about ASIC declining to take regulatory action, particularly where ASIC had not given reasons for its decision to the complainant. In doing so, our aim was to consider whether the processes that had led to ASIC's decision were sound, and whether there had been adequate communication with the complainant.

The case study *Decision examined* (page 105) illustrates one case where there was a tension between ASIC providing an explanation while maintaining confidentiality.

same name

CASE STUDY

A company complained to us that ASIC had registered a competitor with a name that was almost identical to theirs. The company believed the competitor would operate in the same geographical area and the similarity of name would confuse customers and damage the company's business.

ASIC had explained to the company that a name was available to a new company except in circumstances specified in the legislation, and none of those circumstances applied in this instance. However, ASIC had suggested that the company could seek legal advice about other ways to protect its trading reputation.

We considered that ASIC's view of the legislation was reasonable, and reiterated to the company the suggestion that it could seek legal advice about its options.

DEPARTMENT OF FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Generally we receive few approaches and complaints about the Department of Families, Community Services and Indigenous Affairs

(FaCSIA). One complaint we received in 2006–07 illustrates again the difficulties that can arise when a number of agencies are involved in providing services to an individual, as shown in the case study *Complaint unresolved*.

decision examined

CASE STUDY

Ms Q complained to ASIC about a company. She considered that her complaint clearly showed that the company had breached corporations legislation, but ASIC declined to take action against it and Ms Q could not understand why.

ASIC gave us further information about why it had not taken action against the company. Although we considered that its explanation was not unreasonable, ASIC advised us of its view that this explanation could not be given to Ms Q for reasons of confidentiality.

We told Ms Q that our investigation had not identified any grounds for considering ASIC's decision to be unreasonable. However, we suggested to ASIC that it might in the future consider ways in which it could balance its need to maintain confidentiality in accordance with legislative requirements, with the need to explain its decisions to complainants in the interests of good administration.

complaint unresolved

CASE STUDY

Our office received a complaint from Mr R, a jobseeker, who was dissatisfied with the way in which the Complaints Resolution and Referral Service (CRRS) was dealing with his complaint about his Disability Employment Network (DEN) provider. The CRRS is an independent organisation funded by FaCSIA to help resolve complaints about services funded under the *Disability Services Act 1986*. Mr R advised he had attempted to complain about this to the DEWR Customer Service Line, which referred him back to the CRRS.

We approached FaCSIA about this complaint, understanding that it was responsible for contracting the CRRS to provide a complaints service about disability employment services. We were advised that a memorandum of understanding existed between DEWR and FaCSIA, stating that DEWR would handle escalated complaints about DEN providers. Although FaCSIA did not raise this complaint with DEWR, a FaCSIA contact officer agreed to act as a liaison point between this office and the CRRS in relation to the complaint.

In the course of our investigation we identified that the CRRS policy and procedure document of November 2003 stated that complaints about the CRRS should be directed to the CRRS in the first instance and can then be escalated by the CRRS to the then Department of Family and Community Services. In this instance, however, Mr R's complaint was clearly not escalated to FaCSIA.

At the conclusion of our investigation we formed the view that the CRRS's process for handling complaints was flawed, and that it had not handled Mr R's complaint properly.

DEWR and FaCSIA are renegotiating the memorandum of understanding, and seeking to strengthen the provisions on escalation of complaints to ensure greater transparency of the CRRS complaint resolution process.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

During 2006–07 the office received 155 approaches and complaints about the Department of Foreign Affairs and Trade (DFAT), compared to 140 in 2005–06.

The majority of complaints related to passport processing, including the cost associated with replacing lost or stolen passports, passport fees in general, the renewal requirements for passports, and delays associated with processing passport applications. Many complaints did not proceed to investigation stage because complainants had not attempted to resolve their problem with DFAT in the first instance. The case study *Expired and lost* shows how we were able to help one person, and assist DFAT to provide better information to future passport applicants.

We also received complaints about identification requirements for passports. This was a key source of complaints during 2005–06, primarily due to the introduction of new legislation that resulted in more stringent proof of identity requirements for passport applicants. As a result of one case we investigated, DFAT undertook to update information on its website in relation to the requirements for proof of place of birth.

A few complaints related to passport applications for children under the age of 18

where the child's natural parents were separated. In some cases, parents complained that the other parent had refused permission for a passport to be issued to their child. For example, one father contacted our office regarding DFAT's refusal to issue a passport for his 14-year-old daughter, of whom he had full custody, because the child's mother had objected to her daughter being given a passport. We clarified some matters with DFAT, following which the father decided to appeal DFAT's decision to not grant a passport to his daughter to the Administrative Appeals Tribunal. He also considered seeking an order from the Family Court that would allow his daughter to travel overseas.

In other cases, parents complained that a passport had been issued to their child without their consultation and consent, and as a result the child had been able to travel overseas, sometimes without their knowledge. Some of the cases involved sensitive personal issues such as domestic violence and cultural differences between the parents.

Other complaints covered a wide range of issues, including the actions of DFAT embassy and consular staff located in overseas offices. No trends of note were detected amongst this group of complaints. We received a few complaints about the quality of advice given by embassy and consular staff in relation to eligibility for visas required for travel to

expired and lost

CASE STUDY

Mr S's passport had expired more than two years before he decided to apply for a new passport. He was not able to find the expired passport, and ticked 'previous passport lost/destroyed' on the application form. The Australia Post employee who took Mr S's application form told him that he would have to pay a lost passport replacement fee of over \$60, in addition to the \$197 fee for the issue of a new passport.

Mr S considered this unfair because his old passport had expired, there was nothing on the passport application form requiring him to produce the old passport, and nothing on any of the passport documentation or guidelines advising a passport holder they need to retain an expired passport. He approached DFAT's Passport Office, which told him that the 'lost or stolen' fee was a policy intended to deter people from losing their passports.

As a result of our investigation DFAT decided to refund the 'lost or stolen' fee to Mr S because his previous passport had expired. In addition, DFAT advised it would provide additional information about the need to retain expired passports on its passport website, and would review the content of passport brochures.

Australia, and the lack of assistance provided to Australian citizens who were seeking to return home from overseas urgently after an unforeseen event such as the outbreak of war or civil unrest. For example, a few complaints were about the evacuation of Australians following the outbreak of war in Lebanon in July 2006. Most of these complaints did not proceed to investigation stage because evacuation occurred relatively quickly and complainants no longer wished to pursue the matter.

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

We receive complaints about the administration of personal insolvency law by the Insolvency and Trustee Service Australia (ITSA). In 2006–07 we received 60 approaches and complaints about ITSA, compared to 76 in 2005–06.

Usually we ask people with a complaint about the handling of a bankruptcy, including by the Official Trustee, to complain first to the Bankruptcy Regulation branch of ITSA. If the person is not satisfied with the way their complaint is handled, we may investigate it.

We receive complaints from both bankrupts and creditors. Many complaints can be resolved by an explanation of the legal framework in which bankruptcy operates. For example, fees are charged to bankrupt estates in accordance with legislation, and while a bankrupt or creditor might be dissatisfied with the amount of fees charged, our role will usually be limited to considering whether the legislation has been followed.

The case study *No notice* shows the interaction between complying with legislative requirements and delivering good service.

TELSTRA CORPORATION

Following the government's decision to fully privatise Telstra, the Ombudsman no longer deals with complaints about Telstra.

The loss of jurisdiction was triggered by a declaration by the Minister for Communications, Information Technology and the Arts on 24 November 2006 that the Australian Government no longer held a majority of shares in Telstra. Any complaints made about Telstra on or after that date are not within the Ombudsman's jurisdiction.

In the 2006–07 reporting year we received 228 approaches and complaints about Telstra during the period it was in the Ombudsman's jurisdiction. We closed 229 approaches and complaints, of which we investigated less than 3%. The matters investigated generally related to workers' compensation and Telstra's response to requests made under the Freedom of Information Act.

Most complainants were referred to the Telecommunications Industry Ombudsman (TIO), who continues to handle disputes over billing, contracts, faults and customer service.

People who wish to complain about Telstra's response to a '000' emergency number call may contact the Community and National Interests Section of the Australian Communications and Media Authority.

no notice

CASE STUDY

A trustee in bankruptcy lodged an objection under bankruptcy legislation to Mr U being discharged from bankruptcy (in other words, to the bankruptcy being finalised).

Under the legislation Mr U had 60 days to apply for this objection to be reviewed, after receiving notice of the objection. Failure to seek a review means that the bankruptcy continues. However Mr U claimed that he never received notice of the objection. ITSA advised Mr U that, as his request was out of time, it could not consider his request as valid under the legislation.

We asked ITSA to consider Mr U's argument that he did not receive the notice. ITSA acknowledged that it should have made enquiries about this, and on doing so found that Mr U had not received the notice or been advised of his rights. ITSA then exercised its discretion to review the objection, with a favourable outcome for Mr U.

freedom of information

The purpose of the *Freedom of Information Act 1982* (FOI Act) is to extend, as far as possible, the right of individuals to obtain access to documents held by Australian Government agencies. The Act also enables individuals to seek amendment of records that contain inaccurate personal information.

The FOI Act empowers the Ombudsman to investigate complaints about actions of Australian Government agencies under the FOI Act (s 57). The Act also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters (s 26).

The Ombudsman's role under the FOI Act reflects the more general role of the office in promoting transparency and accountability in government administration.

In 2006–07 we finalised 303 complaint issues (259 in 2005–06) about the way 46 Australian Government agencies handled requests under the FOI Act. The majority of complaint issues were about Centrelink (33%) and DIAC (12%).

Most complaint issues related to delays in processing FOI requests (26%) and to the correctness of the primary decision (27%). In most cases, delay in processing FOI requests is resolved by encouraging agencies to expedite a decision in cases already outside the statutory timeframe. Often the delays are not extensive—though there was a delay of nearly 12 months in responding to a request in one case investigated during the year, and (as noted earlier in this chapter) there have been extensive FOI delays and backlog in DIAC.

Complaints to the Ombudsman about delay can often be avoided if agencies better inform applicants of the progress of their application and the causes for the delay. The Ombudsman continues to encourage agencies to improve the level of contact with applicants to decrease the need for our intervention.

The FOI (Fees and Charges) Regulations set a scale of charges, which are significantly below the real cost to agencies of handling FOI requests. Depending on the nature of an FOI request, the estimated charge can still be high. This occurred in one case investigated during the year, when a request of a relatively straightforward nature attracted a charge that seemed very high. The explanation was that a

large number of third parties needed to be consulted in relation to the release of the information, and the Regulations permitted that time to be included as a charge.

A decision to impose a charge can be challenged on internal review or before the Administrative Appeals Tribunal. The FOI Act also gives a discretion to waive a charge for reasons such as hardship and the public interest. The policy of successive governments has been that FOI applicants should contribute to the costs of their requests. There is no automatic waiver for parliamentarians, journalists or social security recipients. An agency must consider hardship and the public interest in considering requests for waiver.

Complaints to the office sometimes focus on that issue, arguing that an agency should have waived a charge—for example, where the person believes that the document could have been obtained by a parliamentary committee, or it relates to a current issue of public controversy and there is a public interest in disclosure.

It is difficult for the Ombudsman's office to take a definitive stance on those issues, when the Act confers a clear, reviewable discretion on agencies to impose or waive a charge. The office will generally not recommend waiver if an agency has followed a proper process, considered the relevant factors and made a decision within a reasonable range.

The FOI complaints handled during the year underscore the important role that efficient administration of the FOI Act plays in meeting open government objectives.

Many of these issues were raised in the own motion report *Scrutinising Government: Administration of the Freedom of Information Act 1982 in Australian Government agencies* (Report No 2/2006). A proposal in that report was that a statutory office of FOI Commissioner (possibly located within the office of the Commonwealth Ombudsman) could play a constructive role in addressing complaints about the operation of the FOI Act and promoting its effective operation. An FOI Commissioner could provide valuable assistance both to agencies and to the public. The proposal for an FOI Commissioner has also been supported by other bodies and commentators, who see the FOI Act as a cornerstone of Australian democracy.

monitoring and inspections activities

EXPANSION OF OMBUDSMAN'S MONITORING AND INSPECTION ROLE

The Ombudsman's responsibility for inspecting the records of law enforcement and other enforcement agencies, and reporting on those inspections, expanded significantly in 2006 with changes to the *Telecommunications (Interception and Access) Act 1979* (TIA Act). The amendment introduced a scheme by which enforcement agencies can obtain access to stored communications. An example of a stored communication is a text message or email electronically stored, usually temporarily, on a telecommunications carrier or internet service provider's system.

The potential workload in identifying and inspecting the agencies that access stored communications is considerable. This office is not presently aware of any agency other than the AFP and the ACC having used the new provisions. As awareness grows of the potential benefits the provisions provide to other enforcement agencies, that situation may change.

The Ombudsman's inspection role in regard to telecommunications interception has also been extended by the same legislative amendments to cover B-party warrants. A warrant of that type can be used to intercept a communication on a service belonging to a person who is not suspected of committing a serious offence, but who may communicate with the suspected offender via that service.

The statutory creation of ACLEI in 2006 expanded the inspection role of the Ombudsman further. ACLEI is authorised to exercise the same powers as the AFP and ACC to undertake telecommunications interception and access to stored communications under the TIA Act, to use surveillance devices under the *Surveillance Devices Act 2004* (Surveillance Devices Act) and to carry out controlled (covert) operations under Part 1AB of the *Crimes Act 1914* (Crimes Act).

The use of those powers by ACLEI will be subject to regular inspection and monitoring

by the Ombudsman's office. To date, ACLEI has not made use of these provisions, and consequently we did not conduct any inspection. ACLEI has indicated that this will not remain the case, although the number of times the provisions are utilised is expected to be low in comparison with the AFP and ACC.

The office's monitoring and inspection role now includes:

- telecommunications intercepts by the AFP, ACC and ACLEI
- access to stored communications by the AFP, ACC, ACLEI and other enforcement agencies (such as the ATO and Australian Customs Service)
- use of surveillance devices by the AFP, ACC, ACLEI and by state and territory law enforcement agencies under Commonwealth legislation
- controlled (covert) operations undertaken by the AFP, ACC and ACLEI.

TELECOMMUNICATIONS INTERCEPTIONS

Under the TIA Act, the Ombudsman is required to inspect the records of the AFP, ACC and ACLEI twice a year to ensure the records are in compliance with the requirements of the Act. The Ombudsman is also expected to follow up any concerns about compliance or other aspects of record keeping disclosed by the inspection. A report on an inspection is then presented to the agency. An annual report is presented to the Minister on the results of inspections carried out each financial year. We presented a report on the results of inspections undertaken in 2005–06 to the Attorney-General in September 2006.

Two inspections of AFP and ACC records were carried out in 2006–07. The reports, which were provided to the agencies after each inspection, concluded that there was general compliance with the detailed record-keeping requirements of the TIA Act. A number of recommendations were made after each

inspection to improve record keeping. The recommendations were generally accepted by both the AFP and the ACC, which have since implemented a range of measures to improve record keeping.

The record-keeping requirements in relation to the practical effects of the new stored communications provisions are not yet fully defined. Discussions are ongoing with the AFP, the ACC, the Attorney-General's Department and telecommunications carriers to settle the processes required to ensure the integrity of the stored communications regime.

SURVEILLANCE DEVICES

The Surveillance Devices Act came into operation in December 2004. In 2005 we commenced a program of two inspections each year of AFP and ACC records. This inspection regime continued in 2006–07.

During 2006–07 we also inspected the records of two state law enforcement agencies, the South Australia Police and the New South Wales Police, under the Surveillance Devices Act. These were the only state police forces that used powers under the Act. As the number of records held by state police forces is far less than that of the AFP and the ACC, less frequent inspections will be conducted. It is expected that inspections of records relating to the Surveillance Devices Act held by state police will take place once every year.

A report on the results from the first bi-annual AFP and ACC inspections was provided to the Attorney-General in February 2007. Overall there was a satisfactory level of compliance by each agency. However, some compliance issues were identified, including a requirement for more detailed and consistent records on the use and communication of information obtained from a surveillance device. We have noted improvements in the record keeping and procedures of the AFP and the ACC in subsequent inspections.

'Overall there was a satisfactory level of compliance by each agency.'

The results of inspections that were finalised earlier this year, including the inspections of the state police, have been passed to respective agencies and a report is due to be provided to the Attorney-General in August 2007.

CONTROLLED OPERATIONS

Controlled operations can be broadly described as covert operations carried out by law enforcement officers under the Crimes Act for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence. These operations may also result in law enforcement officers engaging in conduct that would constitute an offence unless authorised by a controlled operations certificate.

The Ombudsman has an oversight role in ensuring that controlled operations are approved and records maintained in accordance with Part 1AB of the Crimes Act and that, in relation to these activities, information supplied by agencies in quarterly reports to the Minister and Ombudsman is adequate. At present, relatively low numbers of controlled operations are undertaken in the federal law enforcement arena.

During the year, we conducted four inspections of controlled operations records: two each at the AFP and the ACC. The inspections concluded that both agencies are generally complying with the requirements of the Crimes Act and providing comprehensive information in formal reports. We provided reports on the inspections to both agencies and a briefing to the Parliamentary Joint Committee on the ACC. An annual report for 2005–06 was presented to Parliament in December 2006.

REGIONAL INSPECTIONS

The Ombudsman also undertook an inspection of records relating to telecommunications interceptions, surveillance devices and controlled operations at the AFP's Perth regional office in November 2006. The Perth office was found to be generally compliant with the record-keeping requirements of the relevant Acts.



The Commonwealth Ombudsman has been involved in international initiatives from the first year of operation. The first international activities were very much the reverse of where we are today.

At the start, it was the Commonwealth Ombudsman who looked for assistance from the experience and systems of international colleagues in the strengthening of the office. In the first year this was provided through a study visit to the Office of the Ombudsmen in Wellington, New Zealand, and through attending the second Australasian Ombudsmen's Conference held in Perth in September 1977.

In the second year of operation, the Commonwealth Ombudsman received assistance from the Chief Ombudsman and his fellow Ombudsmen in New Zealand, the Ombudsman Commission of Papua New Guinea (PNG) and the Fijian Ombudsman. By year three, the roles began to change and the Commonwealth Ombudsman provided a staff member to the Ombudsman Commission of PNG to assist in a special investigation.

This pattern of cooperation and collaboration amongst Ombudsmen in our region has proceeded over the years to the point now where the Commonwealth Ombudsman is fully engaged in whole-of-government activities that promote good governance within the Asia-Pacific region. The Ombudsman now has an international program based on collaboration with other Ombudsman offices in the Asia-Pacific region to share experiences and competences with others.

In 2007, the Commonwealth Ombudsman is:

- in partnership with the Ombudsman Commission of PNG in a twinning program of staff exchanges and specialist input between the two offices
- the lead Australian Ombudsman in a partnership with the National Ombudsman Commission of Indonesia, with further support from the New South Wales and Western Australian Ombudsmen, in helping provide greater access across a larger portion of Indonesia to more effective and sustainable ombudsman and other complaint management services
- the lead Ombudsman in a collaborative effort that includes the New South Wales and New Zealand Ombudsmen to develop a professional peer network for mutual support to assist the Ombudsmen of the Cook Islands, Samoa, Solomon Islands, Tonga and Vanuatu.



Visit to the PNG Ombudsman Commission to advise on the design of a new complaint management system (from left) Victor Milli, John Nero, John Hevie, Darren Da Silva (Commonwealth Ombudsman's office) and Joe Molita.

thirty years ... thirty changes

8

The Commonwealth Ombudsman has been receiving complaints about the administrative actions and decisions of Australian Government agencies for thirty years. It has been a period of significant change—in government, in the complaints received by the office, and in how those complaints are handled and resolved. This chapter notes thirty changes over the period that illustrate the changing relationship between people and government, and the Ombudsman's role in that relationship.

A new system of administrative law

The office of Commonwealth Ombudsman was created as part of a comprehensive reform of Australian administrative law in the 1970s. Previously there were limited means for ordinary Australians to obtain independent review of government administrative actions and decisions. A new approach to administrative law was proposed in four reports—the report of the Commonwealth Administrative Review Committee (the Kerr Committee, named after its chair Sir John Kerr), two reports of the Committee on Administrative Discretions (the Bland Committee, named after its chair Sir Henry Bland), and the report of the Committee of Review of Prerogative Writ Procedures (the Ellicott Committee, named after its chair Mr R J Ellicott).

The administrative law reform package comprised three main planks:

- the *Administrative Decisions (Judicial Review) Act 1977*, reforming and codifying the system for judicial review of administrative action by the Federal Court of Australia, including a requirement for reasons to be given on request
- the *Administrative Appeals Tribunal Act 1975*, establishing both a new tribunal to undertake merit review of selected administrative decisions, and an Administrative Review Council (ARC) to advise the Government on administrative law reform
- the *Ombudsman Act 1976*, establishing the office of Commonwealth Ombudsman to investigate complaints from the public about Australian Government agencies and to undertake own motion investigations.

Two other key elements of the administrative law system—the *Freedom of Information Act 1982* (FOI Act) and the *Privacy Act 1988*—were enacted later. Other subsequent changes include the creation of specialist administrative tribunals, and the development of internal review and complaint systems.

This new system of Australian administrative law has largely stood the test of time. Parts of it have been copied or studied closely in other Australian jurisdictions and internationally.

Growth in Commonwealth Ombudsman work

When the office opened on 1 July 1977, it comprised the Ombudsman and five staff. One hundred and seventy complaints had already been lodged. Within two years the numbers had grown to 42 staff and over 7,500 complaints and enquiries annually. Regional offices or agency arrangements were established in all state and territory capital cities. Information about how to make a complaint was published in 21 community languages.

This national office structure has remained in place, and been a source of strength. The office has expanded to nearly 150 staff, dealing with around 33,000 complaints and enquiries annually. The Ombudsman has acquired additional functions in areas as diverse as law enforcement, immigration and freedom of information.



Canberra office staff

Evolution of the Ombudsman institution in Australia

Western Australia was the first jurisdiction in Australia to establish an office of Ombudsman in 1971—called the Parliamentary Commissioner for Administrative Investigations. The Commonwealth Ombudsman was the sixth Ombudsman to be established. There is now an Ombudsman office in each state, the Northern Territory and the Australian Capital Territory (an office currently held by the Commonwealth Ombudsman). Across Australia, the public sector Ombudsmen receive in excess of 50,000 complaints about government each year (plus many other approaches and enquiries).

The institution of ombudsman has also grown in strength in the private sector. Industry Ombudsman offices now handle complaints about telecommunications, banking and financial services, energy and water, private health insurance, public transport and postal services. This oversight role is underpinned in some instances by legislation that obliges commercial bodies to accede to the jurisdiction of the industry Ombudsman.

Together, Australian Ombudsman offices—public sector and industry—handle upward of 170,000 complaints from the public each year, in addition to many other approaches and enquiries. They provide an accessible complaint service to all members of the public.

Changes in Ombudsman responsibilities occurred over time. For example, prior to the creation of the Telecommunications Industry Ombudsman (TIO) in 1993, complaints about Telecom (then a government instrumentality) accounted for around one-fifth of all complaints to the Commonwealth Ombudsman—about 3,000 in 1992–93. The TIO was also given jurisdiction over Telecom (later Telstra), and now has jurisdiction over 1,200 other telecommunications and internet service providers, handling over 85,000 complaints each year.

Specialist Ombudsman roles

Over time the Commonwealth Ombudsman has gained additional specialist Ombudsman roles. The first, created by amending legislation in 1983, was Defence Force

Ombudsman—a role that includes jurisdiction over employment-related matters in the Australian Defence Force. Other specialist roles since conferred on the Commonwealth Ombudsman are Taxation Ombudsman (1995), Immigration Ombudsman (2005), Postal Industry Ombudsman (2006) and Law Enforcement Ombudsman (2006). A current proposal before Parliament is to confer a new role of Access Card Ombudsman.

The Commonwealth Ombudsman is well placed to discharge those specialist Ombudsman roles. The national structure and size of the office means that a specialist function can be discharged across Australia with limited extra staff. The office can also adapt easily to a new specialist function. We employ staff with a diversity of skills, maintain a strong training program, operate a sophisticated complaint management system, can move staff quickly to functional areas of temporary need, and can draw on our long and broad experience to develop new functions. A recent example was the way we quickly took on the new statutory responsibility of reviewing the circumstances of people held in immigration detention for two years or more.

In essence, the Ombudsman office has repositioned itself as a generalist agency hosting a cluster of specialities. While dealing with the general problems that people experience in all areas of government, the office discharges a role that requires specialist understanding and expertise in selected areas of government that fall under the spotlight of public accountability.

Jurisdiction over government service providers

The corporatisation, privatisation and contracting out of government functions and service delivery has transformed the landscape of government. A complex array of government, private and not-for-profit organisations can jointly be parties to a government transaction with an individual.

This change impacted on the jurisdiction of the Ombudsman, which was defined in the Ombudsman Act as extending to action taken, or deemed to have been taken, by government

departments and agencies. Both the ARC in 1998 and the Joint Committee of Public Accounts and Audit in 2000 recommended legislative change to extend the Ombudsman's jurisdiction to apply to government functions across the public/private divide. Following an amendment to the Ombudsman Act in 2005, the office now has jurisdiction over Commonwealth service providers—that is, non-government bodies that are contracted to provide goods and services to the public on behalf of the Australian Government.

Inspection of law enforcement and agency records

A major new function the office acquired in 1988 was to inspect the records of law enforcement agencies relating to telecommunications interception, and to report to the Attorney-General. This function has since been extended to cover inspection of records relating to stored communications, controlled operations and the use of surveillance devices. The number of enforcement agencies that have access to those intrusive powers has increased.

The Ombudsman inspection role means activities that by nature are secret and unknown to most people are subject to regular independent oversight. Parliament and the community can be reassured that law enforcement agencies exercise those powers lawfully and with propriety.

The Ombudsman role of inspecting agency records has been extended to other areas. On an own motion basis, the office has examined agency records to evaluate such matters as freedom of information administration and child support change of assessment.

Administrative audits of this kind can assess agency compliance with core administrative law values of legality, rationality, fairness and transparency. A new task of the office, in the role of Law Enforcement Ombudsman, is to undertake an annual audit of Australian Federal Police (AFP) complaint handling. In the role of Immigration Ombudsman, the office is implementing a program of regular inspection and monitoring of immigration detention arrangements and compliance activity. Another current proposal made by a

Parliamentary committee is for the Ombudsman to undertake periodic compliance audits of quarantine investigations.

Playing a role in an age of terrorism

Parliament's response to terrorism included special mention of the Ombudsman's independent oversight role. The Ombudsman is to be notified if a person is taken into custody under a preventative detention order, in response to a perceived or imminent terrorist threat. The Ombudsman is to be given a copy of the initial preventative detention order, and the person detained must be advised of their right to complain to the Ombudsman. Similarly, a person detained by police for questioning by the Australian Security Intelligence Organisation (ASIO) is to be informed of their right to complain to the Ombudsman about the actions of the AFP.

The oversight role of ASIO is undertaken by a different statutory office, the Inspector-General of Intelligence and Security (IGIS). The IGIS or his staff sit in on the first day of every questioning detention session by ASIO; and the IGIS has a compliance audit role in relation to ASIO records that is similar to the Ombudsman's role in relation to law enforcement records. The Ombudsman and the IGIS have signed a memorandum of understanding and established administrative protocols to facilitate cooperation and integration in discharging their oversight of policing and national security agencies.

Adapting to new functions in government

The office has had to adapt to substantial changes in the functions and structure of government. For example, the change in family patterns and expectations has given rise to a Child Support Agency (CSA) that administers complex laws controlling the financial obligations of parents. Social security benefits impose complex tests and obligations on recipients, and are delivered through a variety of mechanisms in the public and private sector.

Government regulation is now more intensive in many areas that generate complaints, such as companies and securities regulation,

counter-terrorism, environmental protection and, most recently, health and social support in Indigenous communities.

Another change is that government now relies more on executive rather than statutory power to underpin programs as diverse as the management of immigration detention centres, payment of lost redundancy entitlements, work referral for job seekers, and provision of disaster relief. The Ombudsman is the main administrative law agency with a general jurisdiction covering the administration of executive programs.

The changing programs and priorities in government can also throw up new issues for the office. For example, there was a sharp increase in complaints in the late 1990s following Australian Taxation Office (ATO) action in relation to mass-marketed investment schemes, and later the introduction of the Goods and Services Tax. We managed these changes by centralising the handling of taxation scheme complaints in a specialist Tax Team. The challenges facing the office at that time were to become familiar with new taxation legislation, conduct some large-scale investigations, and inform the public of their right to complain if problems arose.

Responding to complexity in government

Government rules, structures and programs have also grown in complexity over the last thirty years. For example, the ATO has approximately 22,000 employees administering nearly 10,000 pages of taxation legislation embodying the complexity that has developed in working arrangements, business structures, financial arrangements, government incentives, and support programs. Centrelink has over 26,000 employees, has more than 6.5 million customers and records more than five billion electronic customer transactions each year, paying benefits, collecting debts from people who were overpaid, evaluating people's family arrangements, assessing people's job skills, and storing personal information.

The majority of the complaints dealt with by the Ombudsman are now about the ATO, Australia Post, Centrelink, the CSA and the

Department of Immigration and Citizenship (DIAC). Many arise from complex laws administered by those agencies that are not well understood by government clients, nor at times by the administrators. The complexity is compounded if multiple agencies, government and non-government, play a role in administering a program.

The prime focus of the office in dealing with an individual complaint is always to find a practical solution to the complainant's problem or grievance. We also have an eye to improvements that can be made to administrative systems that are large, complex and technical.

The right to complain

Thirty years of Ombudsman complaint handling (longer at state level) has been accompanied by the emergence of a 'right to complain'. The notion has become embedded in Australian law and practice that people have a right to complain about government and business, to an independent agency, without hindrance or reprisal, and to have their complaint resolved on its merits according to the applicable rules and the evidence. Ombudsman brochures now speak to people of their 'right to complain'.

Public awareness of this right to complain has strengthened. Surveys commissioned by the Commonwealth Ombudsman in 2006 and 2007 indicate that around three quarters of those surveyed were aware of the role of Ombudsman offices. This compares with only half of those surveyed in a similar survey in the early 1990s. In the latest survey 'the Ombudsman' was the most frequently nominated agency to turn to with a complaint about government.

Making the office accessible to the public

A key step in making the office accessible to the public was to accept oral complaints. An amendment to the Ombudsman Act in 1983 confirmed this established practice. This enabled complaints to be dealt with in an informal and timely manner, without the need in most cases to invoke the formal investigation processes specified in the Act.



Adelaide office staff



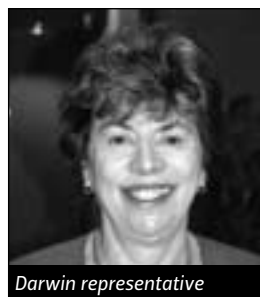
Perth office staff



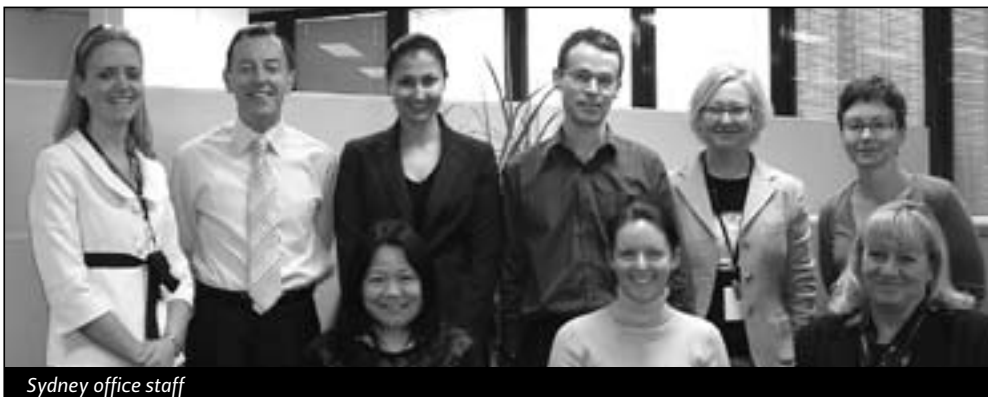
Melbourne office staff



Brisbane office staff



Darwin representative



Sydney office staff

A substantial majority of the complaints to the office are received orally—about 80% in 2007.

Technology changes have seen a steady rise in the number of complaints made electronically. In 2006–07 11% of approaches and complaints were received by email or the online complaint form on the Ombudsman website. Plans are afoot to keep abreast of newer developments in communications, by trialling the lodgement of complaints by SMS.

Helping people deal with problems in government and business

The Public Contact Team established in the office in 2006 has been able to respond to a different challenge that people face in resolving problems. The increased complexity both in government and in the arrangements for delivering services to the public means that many people do not know where to turn when a problem arises.

The number of complaints and approaches to the Commonwealth Ombudsman increased to over 33,000 in the past year—a rise of 18%. Nearly half those approaches consisted of requests for information or matters that were outside jurisdiction—an increase of 51% from the previous year. Those calling the Public Contact Team sometimes knew that their complaint might not be a matter for the Commonwealth Ombudsman, yet approached the office to find out where they should go or what they needed to do to register their concerns about a government action.

Growth of internal complaint-handling systems

Complaint handling was not a well-developed function in government at the time the Ombudsman commenced operation. Few agencies had a publicised internal process for handling complaints from the public, and there were no service-wide benchmarks for measuring client satisfaction with government service delivery.

Most agencies now have a visible and accessible internal complaint-handling process. Examples in some of the larger agencies are the Customer Relations Units in Centrelink, ATO Complaints in the ATO, the Fairness and

Resolution Branch in Defence, and Professional Standards in the AFP.

The Ombudsman has strongly supported the development of professional complaint handling in government. In the mid-1990s the office undertook a survey of complaint handling in Australian Government agencies that led to the publication in 1997 of a *Good Practice Guide to Effective Complaint Handling*. An updated guide will be published later in 2007.

Ombudsman focus on good complaint handling

The improvement in agency complaint handling has enabled the Ombudsman's office to change the way it conducts business. Unless there is a special reason to the contrary, complainants are advised to first use the agency complaint procedure before lodging a complaint with the Ombudsman's office. The office can decline to investigate a complaint under s 6 of the Ombudsman Act if a complainant has not taken this step. We decide not to investigate around 70% of complaints, in most cases referring a person to the agency complaint unit, compared to 20% or less in the early years of the office.

This change in practice has been beneficial. Agency complaint mechanisms now handle considerably more complaints each year than the Ombudsman's office, and can usually do so quickly and helpfully. This has enabled us to concentrate on more serious or complex complaints, and to conduct own motion investigations into possible problem areas in public administration.

This change in practice relies on agencies handling complaints effectively. The Ombudsman's office works closely with agencies—through seminars, and formal and informal consultation—to encourage professional complaint handling that complies with best-practice standards (such as the Australian Standard on Complaint Handling). This is supplemented by own motion reviews of complaint-handling systems—for example, in the ATO, the Job Network, Centrelink, the CSA, the Migration Agents Registration Authority, airports and the Australian Defence Force (jointly with Defence).

Growth of service charters

A related change is that agencies (as required by government) have developed charters that are a public statement of service delivery commitments to the community. The Ombudsman's office has actively encouraged and monitored this trend.

Charters are important when treated by agency managers and staff as a public commitment by the agency of the principles and service standards it will observe. In an accessible document, the community is told what to expect and where to complain when things go wrong. As part of a complaint investigation we frequently examine whether an agency has complied with the principles and commitments stated in its charter.

An effective service charter will also be complemented by a robust complaint handling and feedback mechanism that is integrated with program monitoring, evaluation and development in the agency.

An added reason why the Ombudsman's office has supported the development of charters is that they complement the administrative law standards that an agency must not breach if it is to act lawfully. Charters state positively what an agency will do to ensure good administrative behaviour.

Development of agency liaison arrangements

The growth in government activity and complaints to the Ombudsman made it important for the office to have convenient arrangements in place with agencies for handling complaints. An amendment to s 8 of the Ombudsman Act in 1983 authorised the Ombudsman to make an arrangement with the principal officer of an agency about the manner by which the Ombudsman would inform the agency that a complaint is to be investigated. Prior to that, the Ombudsman was required to notify both the principal officer and the Minister before each investigation commenced.

This amendment underpinned our ability to deal with complaints in a timely and efficient manner, at an appropriate level of formality.

Contact arrangements of different kinds are in place with many agencies. For some agencies, all complaints are managed initially through a central area, while for others there is a range of different contact points—for example, based on location or the nature of a complaint.

The office also deals with agencies at different levels, ranging from investigation officer level up to the Ombudsman. A matter may be escalated if there is a need to deal at a higher level with a sensitive issue, resolve a disagreement or consult about an intricate matter. Other liaison procedures with agencies include regular meetings, periodic reports on complaint issues, participation in agency training, and consultation during the formulation of agency administrative guidelines and policy documents.

Regular liaison with agencies can help us understand new policies and programs and other changes that could impact on complaint workloads. For our part, we can give agencies an early warning of possible problems, and provide advice on specialist aspects of complaint handling.

Reliance on formal investigation powers

The Ombudsman Act, as enacted in 1976, spelt out the formal investigation procedures and powers required by the office. Later changes to the Act have both modified and strengthened them.

A new s 7A, inserted in 1983, authorised the office to make a preliminary inquiry of an agency before deciding to investigate a complaint. This provided an alternative to the formal duty of the office to notify an agency that a complaint was being investigated and of the details of the investigation.

The office has extensive formal powers to conduct investigations, including powers to summons people to provide evidence and documents, to administer oaths to witnesses, and to enter premises. Use of those coercive powers is not normally necessary; agencies usually provide information or documents upon request, and only require a formal notice to make it certain that all the protections of the Ombudsman Act apply to the agency.

Over time there was a growing concern in some agencies that the voluntary provision of documents to the Ombudsman might breach laws to protect privacy, confidentiality and secrecy. An amendment to the Act in 2005 resolved this doubt by stating that the protections in the Act apply to information provided both voluntarily and in response to a formal demand by the Ombudsman.

In 2004 the Prime Minister gave consent to a project to improve and modernise the framework in the Ombudsman Act for administrative investigation. A report to the Prime Minister proposing a new Ombudsman Act was made in 2006 and is under consideration in government.

Reaching the public

Connecting with the public, especially with communities that are socially marginalised, has always been a challenge facing the office.

The Ombudsman has always had an active outreach program to reach both the community and 'gatekeepers'—community leaders and organisations that are a local source of information and advice. The scope of the outreach program has varied with the resources available over the years, but the challenge remains the same—to communicate with existing and emerging target audiences.

Since 2004 the main outreach focus has been on rural and regional communities; Aboriginal and Torres Strait Islander people, communities and organisations; and younger people. Similar target groups have been identified by other Ombudsman organisations.

In 2005–06 we participated in the 'Speak Up' initiative with other members of the Australian and New Zealand Ombudsman Association, aimed at young people. A postcard was distributed to cafes, tertiary institutions and similar outlets. The results were mixed, though encouraging, and demonstrated the challenge facing complaint agencies to convey their relevance to a younger audience. The answer may partly lie in the creative use of technology and specialist media to engage with younger audiences through their preferred means of communication.

A new Indigenous Unit was established in the office in 2007 to better understand and address issues facing Indigenous communities in dealing with government.

Difficult complainants

A joint project among Ombudsman offices, initiated in 2006 by the NSW Ombudsman office, is looking at difficult and unreasonable conduct by complainants. This has been recognised as a growing problem for Ombudsman and similar agencies.

Ombudsman offices must be accessible to all members of the community, and must listen to any complaint. The problems that people have with government are infinitely varied, and new problems arise as government itself evolves. It is to be expected that some complainants will be persistent, even emotional, in pursuing a personal grievance against government.

Yet this exposes Ombudsman offices to a pattern of engagement with some complainants that can be inefficient and debilitating. Some complainants, for example, can be obsessive, very demanding, overly persistent, rude or aggressive. Far more time can be spent on handling some individual complaints than is warranted, at the expense of dealing with other complaints and issues.

The joint Ombudsman project is developing and trialling management strategies for people who exhibit unreasonable conduct. A central objective has been to develop special training courses and manuals for investigation staff.

Concluding an investigation

For many years the office described the outcome of a complaint investigation as 'resolved substantially in complainant's favour', 'resolved partially in complainant's favour' or 'resolved in agency's favour'. This was altered in 1994 to 'substantial remedy for complainant', 'partial remedy for complainant' and 'unsubstantiated or no remedy required'. Another change later in the 1990s adopted the new terms 'arguable agency defect', 'no apparent agency defect' and 'agency defect not determined'.

There was a reporting change in 2006 to two new statistical categories. One category, described below in 'providing a practical remedy', lists the remedies provided to complainants by the Ombudsman's office. The other category, described more fully in Chapter 5—*Challenges in complaint handling*, lists sixteen categories of 'administrative deficiency' that can be recorded against an agency. The diversity of errors includes human error, legal error, factual error, unreasonable delay, unreasonable agency action, inadequate staff training, and resource deficiency.

These twin categories capture the dual focus of an Ombudsman investigation. One focus is on finding a practical remedy that will resolve a problem experienced by a person in their dealings with a government agency. The other focus is on noting deficiencies in agency conduct that may warrant further consideration, both by the agency and by the Ombudsman's office in own motion investigations into systemic problems in public administration.

Providing a practical remedy

As problems and complaints change, so too must the way that an Ombudsman's office assists people. Many complaints to the Ombudsman now reflect the difficulties experienced by people in dealing with government, arising from the complexity of legislation and government programs. A common complaint issue is that a person is perplexed by an adverse decision, does not understand what is required to obtain a government benefit, or has misunderstood the advice given to them by an agency. Frustration at perceived delay by government in making a decision is another frequent complaint.

It can be pointless or difficult in that setting to focus on whether the complaint is to be resolved in the complainant's or the agency's favour. The more pressing concern is to resolve a person's grievance and to provide a remedy, if appropriate. The Ombudsman remedies that are best attuned to problems of that nature are a clearer explanation of an agency decision, an apology, expediting an agency decision, recommending the payment of administrative

compensation, or arranging a meeting between a complainant and an agency to resolve a dispute.

Many complainants to the Ombudsman have, of necessity, an ongoing relationship with an agency—for example, as a taxpayer, Centrelink customer, postal user, or member of the Australian Defence Force. This reinforces the need for a practical focus in complaint handling, to ensure that the continuing relationship between the complainant and the agency is functional and constructive.

Apologies as a remedy for government error

Complaints to the Ombudsman often stem from simple but unwarranted agency errors—such as delay, misleading advice, inexplicable reasons, lost paperwork and discourtesy. Often the most appropriate and accepted remedy for this default is an explanation or an apology.

Ombudsman offices have given added emphasis over time to the role that apologies can play in addressing grievances. An apology is a common measure of respect in society, and should be applied just as readily in interactions between the public and public administrators. Apologies can contribute to civilising the system of government and making it attuned to its accountability and responsibility to the public.

The office sometimes makes an explicit recommendation to an agency to apologise to a person who has been inconvenienced or wronged by agency action or inaction. The office also draws the attention of agencies to statements made in service charters that the agency will apologise for its mistakes.

Compensation for defective administration

The Commonwealth Ombudsman played a key role in the development of a non-statutory administrative scheme for paying compensation to members of the public. It is called the Compensation for Detriment caused by Defective Administration (CDDA) scheme and was adopted by government in 1995.

The CDDA scheme was a watershed development. For the first time it enabled agencies to compensate members of the public for detriment arising from poor agency administration, without the need to establish a legal liability to compensate. Circumstances in which compensation is paid include where a person has suffered loss caused by incorrect agency advice or an unreasonable administrative failure.

The CDDA scheme also provides that a recommendation or suggestion by the Ombudsman is a sufficient basis for compensation to be paid, even though a case does not quite fit within the scheme. This is an important tool that is used by the office to prompt agencies to find a satisfactory remedy to address a grievance.

Litigation against the Ombudsman

The office of Ombudsman is established by statute and is subject to the same legal controls and remedies as other government agencies. Both complainants and agencies can institute judicial review proceedings against the Ombudsman to seek a ruling on the legality of steps in an investigation.

Litigation against Ombudsmen has been more common in the states, particularly in the early years. For example, a few actions were commenced against the Victorian Ombudsman in the 1970s to challenge the jurisdiction of the Ombudsman to investigate complaints relating to prisons and legal proceedings.

An example of an action brought against the Commonwealth Ombudsman was in 1995. The former Aboriginal and Torres Strait Islander Commission challenged in the Federal Court a proposed Ombudsman report into the appointment of consultants. The Court held that the Ombudsman had acted beyond power in the way that some conclusions were expressed in the draft report, but otherwise did not question the authority of the Ombudsman to investigate and report on the complaint.

There have been a handful of actions in later years by complainants challenging decisions of the Ombudsman not to investigate complaints. The actions have all been dismissed by the

Federal Court and the Federal Magistrates Court, which have drawn attention to the scope of the Ombudsman's discretion to decide what to investigate and how to conduct an investigation. There have also been occasional proceedings by complainants instituted in the Administrative Appeals Tribunal about decisions made under the FOI Act. Those actions have also been unsuccessful in substance.

Research projects

Another avenue taken by the office to improve public administration is to participate in research projects into prominent issues in government. An example given earlier is the joint Ombudsman project into difficult complainant behaviour.

Two other research projects are jointly being conducted with university researchers, supported by funding from the Australian Research Council. One is a national research project into the management of whistleblowers, *Whistling While They Work: Internal Witness Management in the Australian Public Sector*, described in Chapter 6—*Promoting good administration*. Other participants in this project include state Ombudsmen and anti-corruption agencies.

Another project in which the office is playing a lead role is looking at the dilemmas faced by governments in dealing with non-citizens who are not eligible to remain in a country, but there is doubt as to whether they can be removed successfully without significant risk to their human rights or health. This project may collaborate with similar research being undertaken in other countries.

The Commonwealth Ombudsman is also an ex officio member of the Administrative Review Council, which advises the government on administrative law reform. The office has actively contributed to much of the research and publications of the Council, on topics such as the scope of judicial review, the structure of administrative tribunals, providing reasons for decisions, freedom of information legislation, and principles of good decision making.

The Ombudsman's place in the structure of government

The office of Ombudsman sits in an unusual position in the constitutional structure of government. The Ombudsman is an independent statutory officer, with a function of reviewing the actions of other executive agencies. Yet the Ombudsman is often described as being part of the executive arm of government.

Some Commonwealth Ombudsmen have questioned whether the Ombudsman should be treated instead as an officer of the Parliament—a status given to Ombudsmen in many other countries. Another option discussed more recently is to treat the Ombudsman as part of a new grouping in government, that includes other independent accountability agencies such as auditors-general, administrative tribunals, inspectors-general, anti-corruption commissions, privacy commissioners and human rights commissioners. One way this proposal was put in a 2004 address by Chief Justice Spigelman of the NSW Supreme Court, was to propose 'an integrity branch of government as a fourth branch, equivalent to the legislative, executive and judicial branches'.

Proposals of that kind acknowledge the extensive framework of oversight agencies established largely in the last thirty years. Neither the structure of government nor the role of the Ombudsman is static.

Liaison with other oversight agencies

Many other oversight bodies with an accountability and integrity function have been established more recently than the office of the Ombudsman. Examples include the office of the Inspector-General of Intelligence and Security (established in 1986), the Human Rights and Equal Opportunity Commission (1986), the Office of Privacy Commissioner (1988), Inspector-General of Taxation (2003), Inspector-General of the Australian Defence Force (2005), and the Australian Commission for Law Enforcement Integrity (2006).

The functions of those agencies interact in different ways with that of the Ombudsman. Complaints can raise issues that come within

the jurisdiction of more than one agency. A tradition has developed of close consultation and cooperation with other oversight agencies. This enhances the work of all agencies and avoids unnecessary duplication of effort. It also underpins the steady emergence of a sound framework of integrity organisations at the national level in Australia.

Connecting with Parliament

The Ombudsman Act provides a formal link to the Parliament in s 17, which enables the Ombudsman to report to the Parliament when a report or recommendation is not accepted by an agency. Only two such parliamentary reports have been made, in 1985 and 1986. The view expressed since by some Ombudsmen is that Parliament is either too busy or not equipped to deal with an Ombudsman report. The lack of a special Parliamentary committee to receive Ombudsman reports is part of that difficulty.

Successive Ombudsmen have instead placed emphasis on developing other links to the Parliament. One approach is to make submissions and to appear before Parliamentary committee inquiries. Committees generally welcome the Ombudsman's independence and insights, gained from dealing annually with thousands of complaints across all areas of government. Submissions and appearances have been made over the past five years on matters as diverse as immigration visa processing, mental health in detention centres, military justice, governance in the Pacific region, counter-terrorism and security legislation, family benefit payments, and conferral of coercive powers on government officials.

A major activity in the Ombudsman outreach program is to consult with parliamentary electorate offices in rural and regional Australia. Parliamentarians and the Ombudsman perform the same role of receiving complaints from the community, though the Ombudsman has a greater investigation capacity. This arises from the formal powers in the Ombudsman Act, the specialist teams, and the greater resources of the office to conduct major and complex investigations. These points are emphasised in

contact with parliamentarians, who are invited to approach the Ombudsman with any constituent or other complaint.

The Ombudsman is also required by statute to report to the Parliament on some matters. In addition to an annual report, the Ombudsman is required to provide special reports in two areas: a report on the Ombudsman's inspection of the records kept by enforcement agencies concerning their use of intrusive covert powers such as surveillance devices; and a report on the circumstances of any person held in immigration detention for two years or more. These reports keep the Parliament informed of government activities in sensitive areas that require independent scrutiny.

Ombudsman associations

Internationally the Ombudsman model has spread widely. In 1970 fewer than 20 jurisdictions had an Ombudsman. Now over 120 countries have an office established by one name or another. The establishment of a large number of Ombudsmen offices is a global trend that crosses political, cultural and language barriers.

The International Ombudsman Institute (IOI) was established in 1978 and is a worldwide organisation of public sector Ombudsmen. The Commonwealth Ombudsman's office has had a close association with the IOI. For example, the office hosted the Fourth International Ombudsman Conference in 1988, with representatives of 69 ombudsman offices from 36 countries attending; and a previous Commonwealth Ombudsman, Mr Ron McLeod, was Vice-President of the Australasian and Pacific region of the IOI.

A similar level of cooperation now exists in Australia between public sector and industry Ombudsman offices. They have jointly established the Australian and New Zealand Ombudsman Association, which has been active in sharing information among offices on

topics such as learning and development, outreach, internal review of decisions, and benchmarking Ombudsman investigation work.

There is also regional cooperation among Ombudsman offices, including through a Pacific Ombudsman Network coordinated by the Commonwealth Ombudsman. The cooperative efforts, described more fully in Chapter 6—*Promoting good administration*, include staff exchanges, participation in the training programs of other offices, and legal and information technology advice.

Seven Ombudsmen

The Ombudsman is appointed by the Governor-General for a period of up to seven years. The first Ombudsman, Professor Richardson, held a seven-year term, while later Ombudsmen have served terms ranging from one year to five years.

Lawyers have dominated in appointment as Ombudsman, but not exclusively. The backgrounds of the seven Commonwealth Ombudsmen are illustrative: three were legal academics from the Australian National University Law School (Professors Jack Richardson, Dennis Pearce and John McMillan); one a former First Parliamentary Counsel (Mr Geoffrey Kolts); another a major law firm partner (Mr Alan Cameron); one a consumer affairs advocate and consultant (Ms Philippa Smith); and one a former public servant and Inspector-General of Intelligence and Security (Mr Ron McLeod).

Each Ombudsman has brought a particular focus to the office, and helped it to grow to its position of strength. This has been complemented by having staff with diverse qualifications, skills and experience. Currently Ombudsman staff include people with backgrounds in areas such as law, science, nursing, teaching, small business and disability advocacy.

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occupational health and safety

OCCUPATIONAL HEALTH AND SAFETY POLICIES

The Ombudsman's office reviewed its Occupational Health and Safety (OH&S) policy and guidelines in 2006. Other related guidelines updated during the year included the Harassment Prevention Policy, Working from Home guidelines and the Workplace Diversity Framework and Plan. The office also provided detailed information on its intranet outlining the changes to the *Safety, Rehabilitation and Compensation Act 1988*, including advice provided by Comcare on frequently asked questions.

The Ombudsman reports each year against the statement of commitment signed in 2005, to actively work towards achieving the targets set out in the Occupational Health and Safety and Rehabilitation Performance Improvement Targets for Commonwealth Premium Paying Employees (2002–2012) strategy.

OCCUPATIONAL HEALTH AND SAFETY COMMITTEE AND REPRESENTATIVES

A health and safety representative is located in each office. The representatives manage OH&S matters either through the OH&S Committee that meets twice a year, through regular staff meetings or by seeking assistance from the OH&S officer. Two health and safety representative vacancies were filled in accordance with the office's OH&S Agreement.

During the office induction process all new employees are advised of the importance and responsibilities of both staff and management for health and safety in the workplace. New employees are provided with a workplace assessment during the first week of commencement and familiarisation with their physical work environment.

During the year there were no accidents or injuries reportable under s 68 of the *Occupational Health and Safety Act 1991* (OH&S Act) and there were no investigations conducted in the office under ss 29, 46 or 47 of the OH&S Act.

HEALTH AND SAFETY MEASURES

During 2006–07 the office:

- met obligations for Comcare premiums
- managed compensation cases in accordance with approved guidelines
- arranged health assessments, where necessary
- conducted individual workplace assessments
- facilitated eye examinations, where necessary
- made first aid facilities and supplies available, and provided first aid training to First Aid Officers (refresher and senior first aid for new officers)
- provided OH&S training of representatives
- provided staff with Harassment and Bullying workshops
- conducted regular simulated fire evacuations
- conducted health and safety inspections twice a year
- targeted individual health awareness through health management initiatives such as providing flu shots to employees free of charge and disseminating a quarterly bulletin raising awareness on specific OH&S issues
- conducted a national Health Week comprising a diverse range of health and well-being activities and information sessions.

To promote a supportive working environment, the office provides staff with access to an employee assistance program, that provides a confidential counselling service, facilitation of teamwork issues, career advice and the management of any work-related or personal issue.

freedom of information statement

Section 8 of the *Freedom of Information Act 1982* (FOI Act) requires each Australian Government agency to publish information about the way it is organised, its powers, the kinds of decisions it makes, the documents it holds, the way members of the public can obtain access to these documents and any arrangements for public involvement in the work of the agency.

The body of this annual report explains the organisation and major functions of the Commonwealth Ombudsman. This statement supplements that general information to meet the requirements of s 8 of the FOI Act. It is correct as at 30 June 2007.

FUNCTIONS AND DECISION-MAKING POWERS OF THE OMBUDSMAN

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act). The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman, the Immigration Ombudsman, the Law Enforcement Ombudsman, the Postal Industry Ombudsman and the Taxation Ombudsman.

The national office of the Commonwealth Ombudsman and the office of the Australian Capital Territory Ombudsman are co-located in Canberra. Other offices are located in Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

The Ombudsman and Deputy Ombudsmen are statutory officers appointed under the Ombudsman Act. Staff are employed under the *Public Service Act 1999*.

Investigation of administrative actions

Following a complaint from a member of the public, or using 'own motion' powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and private contractors delivering government services.

The Ombudsman cannot investigate:

- the actions of government Ministers or judges
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide not to investigate complaints that are 'stale' or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where it is considered an investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as considered appropriate. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, the Ombudsman may report that view to the agency and recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report to the Prime Minister and report to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force Ombudsman

Section 19C of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Defence Force Ombudsman (DFO). The DFO can investigate complaints from current or former members of the Australian Defence Force about Defence Force employment matters. The DFO cannot investigate most actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

Immigration Ombudsman

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration concerning the circumstances of any person who has been in immigration detention for two years or more. At the request of the Government, the Ombudsman reviewed a substantial number of cases where it appeared that a citizen or person lawfully entitled to be in Australia may have been detained or removed from Australia.

Law Enforcement Ombudsman

Under s 4(5) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman when investigating complaints about the conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979* (AFP Act). Complaints about the conduct of AFP officers received prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act). This Act was repealed after relevant provisions of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced on 30 December 2006.

The special procedures that applied under the Complaints Act to complaints about the AFP's practices and procedures or the conduct of individual AFP members, are explained in last year's annual report.

Complaints about the conduct of AFP officers received after 30 December 2006 are dealt with under the Ombudsman Act. In addition, under the AFP Act the Ombudsman is required to review the administration of the AFP's handling of complaints, through inspection of AFP records, at least annually. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the Minister. The results of these reviews must be provided to Parliament on an annual basis.

Postal Industry Ombudsman

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman (PIO). The PIO deals with complaints about postal service delivery by Australia Post and those private sector postal operators that elect to be members of the PIO scheme.

Taxation Ombudsman

Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the Australian Taxation Office (ATO). The Ombudsman has a specialist team to investigate complaints about the ATO.

The Ombudsman's intercept and surveillance devices audit

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP, the Australian Crime Commission (ACC) and the Australian Commission for Law Enforcement Integrity (ACLEI), and certain other agencies under specific circumstances, to ascertain whether the agencies have complied with specified record-keeping requirements of the Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP, the ACC and ACLEI.

Complaints about freedom of information

The FOI Act enables the Ombudsman to investigate complaints about actions and decisions by departments and agencies on requests for access to documents under FOI. Details of these complaints are included in the Ombudsman's annual reports and in any additional reports made to Parliament under s 19 of the Ombudsman Act. The FOI Act s 57(3) provides that an application cannot be made to the Administrative Appeals Tribunal for review of an FOI decision that is the subject of a complaint to the Ombudsman until the Ombudsman has finalised the investigation.

Australian Capital Territory (ACT) Ombudsman

Under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), the Commonwealth Ombudsman discharges the role of ACT Ombudsman. A memorandum of understanding between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT Ombudsman is set out in a separate annual report made to the ACT Government pursuant to the *Ombudsman Act 1989* (ACT).

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

CATEGORIES OF DOCUMENTS HELD BY THE OMBUDSMAN

The Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

FOI access and contact

General enquiries and requests for access to documents or other matters relating to FOI may be made in person, by telephone or in writing at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. For the cost of a local call, people can contact the Commonwealth Ombudsman's office by calling 1300 362 072. (See contacts in 'References' section of this report.)

Pursuant to s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsmen, all Senior Assistant Ombudsmen, and some Executive Level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant as detailed below.

FOI requests to the Ombudsman's office

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (34 in 2006–07, compared to 24 in 2005–06), mostly for documents related to investigations. Following are some observations about how those requests are handled.

The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:

- documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else

- records of telephone conversations involving the complainant
- most database entries relating to the complainant.

In the course of investigation, we may provide an agency response to a complainant so that he or she can better understand the agency's position. It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the documents' content and context, in the light of their experience in dealing with requests for similar documents.

A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have

to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

The Ombudsman's office has raised with government, in the context of a current review of the Ombudsman Act, whether the office should be subject to the FOI Act. Some other Ombudsman offices in Australia are exempt from the FOI Act in their jurisdiction. The explanation given is that it can be unsuitable to apply the Act to an office that has the function of investigating complaints against other government agencies, including complaints about FOI matters. Many of the documents held by the Ombudsman's office will have come either from the complainant or the agency under investigation, or be internal working documents of the Ombudsman's office that contain interim expressions of opinion about other agencies that should not be disclosed publicly unless that agency has first been given an opportunity to comment on the opinion consistent with natural justice and the Ombudsman Act s 8(5).

papers and presentations by staff

- Airo-Farulla, G. 2006, *The role of the Ombudsman in a Parliamentary Democracy*, presentation to members of the House of Regional Representatives of the Republic of Indonesia, and the Queensland Crime and Misconduct Commission, Brisbane
- 2006, *The Role of the Commonwealth Ombudsman*, presentation to UN Association (Queensland Chapter), Brisbane
- Airo-Farulla, G. and Giles, C. 2006, *The Commonwealth Ombudsman and immigration complaints*, presentation to Continuing Professional Development session for Solicitors and Registered Migration Agents, Brisbane
- 2007, *The Role of the Commonwealth Ombudsman in investigating FOI complaints*, presentation to FOI Practitioners' Forum, Brisbane
- Bell, C. and Hoskin, M. 2007, *Role of the Defence Force and Commonwealth Ombudsman*, presentations at Jervis Bay and Canberra
- Brent, R. 2006, *Role of the Commonwealth and Defence Force Ombudsman*, presentation to IGADF investigation courses, Melbourne and Canberra
- 2007, *The role of the Commonwealth Ombudsman*, presentation to APSC SES Transforming Leadership and key issues for leaders program, Crackenback
- 2007, *Managing agency relationships*, presentation to DIAC Review Coordination Branch leadership forum, Canberra
- 2007, *Problem areas in complaint handling*, presentation to Department of Health and Ageing's Office of Aged Care Compliance, Canberra
- Brown, V. 2007, *The role of the Commonwealth Ombudsman*, presentation to APSC SES Orientation Program, Canberra
- Browne, D. 2006 and 2007, *Role of the Defence Force and Commonwealth Ombudsman*, presentation to IGADF investigation course, Sydney
- Ducker, L. 2007, *Role and function of the Postal Industry Ombudsman*, presentation to Post Office Agents Association Ltd Annual Conference, Christchurch, New Zealand
- Emmel, K. and Hennessey, T. 2006, *Role of the Adelaide office of the Commonwealth Ombudsman*, information sessions for Centrelink staff, Whyalla
- Hawke, R. 2006, *Role of the Defence Force and Commonwealth Ombudsman*, presentation to Victorian Veterans Regional Officers, Melbourne
- Martin, B. 2007, *Human Rights: Whose Rights? Government Decisions and Your Rights*, joint community information session with SA State Ombudsman, SSAT, AAT, Veterans' Review Board and MRT, Law Week 2007, Adelaide
- Martin, B. and Hennessey, T. 2006, *Role of the Ombudsman*, presentation to Centrelink and Child Support Agency staff, Port Augusta, South Australia
- Masri, G. Pezzanite, D. and Hennessey, T. 2006, *The role of the Immigration Ombudsman*, round table discussion with representatives of Australian Red Cross, Australian Refugee Association and Legal Services Commission, Adelaide
- Masri, G. Pezzanite, D. and Hennessey, T. 2007, *Role of the Immigration Ombudsman*, presentation to members of South Australian chapter of Migration Institute of Australia, Adelaide
- Masri, G. 2007, *View from the Ombudsman's office—working with DIAC in a post-Palmer environment*, presentation to DIAC Case Management Conference, Canberra
- 2007, *The role of the Ombudsman*, presentation to Department of Health and Ageing SES staff, Canberra

Matcham, R. 2006 and 2007, *Parliament and Administrative Law*, presentations to APSC SES Orientation, Canberra

- 2007, *Parliament and Administrative Law*, presentation to SES staff at the Department of Health and Ageing, Canberra
- 2007, *Stale case survey*, presentation made to the Office of the Thai Ombudsman, Bangkok, Thailand

McMillan, J. 2006, *What can we as Ombudsmen expect in the future?*, address to the International Financial Ombudsman Conference, Gold Coast

- 2006, Launch of Postal Industry Ombudsman, Sydney
- 2006, *The role of the Ombudsman in ensuring executive compliance with rights*, presentation to Legislatures and the Protection of Human Rights Conference, Melbourne
- 2006, *Problems, complaints and (some) solutions*, presentation to Veterans' Law Conference, Gold Coast
- 2006, *Re-thinking the separation of powers*, Sir Frank Kitto Lecture at University of New England, Armidale
- 2006, presentation to Vital issues seminar on whistleblowing, Parliamentary Library, Canberra
- 2006, *Dealing with accountability, assurance and conformance*, presentation to DIMA SES Governance and Leadership, Canberra
- 2006, *The FOI landscape after McKinnon*, presentation to Australian Institute of Administrative Law, Canberra
- 2006, *Managing complaints within Commonwealth Government contracts*, presentation to Jobs Australia National Conference, Sydney
- 2006, *Oversight of policing and corruption*, presentation to Centre for International and Public Law annual public law weekend, Canberra
- 2006, *Tribunals and administrative adjudication—the Ombudsman's perspective*, presentation to MRT and RRT conference, Sydney

- 2006, *Clients of government agencies—rights and expectations?*, presentation to Government Law Group, Sydney
- 2006, *Current Issues and Problems—through the Ombudsman lens*, presentation to Centrelink SES, Canberra
- 2006, Opening address to the Citizens Jury to consider Challenge 2014—ten year vision for disability in the ACT, Canberra
- 2007, *Accountability of Government*, opening address to the Above Board Accountability Forum, Canberra
- 2007, *Automated Assistance to Administrative Decision-Making*—Launch of the Better Practice Guide, Institute of Public Administration Australia seminar, Canberra
- 2007, *Current issues and problems—through the lens of the Taxation Ombudsman*, presentation to ATO conference, Sydney
- 2007, *The Ombudsman's role in Defence Administration*, ANU Military Law course, Canberra
- 2007, *Working in government—from the outside looking in*, presentation to the Department of Prime Minister and Cabinet seminar, Canberra
- 2007, *Natural Justice—too much, too little, or just right?*, Australian Institute of Administrative Law, National Administrative Law Forum, Canberra
- 2007, *The role of the Commonwealth Ombudsman*, presentation to APSC SES Orientation Program, Canberra
- 2007, *Managing complainants who exhibit difficult behaviour*, presentation to Energy and Water Ombudsman (Victoria) conference Partnering for improved outcomes for customers and business, Melbourne

McMillan, J. and Durkin, M. 2007, *Lessons learned from DIMA referred immigration cases*, presentation to ASIO SES, Canberra

Nash, D. 2006, *The changing role of the Commonwealth and Immigration Ombudsman*, presentation to Queensland State Conference of the Migration Institute of Australia, Surfers Paradise

- Neish, R. Hazelwood, S. Ellett, P. and Czesla, J. 2007, *The role of the Commonwealth Ombudsman: inspections and procedures for Telecommunications Interceptions, Surveillance Devices and Controlled Operations testing*, presentation to AFP Special Project Registrars Workshop, Canberra
- Pesenti, S. 2006, *The Ombudsman and the Parliament*, presentation to Responsible Parliamentary Government Course run by the Centre for Democratic Institutions at the ANU, Canberra
- Pezzanite, D. 2006, *Role of the Commonwealth Ombudsman*, presentation to SA office of the Welfare Rights Centre Inc, Adelaide
- Robertson, D. 2006, *Role of the Commonwealth and Defence Force Ombudsman*, presentations to ex-service organisations and veterans, and RAAF and Navy officers, Nowra, Jervis Bay and Canberra
- Siuta, W. 2006, *Role and function of the Melbourne office of the Commonwealth Ombudsman*, presentation to the Outreach Report, Melbourne
- Smith, A. 2006, *The role of the Ombudsman*, presentations to DIAC recruits and various community groups, Perth
- 2006 and 2007, *The role of the Ombudsman*, presentations to Northern Suburbs Community Legal Centre and Metropolitan Migrant Resource Centre, Mirrabooka, Western Australia
- 2006, *The role of the Ombudsman*, presentation to St Vincent de Paul Society, Belmont, Western Australia
- Sundar, R. 2007, *Role of the Commonwealth Ombudsman's office*, presentation to Aboriginal Land Council Executive, Sydney
- Thom, V. and Ranck, S. 2006, *The experience of the Commonwealth Ombudsman's office in monitoring public service*, presentation to Establishment of local ombudsman service in Central Kalimantan in enhancing proper public service, Indonesia
- Thom, V. 2006, *The relationship between the Ombudsman's office and DIMA*, presentation to DIMA Development program, Canberra
- 2007, *Technical decision-making processes across the public service*, presentation to ATO Technical Quality Assurance Forum, Canberra
- 2007, *Overview of the Commonwealth Ombudsman's office and key issues relevant to relationship with the IGADF*, presentation to IGADF planning workshop, Canberra
- Thom, V. and Hennessey, T. 2007, *Role of the Commonwealth Ombudsman*, presentation to SA Federal Members of Parliament and staff, Adelaide
- Thom, V. and Smith A. 2007, *The role of the Ombudsman*, presentation to Federal Electorate Officers, Perth

statistics

Table A1—Approaches and complaints received and finalised about Australian Government agencies, 2006–07, *Ombudsman Act 1976* (including freedom of information)

Table A2—Australian Federal Police complaints received and finalised, complaint issues finalised, 2006–07

Table A3—Australian Federal Police method of handling complaint issues finalised, 2006–07

EXPLANATIONS OF TERMS USED IN APPENDIX 4 TABLES

Advised to pursue elsewhere—complainant advised to pursue complaint directly with agency, court or tribunal, industry or subject specialist, member of parliament or minister

AFP evaluation—AFP conducted preliminary enquiries to evaluate the merits of a complaint and reviewed by the Ombudsman

AFP investigation—AFP investigated complaint against AFP members and reviewed by the Ombudsman

AFP workplace resolution—complaint managed by the AFP in the workplace and reviewed by the Ombudsman

Approach/complaint not pursued—withdrawn by complainant, or written complaint requested but not received

Approaches/complaints finalised—approaches/complaints finalised in 2006–07, including some complaints carried over from previous years

Approaches/complaints received—approaches/complaints received in 2006–07

Category 1 approaches—resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority

Category 2 approaches—approaches that cannot be resolved at category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency

Category 3 approaches—investigation conducted and agency contacted

Category 4 approaches—further investigation conducted, as the complaint/approach was not able to be resolved in category 3

Category 5 approaches—further investigation conducted, as the complaint/approach was not able to be resolved in category 4; involves formal reporting processes

Conciliated—complaint conciliated through the AFP's workplace-resolution process and reviewed by the Ombudsman

Incapable of determination—sufficient evidence was not available to support a clear conclusion

Issues—approaches/complaints can contain a number of issues, each requiring a separate decision as to whether to investigate; each issue may result in a separate outcome

Ombudsman decision not to investigate—the Ombudsman may decide not to investigate where a person has not tried to resolve their problem directly with the relevant agency or there is a more appropriate avenue of review available

Ombudsman investigation (for complaints being dealt with under the Complaints Act)—investigation, following consideration by the AFP, asking more questions and reviewing the agency's files, policies and procedures

Ombudsman investigation not warranted—investigation of the approach/complaint judged to be unnecessary for one of the following reasons: over 12 months old, frivolous or not in good faith, insufficient interest, related to commercial activity, or 'not warranted' having regard to all the circumstances; this includes approaches/complaints that were considered by the AFP and reviewed by the Ombudsman where investigation or further investigation would serve no useful purpose having regard to all the circumstances

Out of jurisdiction—complaint not within the Ombudsman's legal powers

Remedies—complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

Special investigation—investigations conducted under s 46 of the Complaints Act may be conducted solely by the Ombudsman or jointly with the AFP

Substantiated—complaint issue was found to be true

Unsubstantiated—there were no grounds for the complaint issue

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2006–07, OMBUDSMAN ACT 1976 (INCLUDING FREEDOM OF INFORMATION)

AGENCY NAME	RECEIVED		FINALISED					REMEDIES							
	Total	Not investigated	Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
			Category 1	Category 2	Category 3										
Agriculture, Fisheries and Forestry	12	1	7	1		9									
	9	2	7		1	10									
	35	15	10	11	1	37	2		3		4	1			10
	1			1		1					1				1
	1			1		1									
Attorney-General's															
Attorney-General's Department	24	6	13	3	2	24			1		2			1	4
Administrative Appeals Tribunal	41	15	24	2		41					2			1	3
Australian Crime Commission	9	5	1	2		8	1				1				2
CrimTrac	2		2	1		3									
Australian Customs Service	123	38	55	26	5	124	1	3	3	1	21	2		2	33
Family Court of Australia	64	35	23	11		69	1	3	1		4			2	11
Federal Court of Australia	23	8	11	2	1	22		1				2			3
Federal Magistrates Court of Australia	5	2	2			4									
High Court of Australia	6	1	4	3		8					1				1
Insolvency and Trustee Service Australia	60	17	26	9	5	57	1		1		5				7
National Native Title Tribunal	2		2	1		3									
Office of the Commonwealth Director of Public Prosecutions	5		5		1	6	1						1		2
Office of the Privacy Commissioner	45	12	33	2		47					2			1	3
Commonwealth Parliamentary															
Department of Parliamentary Services	1		1			1									
Communications, Information Technology and the Arts															
Department of Communications, Information Technology & the Arts	9	1	7	3	1	12					2				2
Australia Council for the Arts	1	1				1									
Australian Broadcasting Corporation	14	4	9	1	1	15									
Australian Communications and Media Authority	46	12	26	5	3	46	3	3	1		7	1			15
Australian Film Commission	3	2				3									
Australian Institute of Sport	1		1			1									
Australian Postal Corporation	1,819	563	529	650	56	1,798	84	140	93	29	325	176	20	115	982
Australian Sports Anti-Doping Authority	1	1				1									
National Archives of Australia	5	2	3			5									
National Gallery of Australia	1	1				1									
National Library of Australia	4	1	3			4									

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AGENCY NAME	RECEIVED		FINALISED					REMEDIES							
	Total	Not investigated	Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
			Category 1	Category 2	Category 3										
Special Broadcasting Service Corporation	1		1			1									
Telstra Corporation	228	175	48	4	2	229	2	1		4	1			1	9
Defence															
Department of Defence	106		53	16	5	109	3	1	4		3	2			13
Royal Australian Navy	50	14	23	12	1	50	1		3					1	9
Australian Army	145	37	67	41	3	148	10	2	6		25	1			44
Royal Australian Air Force	57	14	30	14	5	63	4		2		10	2		2	20
Department of Veterans' Affairs	256	56	93	94	11	254	9	3	5		44	8	4	3	76
Australian Defence Force Academy	3	2	1			3									
Australian Navy Cadets	5	2	1	1	1	5				3					3
Australian War Memorial	1		1			1									
Defence Force Retirement and Death Benefits Authority	8	2	4			6									
Defence Housing Australia	36	8	20	5		33	2		1		2		1		6
Defence Service Homes				1		1									
Frontline Defence Services	1	1				1									
Veterans' Review Board	2	1	1			2									
Education, Science and Training															
Department of Education, Science and Training	24	13	8	1		22									
Australian National University	12		6	3		9				1					1
Australian Nuclear Science and Technology Organisation	2		2			2									
Commonwealth Scientific and Industrial Research Organisation	4	2	1			3									
Employment and Workplace Relations															
Department of Employment and Workplace Relations	567	270	177	84	28	559	10	3	11		56	6	1	9	96
Australian Fair Pay Commission	5	1	4			5									
Australian Industrial Registry	3	1	2			3									
Comcare	97	28	46	24	3	101	9	5	2		15	1		1	33
Office of the Employment Advocate	1	1				1									
Office of Workplace Services	30	9	8	6		23			1		3				4
Environment and Water															
Department of the Environment and Water Resources	26	4	14	5	4	27		1	1		4			2	8
Bureau of Meteorology					1	1									
Great Barrier Reef Marine Park Authority					1	1					1				1
Families, Community Services and Indigenous Affairs															
Department of Families, Community Services and Indigenous Affairs	43	18	18	6	5	47	2	1	3			1			10

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2006–07, OMBUDSMAN ACT 1976 (INCLUDING FREEDOM OF INFORMATION)

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		Total	Not investigated		Investigated			Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total	
			Category 1	Category 2	Category 3	Category 4	Category 5										
Aboriginal Hostels Limited Indigenous Business Australia Indigenous Land Corporation Northern Land Council Office of Indigenous Policy Coordination Office of the Registrar of Aboriginal Corporations Social Security Appeals Tribunal Tiwi Land Council		2	2														2
		10	4	1	2	2		1									9
		4	1	2													3
		7	4	3													7
		3		1													1
		5	2	2		1											5
		58	26	19	10	1						9					56
		3	1	1	1			1									3
	Finance and Administration																
		28	5	12	5	2											24
Australian Electoral Commission	27	9	11	7			2	3	1		4				1	11	
Commissioner for Superannuation (ComSuper)	37	14	16	9	1		3	2			5	1			1	12	
Remuneration Tribunal	1		1													1	
Foreign Affairs and Trade																	
Department of Foreign Affairs and Trade	155	57	57	24	8		6	2	3		21	2	2	3		39	
Australian Agency for International Development (AusAID)	5	1	1													2	
Australian Trade Commission	4	3	1		1				1					1		2	
Export Finance and Insurance Corporation	2	1														1	
Health and Ageing																	
Department of Health and Ageing	113	49	50	22	4		2	1	3		14					20	
Aged Care Standards and Accreditation Agency Ltd (The)	2			1												1	
Office of Hearing Services	2		1	1					2			1				3	
Australian Institute of Health and Welfare	1			1			1	1								2	
National Health and Medical Research Council	1				1											1	
Human Services																	
Department of Human Services	9	1	2	1	1				1			1				2	
Australian Hearing	3	2		1					1							2	
Centrelink	6,987	4,149	1,531	1,120	76	1	229	105	197	9	619	209	12	56		1,436	
Child Support Agency	1,790	728	543	458	50		66	53	65	5	345	39	4	39		616	
Commonwealth Rehabilitation Service	31	18	11	2			1				2					2	
Health Services Australia	7	1	1	4							2		1	1		4	
Medicare Australia	123	49	36	29	2		10	5	7	1	12	3		1		39	
Immigration and Citizenship																	
Department of Immigration and Citizenship	1,379	267	596	482	94	1	102	30	76	3	356	22	10	70		669	
Migration Agents Registration Authority	13	3	6		1			1								1	

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2006–07, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

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	Total	Not investigated	Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
			Category 1	Category 2	Category 3										
Migration Review Tribunal	23		4	14	4		1				6				7
Refugee Review Tribunal	7		1	4	3						3				3
Industry, Tourism and Resources															
Department of Industry, Tourism and Resources	48		18	20	7		45				1	3	1		5
AusIndustry	6			5			5								5
IP Australia	14		4	7	2	2	15				1	1			2
Prime Minister and Cabinet															
Department of the Prime Minister and Cabinet	14		5	6	2		13								
Australian National Audit Office	1			1			1								
Australian Public Service Commission	15		11	5			16								
Governor-General and Commander-in-Chief	5		1	3			4								
Transport and Regional Services															
Department of Transport and Regional Services	41		7	21	8	6	42	1	1		9		1		12
Australian Maritime College	3		1	1		1	3		1			1	1		3
Civil Aviation Safety Authority	18		7	9	2	1	19	1	1			1		1	4
National Capital Authority	2		2				2								
Treasury															
The Treasury	7		2	4			6								
Australian Bureau of Statistics	105		75	22	7	1	105	1	1	1	5	1	1		10
Australian Competition and Consumer Commission	28		14	11	6	2	33				3				3
Australian Prudential Regulation Authority	55		30	18	7	1	56	1		1	3	1		6	
Australian Securities and Investments Commission	192		43	106	17	14	180	2	2	1	16	3		4	28
Australian Taxation Office	1,261		550	535	159	28	1,272	26	21	13	1	82	23	13	181
Australian Valuation Office	2		1	1			2								
National Competition Council						1	1								
Productivity Commission	1			1			1								
Reserve Bank of Australia	2		2				2								
Royal Australian Mint	4		2	2			4								
Superannuation Complaints Tribunal	22		10	8	4		22	1			1				2
Tax Agents Board	7		1	6			7								
Australian Federal Police	694		75	478	190	1	745	2	4	1	8	6		2	23
Private Postal Operator	1														
ACT Government Agencies	528		207	148	129	14	502	16	8	9		60	7	2	109
Approaches about out-of-jurisdiction agencies/requests for information	15,319		13,386	1,914			15,300								
TOTAL	33,322		21,296	7,687	3,779	464	8	33,234	622	411	523	57	2,142	521	4,683

Note: Table A1 includes total number of approaches and complaints received and finalised about ACT Government agencies and AFP ACT Policing. Detailed information is in the ACT Ombudsman Annual Report 2006–2007 (www.ombudsman.act.gov.au).

TABLE A2 AUSTRALIAN FEDERAL POLICE COMPLAINTS RECEIVED, COMPLAINT ISSUES FINALISED, 2006–07⁽¹⁾

		Complaints Act	Ombudsman Act	Total
Complaints	Received	517	177	694
	Finalised	591	154	745

Outcome of issues finalised	Conciliated	191		191
	Incapable of determination	9		9
	Substantiated	16		16
	Unsubstantiated	37		37
	Ombudsman investigation not warranted	382	22	404
	Advised to pursue elsewhere	18	121	139
	Approach/complaint not pursued	68	2	70
	Out of jurisdiction	8	12	20
	Total issues finalised	729	157	886

(1) The categories of 'conciliated', 'incapable of determination', 'substantiated' and 'unsubstantiated' are not applicable to complaints dealt with under the Ombudsman Act.

TABLE A3 AUSTRALIAN FEDERAL POLICE METHOD OF HANDLING COMPLAINT ISSUES FINALISED, 2006–07^{(1) (2)}

		Complaints Act	Ombudsman Act	Total
Method of handling complaint	Ombudsman decision not to investigate	180	157	337
	Ombudsman investigation	43		43
	AFP investigation	62		62
	AFP workplace resolution	275		275
	AFP evaluation ⁽²⁾	169		169
	Special investigation	0		0
	Total issues finalised	729	157	886

(1) The only categories applicable under the Ombudsman Act are 'Ombudsman decision not to investigate' and 'Ombudsman investigation'.

(2) The addition of the method 'AFP evaluation' to this table means that figures for 'Ombudsman decision not to investigate' and 'Ombudsman investigation' under the Complaints Act are not comparable to the statistics for previous years.

Note: The office reviews and audits its statistical data. Minor adjustments to statistics used in this report may occur as a result of such reviews.

consultancy services

The Ombudsman's office engages consultants when the expertise required is not available within the organisation or when the specialist skills required are not available without diverting resources from other higher priority tasks. In accordance with procurement guidelines, consultants are selected by advertisement, panel arrangements or selective tendering.

Table A4 provides details of consultancy services let by the office during 2006–07 with a contract value (GST inclusive) of \$10,000 or more.

Definitions

(1) Selection process

Open tender—procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders.

Select tender—procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders in accordance with the mandatory procurement procedures.

(2) Justification for decision to use consultancy

A—skills currently unavailable within agency

B—need for specialised or professional skills

C—need for independent research or assessment

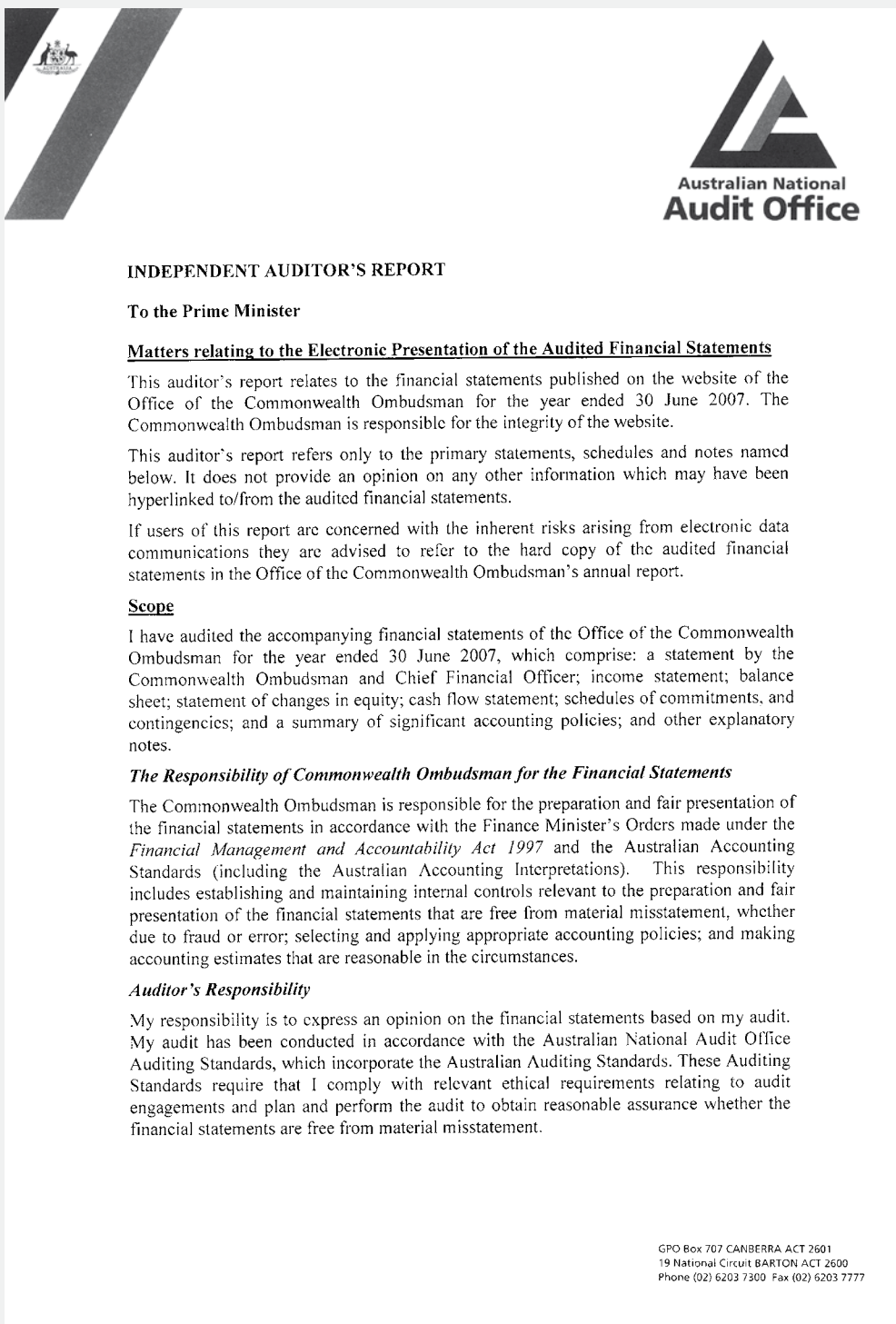
ADVERTISING AND MARKET RESEARCH

Advertising is used to publicise the office's services. No advertising contracts were let in 2006–07. The office's advertising strategies were designed and conceived in-house. Recruitment notices were placed in newspapers at a cost of \$40,052; and advertisements to publicise the office's services, including the new Postal Industry Ombudsman scheme, were placed in selected newspapers and journals at a cost of \$27,175. All notices and advertisements were placed through hma Blaze.

Market research was conducted by ACNielsen to measure the level of community awareness and knowledge of the Ombudsman's roles and function in regional and rural Australia. This contract is reported in Table A4—Consultancy services, 2006–07.

TABLE A4 CONSULTANCY SERVICES, 2006–07

Consultant name	Description	Contract price	Selection process ⁽¹⁾	Justification ⁽²⁾
ACNielsen (Holdings) Pty Ltd	Market research services	\$34,835	Select tender	C
Ernst & Young	Post implementation review of work practice changes	\$64,323	Select tender	C
Instinct and Reason	Market research services	\$30,800	Select tender	C
Mine Development Services Pty Ltd (trading as Siller Systems Administration)	Developing Information and Record Keeping System process and provision of advice relating to the development of other record keeping initiatives	\$20,400	Select tender	B
WalterTurnbull Pty Ltd	Internal audit services	\$90,000	Open tender	A
Total		\$240,358		



INDEPENDENT AUDITOR'S REPORT

To the Prime Minister

Matters relating to the Electronic Presentation of the Audited Financial Statements

This auditor's report relates to the financial statements published on the website of the Office of the Commonwealth Ombudsman for the year ended 30 June 2007. The Commonwealth Ombudsman is responsible for the integrity of the website.

This auditor's report refers only to the primary statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Office of the Commonwealth Ombudsman's annual report.

Scope

I have audited the accompanying financial statements of the Office of the Commonwealth Ombudsman for the year ended 30 June 2007, which comprise: a statement by the Commonwealth Ombudsman and Chief Financial Officer; income statement; balance sheet; statement of changes in equity; cash flow statement; schedules of commitments, and contingencies; and a summary of significant accounting policies; and other explanatory notes.

The Responsibility of Commonwealth Ombudsman for the Financial Statements

The Commonwealth Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and the Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

GPO Box 707 CANBERRA ACT 2601
19 National Circuit BARTON ACT 2600
Phone (02) 6203 7300 Fax (02) 6203 7777

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

Auditor's Opinion

In my opinion, the financial statements of the Office of the Commonwealth Ombudsman:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, and the Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Ombudsman's financial position as at 30 June 2007 and of its financial performance and its cash flows for the year then ended.

Australian National Audit Office



John McCullough
Acting Executive Director

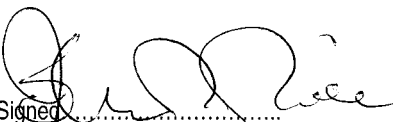
Delegate of the Auditor-General

Canberra
11 September 2007

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT BY THE COMMONWEALTH OMBUDSMAN AND CHIEF FINANCIAL OFFICER

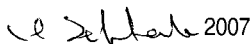
In our opinion, the attached financial statements for the year ended 30 June 2007 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed 

Professor John McMillan
Commonwealth Ombudsman

Signed 

R I Brent
Chief Financial Officer

 20 Sept. 2007

 10 Sept. 2007

financial statements

OFFICE OF THE COMMONWEALTH OMBUDSMAN

INCOME STATEMENT

for the year ended 30 June 2007

	Notes	2007 \$	2006 \$
INCOME			
Revenue			
Revenue from government	3A	17,579,000	17,035,000
Sale of goods and rendering of services	3B	1,326,486	1,349,356
Other revenue	3C	18,000	19,000
Total Revenue		18,923,486	18,403,356
Gains			
Sale of assets	3D	-	-
Total gains		-	-
TOTAL INCOME		18,923,486	18,403,356
EXPENSES			
Employee benefits	4A	13,423,736	11,587,946
Suppliers	4B	4,566,785	5,107,194
Depreciation and amortisation	4C	687,232	622,857
Losses from asset sales	4D	41,920	64,685
TOTAL EXPENSES		18,719,673	17,382,682
SURPLUS		203,813	1,020,674

The above statement should be read in conjunction with the accompanying notes.

financial statements

OFFICE OF THE COMMONWEALTH OMBUDSMAN

BALANCE SHEET

as at 30 June 2007

	Notes	2007 \$	2006 \$
ASSETS			
Financial assets			
Cash and cash equivalents	5A	58,634	332,850
Trade and other receivables	5B	5,092,337	4,313,090
		<u>5,150,971</u>	<u>4,645,940</u>
Total financial assets			
Non-financial assets			
Infrastructure, plant and equipment	6A	1,842,360	1,680,580
Intangibles	6C	406,012	425,597
Other non-financial assets	6D	211,401	168,267
		<u>2,459,773</u>	<u>2,274,444</u>
Total non-financial assets			
TOTAL ASSETS			
		<u>7,610,744</u>	<u>6,920,384</u>
LIABILITIES			
Payables			
Suppliers	7A	657,064	656,091
Other payables	7B	516,372	433,447
		<u>1,173,436</u>	<u>1,089,538</u>
Total payables			
Provisions			
Employee provisions	8A	3,078,854	2,715,948
Other	8B	286,792	306,049
		<u>3,365,646</u>	<u>3,021,997</u>
Total provisions			
Total liabilities			
		<u>4,539,082</u>	<u>4,111,535</u>
NET ASSETS			
		<u>3,071,662</u>	<u>2,808,849</u>
EQUITY			
Contributed equity		1,996,000	1,937,000
Reserves		215,252	215,252
Retained surplus		860,410	656,597
		<u>3,071,662</u>	<u>2,808,849</u>
TOTAL EQUITY			
Current liabilities			
		3,843,392	3,418,658
Non-current liabilities			
		695,690	692,877
Current assets			
		5,362,372	4,814,207
Non-current assets			
		2,248,372	2,106,177

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF CHANGES IN EQUITY

for the year ended 30 June 2007

	Retained Earnings		Asset Revaluation Reserve		Contributed Equity/Capital		Total Equity	
	2007	2006	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$	\$	\$
Opening Balance	656,597	(364,077)	215,252	215,252	1,937,000	848,000	2,808,849	699,175
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in Accounting policies	-	-	-	-	-	-	-	-
Adjusted Opening Balance	656,597	(364,077)	215,252	215,252	1,937,000	848,000	2,808,849	699,175
Income and Expense								
Revaluation adjustment	-	-	-	-	-	-	-	-
Subtotal income and expenses recognised directly in equity	-	-	-	-	-	-	-	-
Surplus for the year	203,813	1,020,674	-	-	-	-	203,813	1,020,674
Total income and expenses	203,813	1,020,674	-	-	-	-	203,813	1,020,674
Transactions with Owners								
Contributions by Owners								
Appropriation (equity injection)	-	-	-	-	59,000	1,089,000	59,000	1,089,000
Sub-total Transactions with Owners	-	-	-	-	59,000	1,089,000	59,000	1,089,000
Transfers between equity components	-	-	-	-	-	-	-	-
Closing balance at 30 June	860,410	656,597	215,252	215,252	1,996,000	1,937,000	3,071,662	2,808,849

The above statement should be read in conjunction with the accompanying notes.

financial statements

OFFICE OF THE COMMONWEALTH OMBUDSMAN

CASH FLOW STATEMENT

for the year ended 30 June 2007

	Notes	2007 \$	2006 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations		15,947,265	14,035,000
Goods and services		1,262,345	1,527,688
Net GST received		381,875	333,221
Total cash received		<u>17,591,485</u>	<u>15,895,909</u>
Cash used			
Employees		(13,060,830)	(11,006,226)
Suppliers		(5,022,524)	(5,673,183)
Total cash used		<u>(18,083,354)</u>	<u>(16,679,409)</u>
Net cash from/(used by) operating activities	9	<u>(491,869)</u>	<u>(783,500)</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		2,692	5
Total cash received		<u>2,692</u>	<u>5</u>
Cash used			
Purchase of property, plant and equipment		(663,103)	(823,849)
Purchase of intangibles		(210,936)	(217,193)
Total cash used		<u>(874,039)</u>	<u>(1,041,042)</u>
Net cash from/(used by) investing activities		<u>(871,347)</u>	<u>(1,041,037)</u>
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		1,089,000	-
Total cash received		<u>1,089,000</u>	<u>-</u>
Net cash from / (used by) financing activities		<u>1,089,000</u>	<u>-</u>
Net increase in cash held		<u>(274,216)</u>	<u>(1,824,537)</u>
Cash at the beginning of the reporting period		<u>332,850</u>	<u>2,157,387</u>
Cash at the end of the reporting period	5A	<u>58,634</u>	<u>332,850</u>

The above statement should be read in conjunction with the accompanying notes.

financial statements

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF COMMITMENTS

as at 30 June 2007

	2007 \$	2006 \$
BY TYPE		
Commitments Receivable		
Grant income	805,017	102,000
GST recoverable on commitments	416,008	503,499
Total Commitments Receivable	<u>1,221,025</u>	<u>605,499</u>
Capital Commitments	-	-
Total capital commitments	<u>-</u>	<u>-</u>
Other Commitments		
Operating leases	4,576,085	5,538,491
Total other commitments	<u>4,576,085</u>	<u>5,538,491</u>
Net commitments by type	<u>3,355,060</u>	<u>4,932,992</u>
BY MATURITY		
Commitments receivable		
Grants receivable		
One year or less	418,203	102,000
From one to five years	386,814	-
Over five years	-	-
Total grants receivable	<u>805,017</u>	<u>102,000</u>
GST recoverable on commitments		
One year or less	113,742	114,024
From one to five years	302,266	361,167
Over five years	-	28,308
Total GST recoverable on commitments	<u>416,008</u>	<u>503,499</u>
Commitments payable		
Operating lease commitments		
One year or less	1,251,162	1,254,267
From one year to five years	3,324,923	3,972,844
Over five years	-	311,380
Total operating lease commitments	<u>4,576,085</u>	<u>5,538,491</u>
Net commitments by maturity	<u>3,355,060</u>	<u>4,932,992</u>

NB: Commitments are GST inclusive where relevant.

Operating leases included are effectively non-cancellable and comprise:

- leases for office accommodation; and
- agreements for the provision of motor vehicles to senior executive officers;

The operating leases are adjusted periodically by the Consumer Price Index (CPI). The commitments above do not include an estimate of the future impact of CPI adjustments due to the impracticality of reliably estimating the impact and the immateriality of the likely impact.

Similarly, the annual lease expense has not been 'straight-lined' due to the impracticality of projecting CPI adjustments, and because of the immateriality of the likely impact.

The above schedule should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF CONTINGENCIES

as at 30 June 2007

	2007 \$	2006 \$
CONTINGENT LIABILITIES	-	-
CONTINGENT ASSETS	-	-
Net contingent liabilities	-	-

The office has no contingent liabilities.

The Office of the Commonwealth Ombudsman has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable, and all are considered remote. There are no existing or likely claims of which the office is aware.

The above schedule should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies

1.1 Ombudsman Objectives

The Office of the Commonwealth Ombudsman is an Australian Public Service Organisation. The Office of the Commonwealth Ombudsman seeks to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the office contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Ombudsman is structured to meet one outcome:

Outcome 1: Administrative action by Australian government agencies is fair and accountable.

The office's activities contributing towards these outcomes are classified as departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the office in its own right. The Ombudsman's office has no administered activities.

Departmental activities are identified under two headings for Outcome 1: Output 1 is Review of administrative action and Output 2 is Review of statutory compliance in specified areas.

The continued existence of the Ombudsman's office in its present form, and with its present programs, is dependent on Government policy and legislation and on continuing appropriations by Parliament for the office's administration and programs.

1.2 Basis of Preparation of the Financial Statements

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general-purpose financial report.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2006; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.2 Basis of Preparation of the Financial Statements (Cont'd)

Unless an alternative treatment is specifically required by an accounting standard or FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the Entity and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2007 or in the comparative financial year.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates or other judgements have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Statement of Compliance

Australian Accounting Standards require a statement of compliance with International Financial Reporting Standards (IFRSs) to be made where the financial report complies with these standards. Some Australian equivalents to IFRSs and other Australian Accounting Standards contain requirements specific to not-for-profit entities that are inconsistent with IFRS requirements. The Ombudsman is a not-for-profit entity and has applied these requirements, so while the financial report complies with Australian Accounting Standards including Australian Equivalents to International Financial Reporting Standards (AEIFRSs) it cannot make this statement.

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the effective date in the current period. The following adopted requirements have resulted in a change to the Ombudsman's accounting policies or have affected the amounts reported in the current or prior periods or are estimated to have a financial affect in future reporting periods.

Other effective requirement changes

The following amendments, revised standards or interpretations have become effective but have had no financial impact or do not apply to the operations of the office.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.4 Statement of Compliance (Cont'd)

Amendments:

- 2005-1 Amendments to Australian Accounting Standards [AASB's 1,101,124]
- 2005-6 Amendments to Australian Accounting Standards [AASB 3]
- 2006-1 Amendments to Australian Accounting Standards [AASB 121]
- 2006-3 Amendments to Australian Accounting Standards [AASB 1045]

Interpretations:

- UIG 4 Determining whether an Arrangement contains a Lease
- UIG 5 Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds
- UIG 7 Applying the Restatement Approach under AASB 129 Financial Reporting in Hyperinflationary Economies
- UIG 8 Scope of AASB 2
- UIG 9 Reassessment of Embedded Derivatives

UIG 4 and UIG 9 might have impacts in future periods, subject to existing contracts being renegotiated.

Future Australian Accounting Standard requirements

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.4 Statement of Compliance (Cont'd)

Financial Instrument disclosure

AASB 7 Financial Instruments: Disclosures is effective for reporting periods beginning on or after 1 January 2007 (the 2007-08 financial year) and amends the disclosure requirements for financial instruments. In general AASB 7 requires greater disclosure than that presently. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will effect the disclosure presented in future financial reports.

Other

The following standards and interpretations have been issued but are not applicable to the operations of the office.

- AASB 1049 Financial Reporting of General Government Sectors by Governments
- UIG 10 Interim Financial Reporting and Impairment

1.5 Revenue

Revenue from government

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations received are recognised at their nominal amounts.

Resources Received Free of Charge

Resources received free of charge are recorded as either revenue or gains depending on their nature ie whether they have been generated in the course of the ordinary activities of the Ombudsman's office.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.5 Revenue (Cont'd)

Other types of revenue

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

1.6 Gains

Resources received free of charge

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (Refer to Note1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature ie whether they have been generated in the course of the ordinary activities of the Ombudsman's office.

Sale of assets

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.7 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in Contributed Equity in that year.

Restructuring of Administered Arrangements

Net assets received from or relinquished to another Australian Government Agency or Authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2006-07, no amounts were returned to the Official Public Account.

1.8 Employee Benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.8 Employee Benefits (Cont'd)

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Ombudsman's office is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the office's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the estimated future cash flows to be made in respect of all employees at 30 June 2007. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and redundancy

Provision is also made for separation and redundancy payments in circumstances where the office has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

Superannuation

Staff of the Ombudsman's office are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or the Australian Government Employee Superannuation Trust (AGEST). The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap and AGEST are defined contribution schemes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.8 Employee Benefits (Cont'd)

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Ombudsman's office makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the office's employees. The Ombudsman accounts for the contributions as if they were contributions to defined contributions plans.

From 1 July 2005, new employees are eligible to join the PSSap scheme.

The liability for superannuation recognised at 30 June 2007 represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' leasehold improvements and rent-free holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.12 Financial Risk Management

The office's activities expose it to normal commercial financial risk. As a result of the nature of the office's business and internal and Australian Government policies, dealing with the management of financial risk, the Ombudsman's office exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.13 Investments

Investments are initially measured at their fair value.

After initial recognition, financial investments are to be measured at their fair values except for:

- a) Loans and receivables which are measured at amortised cost using the effective interest method;
- b) Held-to-maturity investments which are measured at amortised cost using the effective interest method; and
- c) Investments in equity instruments that do not have a quoted market price in an active market and whose fair value cannot be reliably measured and derivatives that are linked to and must be settled by delivery of such unquoted equity instruments, which are measured at cost.

1.14 Derecognising of Financial Assets and Liabilities

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged or cancelled or expires.

1.15 Impairment of Financial Assets

Financial assets are assessed for impairment at each balance date.

Financial Assets held at Amortised Cost

If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Income Statement.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.15 Impairment of Financial Assets (Cont'd)

Financial Assets held at Cost

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

Available for Sale Financial Assets

If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Income Statement.

1.16 Supplier and other Payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.17 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote.

1.18 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.19 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the office where there exists an obligation to restore the property to its original condition. These costs are included in the value of the office's leasehold improvements with a corresponding provision for the 'makegood' taken up.

Revaluations

Fair values for each class of asset are determined as shown below:

Asset Class	Fair Value measured at:
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through the operating result. Revaluation decrements for a class of assets are recognised directly through operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the office using, in most cases, the straight line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease taking into consideration options available at the end of lease.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.19 Property, Plant and Equipment

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2007	2006
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 9 Years	3 to 9 years

Impairment

All assets were assessed for impairment at 30 June 2007. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the office were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

1.20 Intangibles

The office's intangibles comprise purchased software. These assets are carried at cost.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the software is 1 to 8 years (2005-06: 1 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2007.

1.21 Taxation

The office is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 1: Summary of Significant Accounting Policies (Cont'd)

1.22 Reporting of Administered Activities

The office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2007 or in the comparative financial year.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 2: Events occurring after the Balance Sheet Date

No significant events occurred after balance date.

	2007 \$	2006 \$
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NOTE 3: Revenue

Note 3A: Revenues from Government

Appropriations for outputs	17,579,000	17,035,000
Total revenues from government	17,579,000	17,035,000

Note 3B: Sale of Goods and Rendering of Services

Rendering of services to:

Rendering of services – related entities	442,586	471,564
Rendering of services – external entities	883,900	877,792
Total rendering of services	1,326,486	1,349,356
Total sale of goods and rendering of services	1,326,486	1,349,356

Note 3C: Other Revenue

Resources received free of charge	18,000	19,000
Total other revenue	18,000	19,000

Gains

Note 3D: Sale of Assets

Infrastructure, plant and equipment

Proceeds from sale	-	-
Carrying value of assets sold	-	-
Selling expense	-	-
Net gain from sale of assets	-	-

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007 \$	2006 \$
NOTE 4: Operating Expenses		
<u>Note 4A: Employee Benefits</u>		
Wages and salary	11,109,866	9,334,228
Superannuation	1,795,510	1,702,145
Leave and other entitlements	226,222	158,892
Other employee expenses	162,545	260,894
Separation and redundancies	129,593	131,787
Total employee expenses	13,423,736	11,587,946
<u>Note 4B: Suppliers</u>		
Provision of goods from related entities	-	-
Provision of goods from external entities	316,567	489,521
Rendering of services from related entities	754,945	883,697
Rendering of services from external entities	2,383,435	2,575,246
Operating lease rentals ¹	1,004,159	1,091,514
Workers' compensation premiums	107,679	67,216
Total supplier expenses	4,566,785	5,107,194
¹ These comprise minimum lease payments only.		
<u>Note 4C: Depreciation and Amortisation</u>		
<u>Depreciation</u>		
Other infrastructure, plant and equipment	458,742	444,090
Total depreciation	458,742	444,090
<u>Amortisation</u>		
Intangibles – Computer Software	228,490	178,767
Total depreciation and amortisation	687,232	622,857

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007 \$	2006 \$
<u>Notes 4D: Losses from Asset Sales</u>		
Infrastructure, plant and equipment		
Proceeds from sale	2,692	5
Carrying value of assets sold	42,581	64,690
Selling expense	-	-
Intangibles		
Proceeds from sale	-	-
Carrying value of assets sold	2,031	-
Selling expense	-	-
Total losses from asset sales	41,920	64,685

NOTE 5: Financial Assets

Note 5A: Cash

Cash at bank and on hand	58,634	332,850
Total cash	58,634	332,850

Note 5B: Receivables

Goods and services	309,001	98,653
Net GST receivable from the Australian Taxation Office	92,601	125,437
Appropriation receivable – for existing outputs	4,690,735	4,089,000
Total receivables	5,092,337	4,313,090

All receivables are current assets. There is no requirement for an allowance for doubtful debts. Credit terms are net 30 days (2006: 30 days).

Receivables (gross) are aged as follows:

Not Overdue	5,091,724	4,312,517
Overdue by:		
less than 30 days	113	-
30 to 60 days	-	-
61 to 90 days	-	-
more than 90 days	500	573
Total receivables (gross)	5,092,337	4,313,090

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007 \$	2006 \$
NOTE 6: Non-Financial Assets		
<u>Note 6A: Infrastructure, Plant and Equipment</u>		
Leasehold improvements		
At fair value	1,430,288	1,109,640
Accumulated depreciation	(459,036)	(298,354)
Total leasehold improvements	<u>971,252</u>	<u>811,286</u>
Plant and equipment		
At fair value	1,455,286	1,213,829
Accumulated depreciation	(584,178)	(344,535)
Total plant and equipment	<u>871,108</u>	<u>869,294</u>
Total Infrastructure, Plant and Equipment	<u>1,842,360</u>	<u>1,680,580</u>

During the year ended 30 June 2005, all material tangible assets were valued by an independent valuer, Hyman Valuations Pty Limited. Other tangible non-financial assets were valued by the office. The office assessed the fair value of such assets by reference to the written down value of the assets and the current replacement cost.

Formal valuations are generally undertaken every three years. In between formal revaluations the office monitors the assets ensuring the fair value of the assets is materially correct. This is conducted annually and assessed as per above.

No indicators of impairment were found for infrastructure, plant and equipment

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 6: Non-Financial Assets (Cont'd)

Note 6B: Analysis of Infrastructure, Plant and Equipment

TABLE A

Reconciliation of the opening and closing balances of property, plant and equipment (2006–07)

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2006			
Gross Book Value	1,109,640	1,213,829	2,323,469
Accumulated Depreciation	(298,354)	(344,535)	(642,889)
Opening Net Book Value	811,286	869,294	1,680,580
Additions:			
by purchase	402,002	261,101	663,103
Net revaluation increment/(decrement)	-	-	-
Reclassification	(13,565)	13,565	-
Depreciation expense	(201,931)	(256,811)	(458,742)
Disposals			
Other disposals	(26,540)	(16,041)	(42,581)
As at 30 June 2007			
Gross Book Value	1,430,288	1,455,286	2,885,574
Accumulated depreciation	(459,036)	(584,178)	(1,043,214)
Closing Net Book Value	971,252	871,108	1,842,360

TABLE B

Reconciliation of the opening and closing balances of property, plant and equipment (2005–06)

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2005			
Gross Book Value	812,438	866,280	1,678,718
Accumulated Depreciation	(188,724)	(125,544)	(314,268)
Opening Net Book Value	623,714	740,736	1,364,450
Additions:			
by purchase	464,102	359,747	823,849
Net revaluation increment/(decrement)	-	-	-
Depreciation expense	(219,062)	(225,028)	(444,090)
Disposals			
Other disposals	(57,468)	(6,161)	(63,629)
As at 30 June 2006			
Gross Book Value	1,109,640	1,213,829	2,323,469
Accumulated depreciation	(298,354)	(344,535)	(642,889)
Closing Net Book Value	811,286	869,294	1,680,580

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007	2006
	\$	\$

NOTE 6: Non-Financial Assets (Cont'd)

Note 6C: Intangibles

Computer software:

Purchased – at cost	1,128,915	946,593
Accumulated amortisation	(722,903)	(520,996)
Total Intangibles (non-current)	406,012	425,597

No indicators of impairment were found for intangible assets

TABLE C
Reconciliation of opening and closing balances of intangibles

Item	Computer software purchased 2006–07	Computer software purchased 2005–06
	\$	\$
As at 1 July		
Gross book value	946,593	734,635
Accumulated amortisation	(520,996)	(346,403)
Net book value 1 July	425,597	388,232
Additions:		
Purchase/Internally developed	210,936	217,193
from acquisitions of entities or operations (including restructuring)	-	-
Reclassifications	-	-
Amortisation	(228,490)	(178,767)
Impairments recognised in the operating result	-	-
Other movements	-	-
Disposals:		
from disposal of entities or operations (including restructuring)	-	-
other disposals	(2,031)	(1,061)
Net book value 30 June	406,012	425,597
Net book value as of 30 June represented by:		
Gross book value	1,128,915	946,593
Accumulated amortisation	(722,903)	(520,996)
Closing Net Book Value	406,012	425,597

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 6: Non-Financial Assets (Cont'd)

	2007 \$	2006 \$
<u>Note 6D: Other Non-Financial Assets</u>		
Prepayments	<u>211,401</u>	<u>168,267</u>

All other non-financial assets are current assets.

NOTE 7: Payables

Note 7A: Supplier Payables

Trade creditors and accruals	<u>657,064</u>	<u>656,091</u>
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All supplier payables are current liabilities. Settlement is usually made net 30 days.

Note 7B: Other Payables

Prepaid income	401,073	319,967
Lease incentives	<u>115,299</u>	<u>113,480</u>
Total other payables	<u>516,372</u>	<u>433,447</u>

Other payables are represented by:

Current	430,240	345,300
Non Current	<u>86,132</u>	<u>88,147</u>
Total other payables	<u>516,372</u>	<u>433,447</u>

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007	2006
	\$	\$

Note 8: Provisions

Note 8A: Employee Provisions

Salaries and wages	98,173	92,842
Leave	2,787,715	2,500,427
Superannuation	154,169	122,679
Separation and redundancy	38,797	-
Total employee provisions	3,078,854	2,715,948

Employee provisions are represented by:

Current	2,714,768	2,417,267
Non-current	364,086	298,681
Total employee provisions	3,078,854	2,715,948

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date are \$810,860 (2006: \$727,297), in excess of one year \$1,976,855 (2006: \$1,773,130).

	2007	2006
	\$	\$

Note 8B: Other Provisions

Provision for 'makegood'	286,792	306,049
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Other provisions are represented by:

Current	41,320	48,007
Non-current	245,472	258,042
Total Other Provisions	286,792	306,049

Carrying amount at the beginning of the year	306,049	188,916
Additional provisions made	-	117,133
Amounts reversed	(19,257)	-
Carrying amount at the end of the year	286,792	306,049

The office currently has 7 (2006:8) agreements for the leasing of premises which have provisions requiring the office to restore the premises to their original condition at the conclusion of the lease. The Ombudsman's office has made a provision to reflect the present value of these obligations.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

	2007 \$	2006 \$
Note 9: Cash Flow Reconciliation		
<i>Reconciliation of cash per Balance Sheet to Cash Flow Statement</i>		
Cash at year end per Cash Flow Statement	58,634	332,850
Cash at year end per Balance Sheet	58,634	332,850
<i>Reconciliation of operating result to net cash from operating activities:</i>		
Operating result	203,813	1,020,674
Depreciation/amortisation	687,232	622,857
Net loss/(gain) on disposal of assets	41,920	64,685
(Increase)/Decrease in receivables	(1,809,247)	(3,084,603)
(Increase)/Decrease in prepayments	(43,134)	(137,203)
Increase/(Decrease) in employee provisions	362,906	581,720
Increase/(Decrease) in supplier payables	973	113,775
Increase/(Decrease) in other payables	82,925	(82,538)
Increase/(Decrease) in other provisions	(19,257)	117,133
<i>Net cash from/(used by) operating activities</i>	<u>(491,869)</u>	<u>(783,500)</u>

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

Note 10: Executive Remuneration

The number of executives who received or were due to receive total remuneration of \$130,000 or more:

	2007 \$	2006 \$
	Number	Number
\$130,000 to \$144,999	-	2
\$145,000 to \$159,999	-	1
\$160,000 to \$174,999	1	1
\$175,000 to \$189,999	3	-
\$190,000 to \$204,999	1	-
\$235,000 to \$249,999	1	-
\$250,000 to \$264,999	1	1
\$265,000 to \$279,999	-	1
\$295,000 to \$309,999	1	-
\$310,000 to \$324,999	-	1
\$325,000 to \$339,999	1	-
Total	9	7

The aggregate amount of total remuneration of executives shown above

2,046,304 1,446,102

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above

- -

Note 11: Remuneration of Auditors

Financial statement audit services are provided free of charge to the office.

Audit Services

The fair value of the services provided was:
AEIFRS opening balance sheet

18,000 17,000
- 2,000
Total **18,000** 19,000

No other services were provided by the Auditor-General.

Note 12: Average Staffing Levels

The average staffing levels for the office during the year were :

146 142

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 13: Financial Instruments

Note 13A: Terms, Conditions and Accounting Policies

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash	5A	Cash is recognised at their nominal amounts.	The office holds bank accounts with a commercial bank. Monies in the office's bank accounts are swept into the Official Public Account nightly.
Trade and other receivables	5B	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2006: 30 days).

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 13: Financial Instruments (Cont'd)

Note 13A: Terms, Conditions and Accounting Policies (cont)

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Liabilities		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Trade creditors and accruals	7A	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 13: FINANCIAL INSTRUMENTS (Cont'd)

Note 13B: Interest Rate Risk

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate						Non-Interest Bearing		Total		Weighted Average Effective Interest Rate		
				1 year or less		1 to 5 years		> 5 years								
		2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	%	%
Financial Assets																
Cash at bank	5A	55,933	330,149	-	-	-	-	-	-	2,701	2,701	58,634	332,850	0.0	0.0	
Trade and other receivables	5B	-	-	-	-	-	-	-	-	309,001	98,653	309,001	98,653	n/a	n/a	
Appropriation receivable	5B	-	-	-	-	-	-	-	-	4,690,735	4,089,000	4,690,735	4,089,000	n/a	n/a	
Total		55,933	330,149	-	-	-	-	-	-	5,002,437	4,190,354	5,058,370	4,520,503			
Total Assets										7,610,744	6,920,384					
Financial Liabilities																
Trade creditors	7A	-	-	-	-	-	-	-	-	657,064	656,091	657,064	656,091	n/a	n/a	
Total		-	-	-	-	-	-	-	-	657,064	656,091	657,064	656,091			
Total liabilities										4,539,082	4,111,535					

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 13: Financial Instruments (Cont'd)

Note 13C: Net Fair Values of Financial Assets and Liabilities

		2007		2006	
	Notes	Total carrying amount \$	Aggregate net fair value \$	Total carrying amount \$	Aggregate net fair value \$
Financial Assets					
Cash at bank	5A	58,634	58,634	332,850	332,850
Trade and other receivables	5B	309,001	309,001	98,653	98,653
Appropriation receivable	5B	4,690,735	4,690,735	4,089,000	4,089,000
Total Financial Assets		<u>5,058,370</u>	<u>5,058,370</u>	<u>4,520,503</u>	<u>4,520,503</u>
Financial Liabilities					
Trade creditors	7A	657,064	657,064	656,091	656,091
Total Financial Liabilities		<u>657,064</u>	<u>657,064</u>	<u>656,091</u>	<u>656,091</u>

Note 13D: Credit Risk Exposures

The office's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The office has no significant exposures to or concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

financial statements

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 14: Appropriations

Note 14A: Acquittal of Authority to Draw cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2007	2006
	\$	\$
Balance carried from previous year	3,400,034	2,147,613
Appropriation Act:		
Appropriation Act (No.1)	16,396,000	11,443,000
Appropriation Act (No.3)	1,183,000	5,592,000
Departmental adjustments by the Finance Minister (Appropriation Acts)	-	-
Comcover receipts (Appropriation Act s13)	-	-
Advance to the Finance Minister	-	-
Reductions:		
Prior years	-	-
Current years	-	-
FMA Act:		
Refunds credited (FMA s30)	-	-
Appropriations to take account of recoverable GST (FMA s30A)	513,047	580,308
Annotations to 'net appropriations' (FMA s31)	1,354,577	1,357,559
Total appropriation available for payments	22,846,658	21,120,480
Cash payments made during the year (GST inclusive)	18,095,330	17,720,446
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	4,751,328	3,400,034
Represented by:		
Cash at bank and on hand	58,634	332,850
Departmental appropriations receivable	4,631,735	3,000,000
GST Receivable from the ATO	92,601	125,437
GST payable from Supplies	(59,733)	(67,221)
GST receivable from Customers	28,091	8,968
Total	4,751,328	3,400,034

There were no savings offered up during the year and there have been no savings offered up in previous years that are still ongoing.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 14: Appropriations (Cont'd)

Note 14B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for other than Ordinary Annual Services Appropriations

Particulars	Operating	
	2007	2006
	\$	\$
Balance carried from previous year	1,089,000	-
Appropriation Act:		
Appropriation Act (No.2)	-	40,000
Appropriation Act (No.4)	59,000	1,049,000
Total appropriation available for payments	1,148,000	1,089,000
Cash payments made during the year (GST inclusive)	1,089,000	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	59,000	1,089,000
Represented by:		
Appropriation receivable	59,000	1,089,000
Total	59,000	1,089,000

NOTE 15: Reporting of Outcomes

Note 15A: Net Cost of Outcome Delivery

	Outcome 1	
	2007	2006
	\$	\$
Expenses		
Administered	-	-
Departmental	18,719,673	17,382,682
Total expenses	18,719,673	17,382,682
Costs recovered from provision of goods and services to the non-government sector		
Administered	-	-
Departmental	883,900	877,792
Total costs recovered	883,900	877,792
Other external revenues		
Administered	-	-
Total Administered	-	-
Departmental	442,586	471,564
Total other external revenues	442,586	471,564
Net cost/(contribution) of outcome	17,393,187	16,033,326

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

NOTE 15: Reporting of Outcomes (Cont'd)

Note 15B: Major Classes of Departmental Revenues and Expenses by Output

	Outcome 1					
	Output 1		Output 2		Outcome 1 Total	
	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$
Departmental expenses						
Employees	12,669,322	9,270,357	754,414	2,317,589	13,423,736	11,587,946
Suppliers	4,310,132	4,085,755	256,653	1,021,439	4,566,785	5,107,194
Depreciation and amortisation	648,610	498,286	38,622	124,571	687,232	622,857
Other	39,564	51,748	2,356	12,937	41,920	64,685
Total departmental expenses	17,667,628	13,906,146	1,052,045	3,476,536	18,719,673	17,382,682
Funded by:						
Revenues from government	16,591,060	13,628,000	987,940	3,407,000	17,579,000	17,035,000
Sales of goods and services	1,326,486	1,079,485	-	269,871	1,326,486	1,349,356
Other non-taxation revenues	-	-	-	-	-	-
Total departmental revenues	17,917,546	14,707,485	987,940	3,676,871	18,905,486	18,384,356

Direct costs for Outputs 1 and 2 are allocated primarily on staff numbers.

Indirect costs, such as corporate support expenses, are allocated on staff numbers and square metres occupied. The provision of services by corporate support areas is predominantly driven by staff demands. Some exceptions exist, but testing has shown that other, more complex allocation methods do not produce a materially different result from that produced by this simple allocation method.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

Note 16: Act of Grace Payments, Waivers and Defective Administration Scheme

No Act of Grace payments were made during the reporting period (2006: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997*.

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glossary

AAADM	Automated Assistance in Administrative Decision Making	CDDA	Compensation for Detriment Caused by Defective Administration
AAT	Administrative Appeals Tribunal	CDEP	Community Development Employment Projects
ACC	Australian Crime Commission	Complaints Act	<i>Complaints (Australian Federal Police) Act 1981</i>
ACLEI	Australian Commission for Law Enforcement Integrity	Crimes Act	<i>Crimes Act 1914</i>
ACT	Australian Capital Territory	CRRS	Complaints Resolution and Referral Service
ADF	Australian Defence Force	CSA	Child Support Agency
AFC	Australian Film Commission	Cth	Commonwealth
AFP	Australian Federal Police	DEN	Disability Employment Network
AFP Act	<i>Australian Federal Police Act 1979</i>	DEWR	Department of Employment and Workplace Relations
ANAO	Australian National Audit Office	DFAT	Department of Foreign Affairs and Trade
ANU	Australian National University	DFO	Defence Force Ombudsman
ANZOA	Australian and New Zealand Ombudsman Association	DHA	Defence Housing Australia
AO	Officer of the Order of Australia	DHS	Department of Human Services
APS	Australian Public Service	DIAC	Department of Immigration and Citizenship
APSC	Australian Public Service Commission	DIMA	Department of Immigration and Multicultural Affairs
ARC	Administrative Review Council	DSP	Disability Support Pension
ARO	Authorised Review Officer	DVA	Department of Veterans' Affairs
ASIC	Australian Securities and Investments Commission	EL	Executive Level
ASIO	Australian Security Intelligence Organisation	FaCSIA	Department of Families, Community Services and Indigenous Affairs
ATO	Australian Taxation Office	FOI	freedom of information
AusAID	Australian Agency for International Development	FOI Act	<i>Freedom of Information Act 1982</i>
AWA	Australian Workplace Agreement	FRB	Fairness and Resolution Branch, Department of Defence
CCC	Customer Contact Centre		
CCTV	Closed circuit television		

GEERS	General Employee Entitlements and Redundancy Scheme	Ombudsman Act	<i>Ombudsman Act 1976 (Cth)</i>
GIC	General Interest Charge	PAGES	Provider of Australian Government Employment Services
GSL	GSL (Australia) Pty Ltd	PCO	Public Contact Officer
GST	goods and services tax	PCT	Public Contact Team
Hon.	Honourable	PIO	Postal Industry Ombudsman
IDAG	Immigration Detention Advisory Group	PM&C	Department of Prime Minister and Cabinet
IDC	Immigration Detention Centre	PNG	Papua New Guinea
IGADF	Inspector-General of the Australian Defence Force	Privacy Act	<i>Privacy Act 1988 (Cth)</i>
IGIS	Inspector-General of Intelligence and Security	Prof.	Professor
IOI	International Ombudsman Institute	Qld	Queensland
IPP	Information Privacy Principle	RAAF	Royal Australian Air Force
IT	information technology	RAP	Reconciliation Action Plan
ITSA	Insolvency and Trustee Service Australia	RRT	Refugee Review Tribunal
IWG	Indigenous Working Group	s	section
JCPAA	Joint Committee of Public Accounts and Audit	SA	South Australia
MARA	Migration Agents Registration Authority	SAM	Single Access Mechanism
Migration Act	<i>Migration Act 1958 (Cth)</i>	SES	Senior Executive Service
MP	Member of Parliament	SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>
MRC	Military Rehabilitation and Compensation	SSAT	Social Security Appeals Tribunal
MRT	Migration Review Tribunal	Surveillance Devices Act	<i>Surveillance Devices Act 2004 (Cth)</i>
NOC	National Ombudsman Commission of Indonesia	TAS	Tasmania
NSA	Newstart Allowance	TIA Act	<i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>
NSW	New South Wales	TIO	Telecommunications Industry Ombudsman
NT	Northern Territory	TRA	Trades Recognition Australia
OH&S	occupational health and safety	UN	United Nations
OH&S Act	<i>Occupational Health and Safety Act 1991 (Cth)</i>	VIC	Victoria
		WA	Western Australia

compliance index

This is a guide to the report's compliance with the Requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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Correction of material errors in previous annual report

No material errors have been identified in the
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