



The Honourable Clare Martin MLA
Chief Minister
Parliament House
DARWIN NT 0801

24 November, 2003

Dear Chief Minister

In accordance with the provisions of Section 28(1) of the *Ombudsman (Northern Territory) Act 1978*, it gives me great pleasure to submit to you the Annual Report on the activities and operations of the Office of the Ombudsman for the year ending 30 June 2003.

I advise in respect of my duties as an Accountable Officer, and to the best of my knowledge and belief:

- (a) proper records of all transactions affecting the Office were kept and employees under my control observed the provisions of the *Financial Management Act*, the *Financial Management Regulations* and *Treasurer's Directions*;
- (b) procedures within the Office afforded proper internal control, and a current description of these procedures can be found in the *Accounting and Property Manual* which has been prepared in accordance with the *Financial Management Act*;
- (c) no indication of fraud, malpractice, major breach of legislation or delegations, major error in or omission from the accounts and records existed;
- (d) in accordance with Section 15 of the *Financial Management Act* the internal audit capacity available to the Office is adequate and the results of internal audits were reported to me;
- (e) the financial statements included in this Annual Report have been prepared from proper accounts and records and are in accordance with Part 2, Section 5 of the *Treasurer's Directions* where appropriate; and
- (f) all actions have been in compliance with all Employment Instructions issued by the Commissioner for Public Employment.

In addition, I advise that in relation to items (a) and (e) the Chief Executive Officer (CEO) of DCIS has advised that to the best of her knowledge and belief, proper records are kept of transactions undertaken by DCIS on my behalf, and the employees under her control observe the provisions of the *Financial Management Act*, the *Financial Management Regulations* and *Treasurer's Directions*.

The CEO of DCIS also advises all financial reports prepared by DCIS for this Annual Report, have been prepared from proper accounts and records and are in accordance with *Treasurer's Directions* Part 2, Section 5 and Part 2, Section 6, where appropriate.

Yours sincerely

PETER BOYCE
OMBUDSMAN



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OMBUDSMAN'S OVERVIEW

FOREWORD

This is the twenty-fifth Annual Report of the Office of the Ombudsman for the Northern Territory and my ninth as Ombudsman.

The purpose of this report is to:

- assure the Legislative Assembly that I, as Ombudsman, have carried out my powers and functions in a proper and accountable manner;
- provide feedback to the Northern Territory community about issues which are arising in relation to the provision of services by the public sector as highlighted by complaints received by my Office; and
- demonstrate to the community that the Office of the Ombudsman has operated efficiently and provides an effective complaint resolution mechanism.

This year, unlike the previous year which saw a new government elected, major changes to agency arrangements and the introduction of the *Information Act*, has been one of consolidation for the Office. An organisational restructure has been completed, staffing levels have now stabilised and a number of positions have been permanently filled. The year saw a 27% increase in approaches to the Office, a focus on improved case management and a number of significant investigations completed.

The review of the *Ombudsman (Northern Territory) Act* was completed in April 2003 with the Steering Committee reporting to the Chief Minister. At the time of completing this report Government had not made any decisions on the report.

The year in overall terms was again busy and challenging, particularly in regard to the new staff who joined the Office. I am pleased to note that my staff have responded well to the challenges and I believe the Office is well positioned to provide an increasingly high quality service to the community and the NT Public Sector generally.

OVERALL PERFORMANCE

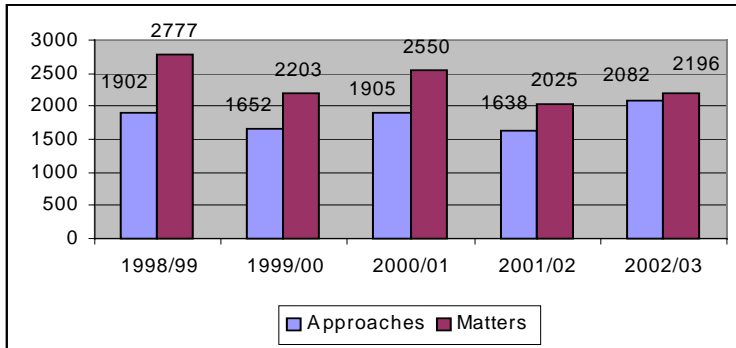
WORKLOAD

Number of Approaches Received and Matters Raised

“Approaches” are the number of contacts made by individuals or entities to the Office seeking our assistance and include enquiries and complaints. “Matters raised” are the specific issues raised in a complaint and can be more than one per complaint.



Graph 1: Comparison of total approaches and matters over past 5 years



During the financial year the Ombudsman's Office received 2082 approaches which consisted of 2196 matters of complaint. When comparing these figures to last financial year there has been an increase of 27% (444) in the number of approaches and 8% (171) in the number of matters of complaint.

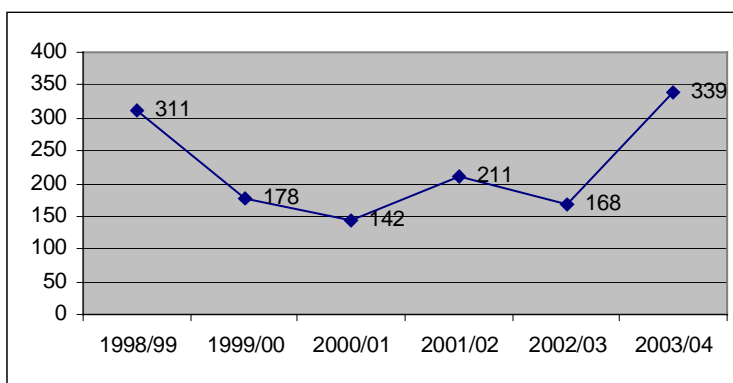
I believe this increase in workload was primarily due to the following events:

- stabilisation of the new administrative arrangements;
- better targeting of the funds utilised for access and awareness;
- stabilisation of Office staff, both in Darwin and Alice Springs; and
- implementation of the telephone system for prisoners in Correctional Centres in Darwin and Alice Springs.

Number of Approaches Carried Forward to Next Year

Graph 2 below depicts the number of complaints carried forward from one year to the next; i.e. 339 complaints remained open at the end of 2002/03 and have therefore been carried forward to the 2003/04 financial year.

Graph 2: Complaints carried forward from the previous five years



Although there were more approaches finalised this financial year than in the previous year, the number of approaches carried forward has increased because it was not possible to finalise approaches at the same rate they were being received,

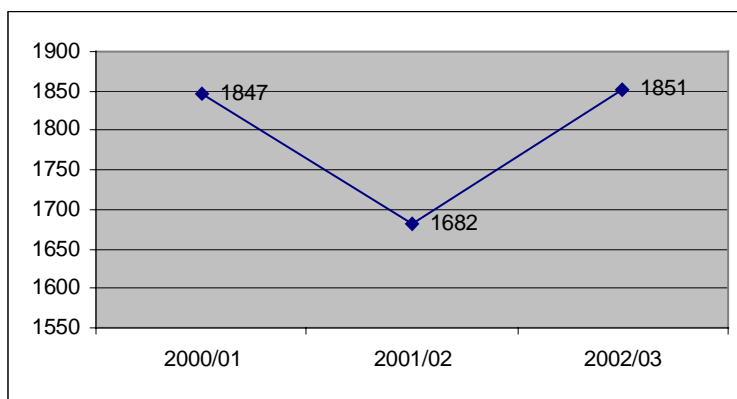


i.e. there was a 27% increase in workload. The Office received 2092 approaches and finalised 1851.

Approaches finalised during the year

Graph 3 depicts the number of approaches finalised over the past three financial years. It can be seen from this that there has been a significant increase in the number of approaches finalised this year (1851) compared to last year (1682). This represents an overall increase of 10% in the output of the Office.

Graph 3: Approaches finalised over the past three years



EFFICIENCY

Table 1 and Graph 4 provide measures of the Ombudsman's overall efficiency in finalising complaints. Table 1 relates to the time taken to close complaints and Graph 4 to the cost per matter.

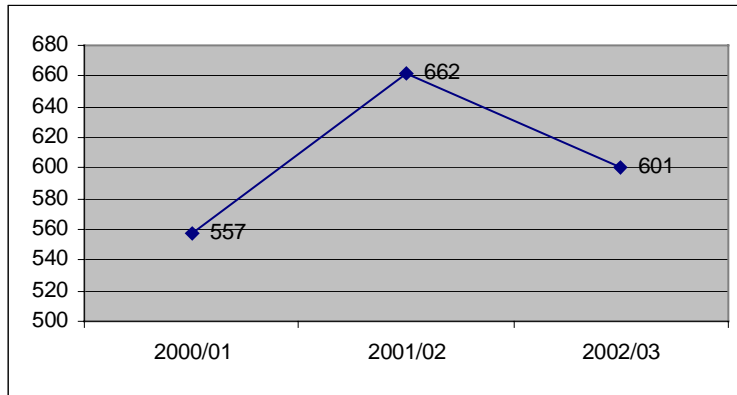
Table 1: Time taken to close complaints

Performance Benchmark	2002/03 Performance
General complaints: 85% of complaints should be finalised within 180 days.	% of complaints meeting target – 75%
Police complaints: 60% of complaints should be finalised within 180 days.	% of complaints meeting target – 66%

It is unfortunate that the performance target in relation to finalising General Complaints was not met. However it is pleasing that the performance target in relation to Police Complaints has been exceeded. Overall I am satisfied with the time taken to resolve complaints, however I would anticipate that general complaints will be resolved as per the performance target next financial year.



Graph 4: Cost per finalised approach over three years (General and Police)



For the purposes of this comparison, the cost per finalised approach is calculated by dividing the total funds expended on the complaint resolution activity (refer to page 39) by the number of approaches made to the Office that were finalised during the year. It can be seen that there has been a decrease from \$662 in 2001/02 to \$601 in 2002/03, which represents a 9% reduction in the overall cost of finalising an approach.

ACHIEVEMENT AGAINST OBJECTIVES SET FOR 2002/03

No	Objective	Achievement
1	Complete the review of the <i>Ombudsman (Northern Territory) Act 1978</i> .	The review of the Act has been finalised in that all submissions have been received and a final report has been provided to the Chief Minister by the Steering Committee.
2	Develop and implement a means of assessing both complainants' and agencies' satisfaction with the Ombudsman's complaint process.	The satisfaction survey form for complainants is drafted, however it is currently being independently assessed prior to being implemented. Anticipate full implementation on 1 January 2004.
3	Develop and implement an updated policy and procedures manual for the Office of the Ombudsman.	A draft policy and procedures manual has been made available to all staff. Implementation is being monitored to determine whether any changes are required before finalising.
4	Develop and implement agreed working arrangements and protocols with at least three major agencies.	Protocols for Corrections, PowerWater Cororation and Territory Housing have been drafted.



2003/04 OBJECTIVES

The objectives I have set for 2003/04 are as follows:

1. Implement the outcomes that ensue as a result of any decisions made by Cabinet in relation to the review of the *Ombudsman (Northern Territory) Act*.
2. Develop and implement some form of feedback survey that can be used by government agencies to assess their satisfaction with the complaint process.
3. Finalise, implement and monitor the complaint handling protocols that have been developed for Corrections, PowerWater Corporation and Territory Housing.

BUDGET SNAPSHOT

The 2002/03 budget for the Agency of the Ombudsman was divided into two separate programs. It should be noted that for budget purposes Treasury has determined that the "Agency" of the Ombudsman is one activity with two separate programs. This ensures the separate budget allocations for the Office of the Ombudsman and the Health and Community Services Complaints Commission are able to be administered together, but maintained as separate statutory entities in accordance with the legislation. The total expenditure for the year was **\$1,854,000**. This expenditure was divided between the two programs as follows:

- the Office of the Ombudsman **\$1,566,000**
- the Health and Community Services Complaints Commission **\$288,000**

NEW CASE MANAGEMENT SYSTEM

A new Case Management System was introduced into the Ombudsman's Office in August 2002. This system replaced what was a very inefficient case registration system and is similar to that utilised by the Health and Community Services Complaints Commission.

The main requirements specified for the new system were:

- the workflow and data collection requirements had to be flexible enough to accommodate each of the different areas (General, Corrections and Police) as they had different processes and procedures;
- strong access and security restrictions due to legislative requirements and the need to ensure information was kept confidential so that only relevant Case Officers could access it;
- easy ability to change system keywords so that identified staff could change the keywords with a minimum of technical knowledge;
- ability of staff to be able to use the system in remote localities, that is in Alice Springs and via a laptop;



-
- ability to undertake powerful searches and ensure cases could be easily found by complainant number, name or other keyword;
 - powerful reporting ability with the capacity to produce both ad hoc and regular reports;
 - production of automatic email reminders;
 - ability to use word templates for form letters and to automatically produce letters and emails; and
 - ability to record free text file notes and summary of complaint progress.

I am pleased to report that the new system has delivered on all the requirements. In conjunction with the implementation of this new system internal complaint handling processes have been reviewed and strengthened and I will comment on this later in the report.

Unfortunately, in the change over from the old to the new it has not been possible to reconcile all the previous statistical information. As a consequence some of the statistics contained in this Annual Report do not reconcile with statistics reported last year. I have provided footnotes where this has occurred.

CONCLUSION

Finally, I wish to record my personal appreciation for the work, support and commitment provided by staff of the Office during the year. Despite budgetary and staffing difficulties throughout the year, my staff continued to provide a dedicated and effective service to the public and other stakeholders.

PETER BOYCE
OMBUDSMAN FOR THE NORTHERN TERRITORY



CHAPTER 1

IMPORTANT ISSUES

USE OF “OWN MOTION” POWER

INTRODUCTION

The use of the own motion power appears to have been raised as an issue of concern in regard to the current review of the *Ombudsman (Northern Territory) Act*. These concerns have been expressed in a number of ways ranging from an unfettered use to inappropriate use and unreasonable use of that power.

Primarily the criticism is from several key agencies against whom the powers to conduct an own motion investigation have been used and - one might comment cynically - where such power has resulted in outcomes that can be seen as being detrimental to the agency.

What is not clear, is whether the critics have fully explored, understood, or considered the merits of the decision as opposed to the agency simply disliking the nature of the power and its potential to disclose maladministration despite there not being a complaint.

BACKGROUND

The own motion power exists in virtually every Ombudsman’s jurisdiction throughout Australia and New Zealand and, indeed, Commonwealth countries. It is universally acknowledged as being a key characteristic of an Ombudsman’s powers, reflecting true independence and application of the objectives of an Ombudsman, ensuring accountability of bureaucracy.

The own motion power enables the Ombudsman to undertake an investigation into a matter of administration where such matter of administration would otherwise be within the jurisdiction of the Ombudsman had a complaint been made by a person or body. The key to the own motion power is that it does not require a complaint to be made.

It is obvious that, in utilising such a power, there needs to be established a basis for doing so in terms of factual matters arising that cause the Ombudsman to consider the use of the power. There appears to be a view that the power is used loosely, too often and without due regard to other mechanisms that might be available. Such mechanisms might be internal review or investigation or a specific complaint by the individual concerned.



What critics of the own motion power do not understand is that the Ombudsman's Offices, and this is so in the Northern Territory, do not have the resources to instigate own motion investigations loosely or without good cause. Indeed, I would argue that the opposite is the case and that all too often, due to a lack of resources and, indeed, expertise, opportunities to conduct own motion investigations are turned down rather than taken up and that anyone with a proper understanding of the role of the Ombudsman might well be critical of a lack of pro-active use of the power.

The own motion power is particularly important in that it does provide an opportunity for the Ombudsman to act proactively to address concerns rather than reactively on the basis of a complaint made directly to the Office. What needs to be understood is that, through the important role of handling complaints against government agencies, the Ombudsman has developed a broad based experience and understanding as to how agencies are operating in terms of providing services. The use of the own motion power invariably requires an assessment as to whether there is a justification for its use and whether it will ultimately lead to any realistic outcome. Accordingly, there are some key criteria that need to be addressed before deciding to exercise the own motion powers.

KEY CRITERIA

The key criteria that need to be addressed are as follows:

- There must be a substantive issue raised and brought to the attention of the Ombudsman, not merely a speculative matter which would have the Ombudsman going on a 'fishing expedition'.
- Before determining that an own motion investigation should proceed, the Ombudsman would invariably make appropriate inquiries to establish whether there is any need for such an investigation to be initiated. The current legislation does not specify this as being a requirement but it has invariably been the practice. Further, in most cases where an own motion power has been considered, consultation has taken place with the agency concerned to seek their input into the process and give them an opportunity to provide any information that would assist in making such a decision.
- A decision to conduct an own motion investigation is a discretionary decision available to the Ombudsman and it is not necessary to have received a complaint from any person or body to initiate such an investigation.
- An own motion investigation can be utilised where there has been:
 - an allegation of substantial and serious impropriety;
 - an allegation which has received sustained public interest and controversy;
 - where there exists prima facie evidence of substance to support an allegation and there is no alternative independent inquiry proposed or available and it is in the public interest for the Ombudsman to take up the matter;



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- where an allegation has been made which appears to give rise to systemic issues which need to be addressed in the public interest or to avoid further allegations of the same nature;
 - where an anonymous complaint raising substantial and serious issues has been received and such complaint can be investigated in the absence of any involvement of a specific complainant.

The above examples all involve situations where the Ombudsman may initiate an own motion investigation in the absence of any direct complaint by aggrieved persons with sufficient interest in the matter. There is also scope for an own motion investigation to derive directly from a particular complaint where there is a need for further investigation to pursue wider issues than those raised specifically by the complainant.

Similarly, in some cases the use of the own motion powers is an appropriate discreet method of pursuing a matter without involving a complainant. For example, one of the few areas where own motion investigations have been used is in the context of Correctional Services in the Northern Territory. In some instances complaints raised by prisoners have identified systemic issues and/or significant issues such that a formal investigation is warranted. There is often not a need to further involve a prisoner, or indeed to provide a prisoner with other information and, in such cases, an own motion investigation is entirely appropriate in my view.

COMMENT

The suggestion that the own motion power has been misapplied, misused or used inappropriately does not, in my view, have any basis in fact. It has been used sparingly and has been used within the statutory parameters of current legislation. To suggest it is an unfettered power is to misunderstand the purpose of the power and the strict statutory requirements that apply in terms of exercising powers under the relevant legislation. It also misunderstands that the Ombudsman's Office epitomises processes of procedural fairness and these are enshrined within the relevant provisions of the Act. Thus, where an own motion investigation is conducted, an agency must be given all appropriate opportunities to be aware of the nature of the investigations and to comment on any matters, particularly any adverse comment, contained in any draft report. Importantly, the Ombudsman does not have determinative powers and can make recommendations only.

A CEO of an agency or, indeed, a Minister responsible for that agency, can approach the Ombudsman and raise a specific matter for the Ombudsman's consideration. In appropriate cases the Ombudsman can utilise the own motion power to conduct an investigation and address the matter so as to alleviate any sustained criticism against the agency for not addressing the matter appropriately. I, myself, have initiated such an own motion investigation on several occasions.



In one case, for example, the CEO of Transport and Works asked me to investigate ongoing allegations concerning possible illegal and/or corrupt activities on the part of public servants in Alice Springs in regard to public works contracts.

In another case, the Commissioner of Police purported to carry out an investigation in regard to serious allegations made against a senior police officer through the media. Having completed the investigation the Commissioner referred the matter to me with a view to seeking my input as to whether the investigation had reached appropriate conclusions. In the first instance I was critical of the investigation and recommended that further inquiries be instigated. There was, as a result, a challenge to the Ombudsman's jurisdiction by the officer concerned. To address the matter, I instigated an own motion investigation which resulted in my jurisdiction being challenged in court.

The court ruled that there was in fact no own motion power available to the Ombudsman in the context of a matter which related to the conduct of a police officer. This was because the court ruled that, due to the specific wording of the legislation, an own motion investigation was only 'authorised' if it was within the specific provisions of the Act. In regard to complaints concerning the conduct of individual police officers, there were specific restrictions and limitations such that the court ruled an own motion investigation could not be 'authorised' unless there had been a complaint by a person aggrieved and who had sufficient interest in the process. The end result was that the Commissioner was denied the ability to refer what were, in effect, internal investigations involving significant and serious allegations of police misconduct to the independent oversight agency for review and comment. This means that the Commissioner could not utilise an independent accountability mechanism which would help the Commissioner in terms of promoting, to the public at large, the integrity of the NT Police.

SUMMARY

The "Own Motion" power is a corner stone of the Ombudsman's legislation. In regard to the current legislation, the power is sufficiently broadly expressed so as to address any matters that might arise and is effective as it stands. It is not unfettered and it must be exercised within the ambit of the legislation. The only exception arises in regard to police complaints and this is an area where the Act obviously, in my view, needs to be amended so as to ensure that the Ombudsman does have the power to conduct own motion investigations in regard to allegations as to the conduct of individual police officers regardless of whether or not there has been a specific complaint made. This would allow the Commissioner to refer matters, if he wished to do so, and for the Ombudsman to address matters within the criteria set out.



THE POWER OF THE OMBUDSMAN TO OBTAIN INFORMATION DURING THE COURSE OF MAKING PRELIMINARY INQUIRIES INTO A COMPLAINT

Section 17A of the *Ombudsman (Northern Territory) Act* enables the Ombudsman to make preliminary or minor inquiries in a number of specific circumstances, including:

- determining whether or not the Ombudsman is authorised to investigate the action complained of;
- if the Ombudsman is so authorised, determining whether or not the Ombudsman may, in his discretion, decide not to investigate the action complained of;
- determining the complaint without the need for an investigation under the Act where the Ombudsman is of the opinion, having regard to the nature and seriousness of the complaint, that it may be resolved expeditiously.

Section 17A(2) states:

‘An inquiry under subsection (1) is not an investigation for the purposes of section 19 of this Act.’

The fundamental objective when a complaint is received against an agency is to try and resolve the complaint at the lowest possible appropriate level. Thus the ability to conduct preliminary and minor inquiries has become a very important process for the Ombudsman in resolving complaints.

Within the parameters of trying to resolve a complaint expeditiously, the Ombudsman’s Office has developed the practice of utilising alternative dispute resolution processes to avoid the need to revert to a more formal resource intensive process such as investigation.

In addition, the preliminary inquiry process has been utilised as an information gathering process to enable a proper assessment of a complaint to be made and, having made that assessment, to determine whether the complaint can be resolved expeditiously without the need to proceed to a full and formal investigation.

The current legislation does not specifically oblige any agency or body that is subject to the jurisdiction of the Ombudsman to provide information and to assist the Ombudsman. However, this is clearly implicit in the nature of the legislation and has always been an inferred responsibility on the part of agencies or entities that are subject to the Ombudsman’s jurisdiction.

The key to the success of the role of the Ombudsman is that he or she does not have determinative powers and that he or she works co-operatively with all parties in order to reach a resolution. The key to the integrity of this process is the ability of the Ombudsman to obtain all relevant information pertaining to a complaint so as to be able to ascertain what has happened, why it has happened and to provide a complainant with a meaningful explanation and possible resolution.

In the main, when a complaint is received by this Office and an agency is advised of the complaint, there has been no apparent reluctance on the part of the agency to



provide full and frank information pertaining to the complaint. My officers have generally been provided with complete access to all information held by the agency concerned including, if requested, access to the agency's files directly to peruse and to extract any information considered relevant.

Since the Ombudsman commenced operating in the Northern Territory on 1 July 1978 it is my understanding, that the general belief has been that section 20(3) of the Act specifically provided the basis by which agencies and, in particular, individuals employed within agencies were able to provide the Ombudsman with information without hesitation or restriction. I set out below the relevant provisions:

'Subject to section 22, no obligation to maintain secrecy or other restriction upon disclosure of information obtained by or furnished to an officer, member or employee of or within any department or authority to which this Act applies, whether imposed by any law enforced in the Territory or otherwise, applies to or in relation to the disclosure of information for the purposes of an investigation by the Ombudsman under this Act.'

A problem has however recently arisen in relation to the applicability of this section to preliminary inquiries. The Department of Health and Community Services (DHCS) sought an opinion as to whether they could provide information to the Ombudsman during a preliminary inquiry in the face of the secrecy provisions contained in section 97 of the *Community Welfare Act*. The legal opinion provided to the DHCS stated that the preliminary inquiry was not an investigation for the purposes of section 19 of the Act. The effect of this opinion is that the Ombudsman is not entitled, during the preliminary inquiry process, to receive any information in regard to a complaint, from an agency, that is the subject of a secrecy provision such as is contained in section 97 of the *Community Welfare Act*.

I do not agree with the opinion but I understand totally that the agency is bound to heed the advice so as not to expose itself to any suggestion that it is breaching the provisions of section 97 of the *Community Welfare Act*.

In my view, the advice provided is more far reaching than the specific situation it purported to address. Effectively, the advice would suggest that no agency that is subjected to any form of secrecy provision may provide the Ombudsman with any information during the preliminary inquiry process. The rationale is that a preliminary inquiry is not an investigation and therefore section 20(3) of the Act cannot operate and there is no lawful basis for an agency to provide information to the Ombudsman in respect to a complaint. This, of course, defeats the intent of the legislation and, indeed, the specific intent of section 17A whereby a complaint can be resolved expeditiously.

It also brings about the unfortunate situation where the Ombudsman is forced to consider commencing a formal investigation solely to utilise the specific provisions of the legislation so that he or she could obtain information by subpoena, or to require a person to attend before the Ombudsman to give evidence.



In many instances when a complaint is received by the Ombudsman, the first step is to write to the agency asking them to respond to the concerns raised and to provide relevant information as to what has happened. If this step is precluded by the fact that the agency cannot provide information unless a formal investigation has commenced, then the very concept of the role of the Ombudsman is being undermined.

The advice also calls into question whether an employee of a Government Agency, Local Government Council or a member of the NT Police is entitled to provide the Ombudsman with any information if they would be seen to be in breach of any code of conduct that might apply in regard to their organisations. If the code of conduct does not specifically provide for information to be provided to the Ombudsman then the legal advice argues that the code would prevent any inappropriate disclosure to a third party such as the Ombudsman.

The concerns raised by the opinion obtained by the DHCS have been made known to the Steering Committee considering the review of the Ombudsman Act. I would particularly like to observe that DHCS has not in any way attempted to impede the role of the Ombudsman and to some extent the advice it received has created difficulties for DHCS which were not foreshadowed or desired. DHCS has been more than willing to work with me to try and find some solution to the problems created by the advice.

There has been some suggestion that the Ombudsman should not have the ability to require an agency to provide information other than in the context of a formal investigation because to have such a power would be akin to a Royal Commission type power. With respect, this is a completely misconceived argument in my view. Royal Commission type powers are powers whereby the Ombudsman is able to require a person to attend and give evidence on oath or to produce documentation which the Ombudsman seeks to see. In such a case it is envisaged that a serious issue of complaint is being investigated and that there is a need to require the co-operation of the agency or, indeed, to evidence a very independent process for investigating the matter in hand.

In contrast, the ability to obtain information at the earliest possible stage to understand the nature of a complaint and its merits and to assess what is the appropriate process for resolving that complaint, does not equate to any Royal Commission type power in my view. It simply facilitates the fundamental objective and purpose for which the Ombudsman exists and that is, to provide a meaningful, flexible and non-adversarial process for complaints to be resolved as expeditiously and as appropriately as possible. The exchange of information and empowering of parties by giving access to information is a fundamental cornerstone of this process.

I am confident that the problems identified will be addressed in the review of the Act. This is imperative because there has been considerable focus within the review of providing a mechanism within the new proposed legislation whereby complaints can be mediated or conciliated rather than be the subject of investigation as such. Such processes will be entirely reliant upon a proper exchange of information so that all



parties can reach appropriate resolution. Secrecy provisions in specific legislation should not, other than in the most exceptional circumstances, be a basis for precluding the role of the Ombudsman.

I would make one final comment and that is to observe that there will always be circumstances in which information held by an agency should not be passed on to a party making a complaint. This does not mean that the Ombudsman should not have access to that information so as to be fully informed as to what has happened and to be able to make appropriate decisions as to how to action a complaint. This is entirely consistent with the concept that the Ombudsman is independent and impartial. The Ombudsman is not an advocate for either the agency or the member of the public making a complaint. The Ombudsman is not a process by which members of the public can defeat the provisions of the *Information Act* or indeed discover otherwise unattainable information. However, the effectiveness of the role of the Ombudsman cannot, and should not, be restrained by an inability to access all the relevant information necessary to form a proper view on a matter of complaint. To not allow the Ombudsman to have appropriate access is to truly create a toothless tiger and there will be no basis for the Ombudsman to contribute appropriately to the concept of improving service delivery to members of the community.

REVIEW OF THE OMBUDSMAN (NORTHERN TERRITORY) ACT

Throughout this report I have made reference to the review of the *Ombudsman (Northern Territory) Act* (the Act). This is a particularly important issue for the Office of the Ombudsman, given the fact that this is the first comprehensive review of the legislation since it came into force on 1 July 1978.

The review of the Act was commissioned by the Chief Minister, the Hon Clare Martin, MLA in February 2002.

The review panel, constituted by the Chief Minister, undertook a broad public consultation process based upon the terms of reference that were approved by the Chief Minister on 8 February 2002. The review panel which was convened comprised representatives from:

- Department of the Chief Minister (Chair)
- Office of the Ombudsman
- Parliamentary Counsel
- Department of Justice
- Northern Territory Police, Fire & Emergency Services
- Department of Community Development, Sport & Cultural Affairs

A discussion paper was prepared by the review panel and was widely distributed in August 2002 for a three month consultation period. Advertisements were placed in all regional newspapers advising the public of the review. Further advertisements were placed in mid-September 2002 as a reminder and a final call for submissions were made in the third week of October 2002.



A dedicated website was created for the review and a toll free 1800 telephone number was established to provide the public with additional information.

The review received 30 submissions. Three organisations specifically requested the opportunity to supplement written submissions by way of oral presentations to the review panel.

The panel was originally due to present a final report to the Chief Minister by 31 December 2002. However, given the extensive process of public consultation conducted in the very early stages of the review, the panel requested, and was granted, an additional four months to complete its report.

I am unable to comment specifically on the content of the report made by the review panel to the Chief Minister as it has yet to be considered by Cabinet. The report was made available to the Chief Minister in April 2003.

One of the most critical and possibly controversial areas of the review was the processes and procedures for handling complaints against police. A significant period of consultation took place between my office and the Commissioner of Police's representative on the review panel which resulted in substantial agreement in principle to a process for handling complaints against police. This enabled the review panel to report to the Chief Minister in regard to processes for handling complaints against police where there had been a significant level of consensus as between the Ombudsman and the Commissioner of Police. I would particularly note that this agreement was reached after very extensive efforts on the part of my Office by my Legal Officer, Ms Mary Chalmers, and on behalf of the Commissioner of Police, by Assistant Commissioner Doug Smith (as he then was).

I note that when the composition of the review panel was publicly announced there were some concerns raised by some observers that the review panel was not sufficiently independent and separate from government to be able to properly review the legislation. This primarily arose because virtually all the members of the review panel came from government agencies over whom the Ombudsman had jurisdiction. The Ombudsman's legislation is public benefit legislation and, as such, it is recognised that the needs of the public at large must therefore be addressed during any review of such legislation. I believe that the public consultation process that was followed in this particular case went a long way toward addressing concerns and I am also satisfied, as a member of the review panel, that the process was fair and the review panel approached the matter with openness and a clear focus on the needs of the Northern Territory community. As I stated in my last annual report, had I had any specific concerns as to the appropriateness of the process I would have raised them directly with the Chief Minister.

The report that was made in April 2003 to the Chief Minister represented, I believe, a balanced and reasonable report into the current legislation and recommendations made for change reflect, on balance, the needs of the Northern Territory community at large.



CHAPTER 2

THE OFFICE OF THE OMBUDSMAN

As Ombudsman I operate under the *Ombudsman (Northern Territory) Act 1978*. This Chapter provides the following details about the Office of the Ombudsman:

- Vision (page 19)
- Mission (page 19)
- Goals (page 19)
- Service Standards (page 20)
- Functions of the Ombudsman (page 20)
- Organisational Structure (page 21)
- Staffing (page 22)
- Finances (page 23)

VISION

To have:

- a Northern Territory public sector that is recognized and respected as providing a fair, efficient and quality administrative service to the public; and
- the Office of the Ombudsman evidencing best practice in the provision of its service.

MISSION

The mission of the Office of the Ombudsman is to:

- resolve complaints in an appropriate, fair, just and independent manner;
- assist Parliament in safeguarding the public interest; and
- work in co-operation with NT public sector agencies for improvement in quality of service to the public.

GOALS

1. Complaints are resolved in a timely and effective manner.
2. Government agencies act and deliver services in a fair, equitable and impartial manner.
3. The public are aware of, able to access, and are educated and informed about the role and functions of the Ombudsman.
4. The Office of the Ombudsman meets all its legislative and employment responsibilities.



The Ombudsman's performance against each of these goals is provided in detail at Chapter 4, pages 37 to 83.

SERVICE STANDARDS

I strongly believe that the services provided by the Ombudsman should be of the highest quality, open to scrutiny and accountable. As such, the Office of the Ombudsman has developed service standards against which it can be judged. These service standards are provided in detail at Appendix 1, page 84.

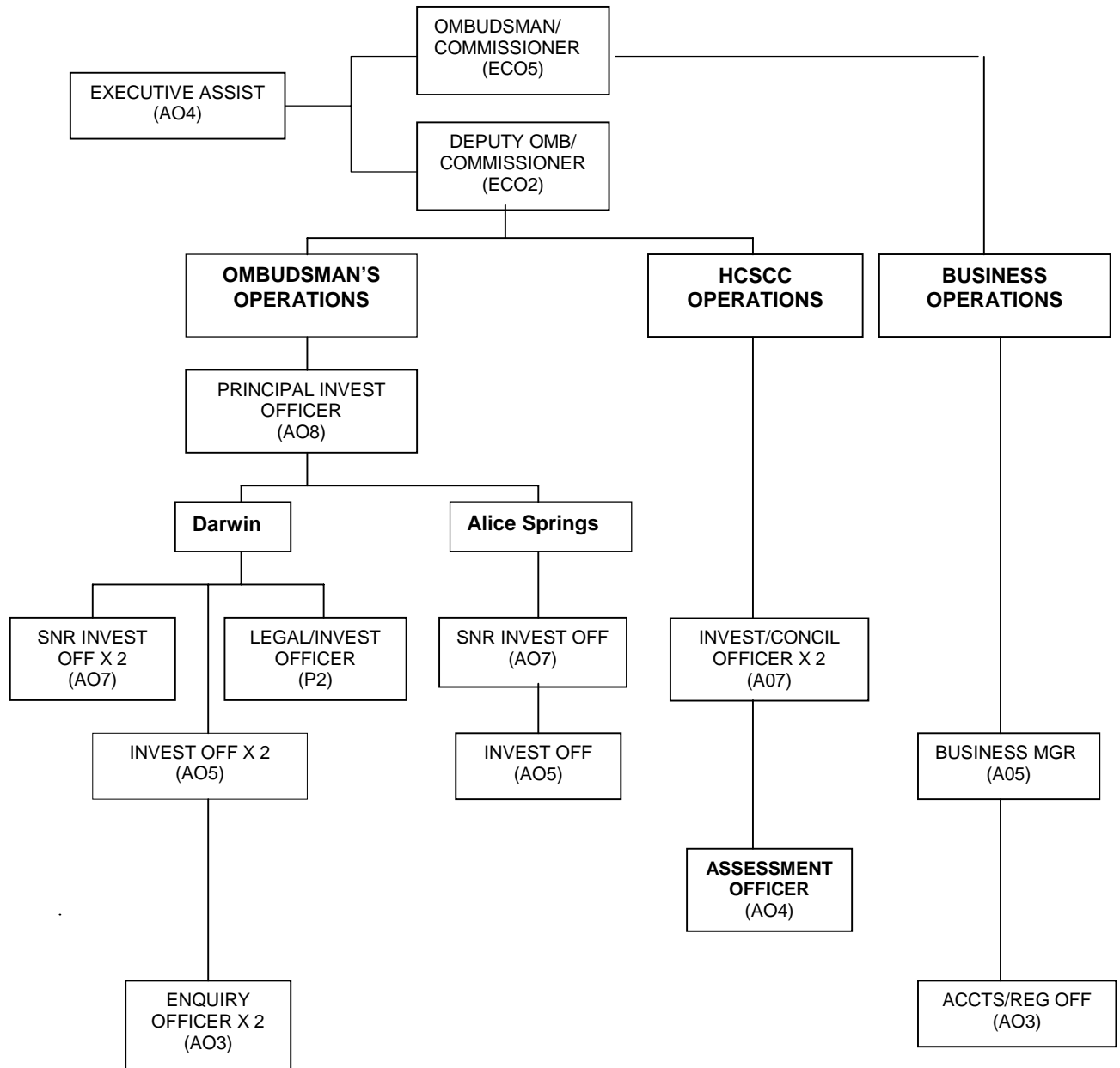
FUNCTIONS OF THE OMBUDSMAN

The functions of the Ombudsman are:

1. To investigate any administrative action by, in, or on behalf of, any Northern Territory Government Agency or Local Government Council to which the *Ombudsman (Northern Territory) Act* applies.
2. To investigate any action taken, or refusal to take action, by a member of the Police Force of the Northern Territory, whether or not that action was an administrative action, where that action was, or was purported to be, for, or in connection with, or incidental to, the exercise or performance of that member's powers or functions as a member of the Northern Territory Police Force.
3. Pursuant to Section 9 of the *Health and Community Services Complaints Act* the Ombudsman was appointed, on 24 June 1998, to be the Commissioner for Health and Community Services Complaints. As such, the Ombudsman is responsible for carrying out the powers and functions of the Commissioner under that Act. This appointment runs for the term of the appointment of the Ombudsman.
4. Pursuant to a co-location agreement with the Commonwealth Ombudsman, to provide administrative support to a representative of the Commonwealth Ombudsman's Office who is co-located within the Office of the Ombudsman in Darwin.
5. Pursuant to Section 48 of the *Legal Practitioners Act 1974* and by virtue of my role as Ombudsman for the Northern Territory, act as a Statutory Member of the Legal Practitioners Complaints Committee.
6. To act as a member of the Northern Territory Law Reform Committee.
7. To consider requests from the Law Society of the Northern Territory for assistance in carrying out its functions.



ORGANISATIONAL STRUCTURE



Notes:

I have included in the organisation chart reference to the Health and Community Services Complaints Commission (HCSCC) to illustrate the relationship between relevant positions in the Ombudsman's Office.



STAFFING

Table 2: Ombudsman's establishment

Position Level	Estab
Ombudsman ¹	1
Deputy Commissioner ECO2 ²	1
Administrative Officer 8	1
Administrative Officer 7	3
Professional Level 2	1
Administrative Officer 5	4
Administrative Officer 4	1
Administrative Officer 3	3
Total	15

The most significant staffing issue during the financial year was the retirement of Ms Sandie Buck from my Alice Springs Office. Ms Buck had been with the Ombudsman's Office for approximately 15 years as an Investigation officer and was well known and respected for the excellent service she provided to complainants. Sandy was appropriately farewelled by myself, staff, colleagues and friends but I would like to record my appreciation to Sandie for her dedication and hard work over the time she worked with the Office.

This position remained vacant for a number of months while I had it redesigned to carry out duties as an Aboriginal Liaison/Complaints Officer. As readers of my Annual Report would be aware, I have been trying for the past five years to obtain additional funds from Government for such a position without success. Because of the priority I place on this initiative I took the opportunity when the Investigation Officer position became vacant in Alice Springs to redesign the position so that it will have responsibility for the following activities:

- developing mechanisms to enhance Aboriginal and Torres Strait Islander peoples' accessibility to the services of the Ombudsman and Commission;
- providing an educational resource to Indigenous communities by developing and distributing educational and promotional material; and
- taking, investigating and resolving complaints from Aboriginal and Torres Strait Islander peoples.

I am pleased to say that at the time of writing this report a person has been appointed to the position.

¹ The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints.

² The Deputy Ombudsman is also the Deputy Commissioner for Health and Community Services Complaints.



FINANCES

Detailed and signed financial statements are provided at Appendix 2, page 86. These statements show that the Office of the Ombudsman had a reasonable financial result during the year and, importantly, did not exceed budget allocation. The total expenditure by the Ombudsman's Office for the year 2002/03 was **\$1,566,000**.

OMBUDSMAN'S FUNDS EXPENDED BY HEALTH AND COMMUNITY SERVICES COMPLAINTS COMMISSION

Of the total funds expended, the following expenditure totaling \$128,500, and relating to the Office of the Ombudsman, was expended against the activities of the Health and Community Services Complaints Commission and can therefore be discounted from the Ombudsman's expenditure.

1. The Ombudsman is also the Commissioner for Health and Community Services Complaints, however salary is totally funded from the Office of the Ombudsman. The proportion of salary attributed to this responsibilities as Commissioner (25%) should therefore be costed against the Commission. \$49,600
2. The Deputy Ombudsman is also the Deputy Commissioner for Health and Community Services Complaints, however salary is totally funded from the Office of the Ombudsman. The proportion of salary attributed to these responsibilities as Commissioner (25%) should therefore be costed against the Commission. \$35,000
3. Administrative support provided to the Commission by staff of the Office of the Ombudsman. It is estimated that 25% of their time is associated with Commission activities and should be costed against it. \$21,700
4. The Enquiry Officers provide services to the Commission however are totally funded by the Office of the Ombudsman. It is estimated that 30% of their time is associated with Commission activities and this expenditure should be costed against the Commission. \$22,200

EXPENDITURE AGAINST LOCATION

The Office of the Ombudsman has offices located in Darwin and Alice Springs. The total expenditure for 2002/03 was \$1,566,000 and this was expended against each office as follows:

- Darwin Office \$1,409,400 (90%)
- Alice Springs Office \$156,600 (10%)



FINANCIAL ITEMS OF SIGNIFICANCE

The following items were of significance in relation to the Ombudsman's 2002/03 budget:

- One-off funding for termination costs totaling \$50,000.
- Productivity savings of \$63,000 were imposed for the financial year.
- One-off funding for IT outsourcing amounting to \$20,000. (It is noted that on going funding for IT outsourcing has been approved in the 2003/04 financial year)
- One-off funding of \$40,000 for Minor Works (to renovate the Reception Area for security purposes and to create an additional office) was revoked for 2002/03 from original allocation of \$60,000.

LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

I am appointed, pursuant to section 48 of the *Legal Practitioners Complaints Act, 1974*, as a statutory member of the Legal Practitioners Complaints Committee by virtue of my holding the statutory position of Ombudsman for the Northern Territory.

The role of the Legal Practitioners Complaints Committee is to hear complaints of professional misconduct made against legal practitioners.

In 2002/03 I have not been involved in any complaints concerning legal practitioners.

I note that, as advised in my 2001/2002 Annual Report, Mr Iain Summers, the former Auditor-General, remains the alternative member for the Ombudsman on the Committee.

I would observe that the Law Society has appointed a Complaints Officer who is primarily responsible for dealing with any complaints against members of the legal profession. This initiative would appear to have reduced the number of complaints moving across to the Legal Practitioners Complaints Committee and therefore appears to have been a successful strategy on the part of the Law Society. I note also that the Law Society has reviewed its complaints processes and has now implemented a new process which will see the appointment of lay members to the Law Society's Complaints Committee. This initiative is to be applauded in that it can only promote a more transparent and accountable process to the public.

NORTHERN TERRITORY LAW REFORM COMMITTEE

The NT Law Reform Committee is chaired by the Honourable Austin Asche, AO, QC. In my 2001/02 Annual Report I commented that the Committee was likely to become more specifically involved in important areas of law reform and development of law in the Northern Territory. This comment was made as a result of an indication from the Minister for Justice and Attorney-General, the Honourable Peter Toyne, MLA that he would utilise the Committee more than has been perhaps the case in the past.



This observation came to fruition with a reference being made to the Northern Territory Law Reform Committee by the Attorney-General, under the auspices of the Inquiry 'TOWARDS MUTUAL BENEFIT'. AN INQUIRY INTO ABORIGINAL CUSTOMARY LAW IN THE NORTHERN TERRITORY BY WAY OF A SUB-COMMITTEE OF THE NORTHERN TERRITORY LAW REFORM COMMITTEE.

Importantly, the sub-committee not only comprised members of the NT Law Reform Committee but also Aboriginal and Torres Strait Islander members, appointed by the Attorney-General. The sub-committee was co-chaired by the Honourable Austin Asche, AC, QC and Ms Yananymul Mununggurr.

The sub-committee first met on 7 February 2003 and was briefed by the Attorney-General, the Honourable Peter Toyne, MLA as to the issues that the sub-committee would be focusing upon.

The sub-committee was divided into three distinct sub-committees consisting of Aboriginal members in areas located reasonably close together. It was agreed that these Aboriginal members would report back on questions of Aboriginal customary law, its application to their community and how such customary or traditional law could be recognised and applied within the general legal framework of Northern Territory law.

An extensive public consultation process was instigated as part of the reference. In particular, interviews were conducted with key stakeholders identified through the review process, usually at the Office of the Co-Chairman, the Honourable Austin Asche.

Throughout the inquiry I endeavoured to attend as many of these interviews and meetings of the sub-committee as possible. I, like a number of members, were not able to attend every interview or meeting but contributed as much as I could in the context of my other workload.

I found the inquiry interesting, informative and challenging. The timeframe for the inquiry was very tight and this meant that there was a huge workload undertaken in order to meet the specified timeframes. At the time of writing this report, the sub-committee had completed its work and the Northern Territory Law Reform Committee had finalised its report to the Attorney-General.

It was an honour to participate in such an important inquiry and it would be remiss of me not to observe the dedication and hard work carried out by some key members of the sub-committee, namely the Co-Chairs, the Honourable Austin Asche and Ms Yananymul Mununggurr; the Executive Officer, Faith Woodford and Principle Legal Consultant, Stephen Herne. These four individuals were the key to the inquiry completing its responsibilities in a timely and appropriate manner. Their work should not go unheralded in the overall context of the final report prepared by the sub-committee and endorsed by the Northern Territory Law Reform Committee. I do acknowledge, however, that many others played important roles in the process and I applaud the involvement and contribution of all concerned.



I consider that my involvement in the sub-committee was one of the most interesting and satisfying tasks I have undertaken since I took up the position of Ombudsman. In my view, it was an important inquiry and I hope that it will lead to some real and meaningful change, whereby Aboriginal communities can develop and incorporate Aboriginal traditional law into their normal daily lives and Aboriginal traditional law will be recognised within the context of the existing legal framework.



CHAPTER 3

THE COMPLAINT PROCESS

The Office of the Ombudsman works in an independent and impartial manner, and receives complaints from members of the public who believe they have been treated unfairly or inappropriately by Northern Territory agencies, statutory authorities, local government councils or the Northern Territory Police.

The Ombudsman has broad powers to investigate administrative actions, decisions and practices and procedures of government agencies, statutory bodies, local government councils and the NT Police. Whilst formal investigative powers are available, most complaints are resolved by way of preliminary enquiries or by the use of alternative dispute resolution processes which provide agencies and members of the public with relevant outcomes in a timely manner. If a complaint is sustained, the Ombudsman can recommend corrective action in respect of the complaint.

The Ombudsman has a restricted jurisdiction in relation to the Director of Public Prosecutions, the NT Liquor Commission, the Development Consent Authority and the Anti-Discrimination Commission.

Complaints to the Ombudsman may move through any one of a number of processes. A detailed description of these various processes is provided at Appendix 3, pages 99 to 103.

I have taken the opportunity in this Chapter to comment on a number of specific issues in relation to the complaint process.

CASE MANAGEMENT SYSTEM LEADS TO IMPROVEMENTS

As I mentioned in my overview, the Ombudsman's Office moved forward in August 2002 with the implementation of a new case management system known as ProActive. This system works primarily through a Lotus Notes platform. ProActive replaced a very antiquated case registration system that had worked through a Filemaker Pro platform.

The old system only registered cases and provided statistics on the outcomes of those cases. It was not a case management system. ProActive on the other hand is a case management system and its implementation has had many positive effects on the efficiency and effectiveness of the Ombudsman's Office. Some of these improvements are:



CASE MANAGEMENT

Cases are now able to be better managed at the individual level in that all information relating to the file is available in an electronic form that is easily and quickly accessible. In addition, the Lotus Notes environment allows review dates to be set and tracked and for reminders to be sent to the Case Officer. They are able to see at a glance all their cases and know how they are performing against various agreed benchmarks.

Case Managers are able to identify at any time what the case load of an individual officer is and can access individual cases at any time to review documents and progress. Case Managers are also able to assess Case Officer's performance against the agreed benchmarks.

REPORTING

Reports are able to be accessed from the system very quickly. There are many reports that are instantly accessible by all staff. Examples of these reports are: cases by case officer, cases by stage, cases by name of complainant, cases by identification number and cases against benchmarks.

In addition, regular reports have been developed for the purposes of monitoring the performance of the Office on a monthly and annual basis. Examples of these reports are those provided throughout this Annual Report.

Ad hoc reports are also able to be developed as required.

WORK PROCESSES AND PROCEDURES

The introduction of the new case management system lead to a major review of the procedures and process undertaken by this Office in receiving, investigating and resolving complaints. This in turn facilitated the development of an Operational Manual for the Ombudsman's Office.

Some of the new processes and procedures implemented as a result of this review include:

- Daily assessment meetings to quickly determine jurisdictional and procedural issues.
- Performance benchmarks placed on the various stages of the complaint process.
- Investigative staff organised in teams with responsibility for specific agencies.
- Case management meetings between the manager and investigative staff being introduced on a fortnightly basis and three monthly case meetings between myself, the Principal Investigation Officer, each individual officer and their supervisor.



COMMITMENT TO BEST PRACTICE COMPLAINTS HANDLING

I am committed to assisting public agencies to better manage customer complaints because effective complaints management systems are integral to providing quality customer service and achieving business improvements.

I have reviewed literature and have particularly drawn much of the information stated about this issue from the work done by the Queensland Ombudsman³. I would encourage CEOs of agencies to use this information to review their own complaint handling system.

WHY COMMIT?

The community expects that public agencies will operate ethically and that government at all levels will have systems in place to ensure that this happens. People are well informed of their rights and are more likely to complain about decisions they perceive to be unfair than was previously the case.

In this climate, it is important for agencies to have an effective complaints management system that has the commitment of its Chief Executive and senior management.

CHOOSING THE BEST COMPLAINTS MODEL FOR AN AGENCY

There is no “ideal” model to guide the development of an effective complaints handling system, however the minimum standard that I would expect from any system would be the Australian standard *AS 4269-1995 Complaints Handling*.

In essence this standard states that organisations should have policies and procedures in place that will allow them to:

- promote and support complaints handling from the highest level;
- be receptive to consumer complaints;
- develop a culture that respects people’s right to complain about any aspect of its operations;
- encourage consumer feedback;
- ensure appropriate resources for complaints management systems;
- determine and implement remedies;
- offer complaints services free to consumers;
- report on the operation of complaint handling procedures; and
- use the data from complaints to identify and rectify systemic and recurring problems.

Any complaint management system that is implemented within agencies should include processes that allow for formal and informal complaints resolution and provide advice on options for external review for customers who are not satisfied with an agency’s response.

³ Refer to www.ombudsman.qld.au/publications/factsheets



MY COMMITMENT

It is my intention over the next year or so to work with agencies to ensure that they have put in place effective complaint handling policies and procedures that comply with *AS4269-1995 Complaints Handling*. In order to achieve this objective, I will initially undertake an audit of each agency's policies and procedures to see whether they comply with the standard and if not to recommend areas that require improvement.

In undertaking this audit I will be assessing the agency's complaint policies and procedures to determine whether they have the following attributes:

1. **A frontline or customer service function** with the authority to deal with low-level customer complaints, such as incorrect addresses, lack of advice, response to correspondence or telephone calls and errors in records.

This stage would include complaints registration and attempted resolution. If the initial contact was handled well at this stage I am sure it would build confidence in the agency.

2. **An internal complaints review mechanism** that is triggered by:
 - the complainant's request for a review of the frontline decision outlined in 1. above (i.e. low level complaints); or
 - a decision that the matter is unsuitable for frontline review (i.e. higher level complaint).

I would envisage the process involving the agency reviewing, usually at the request of an aggrieved person, a decision or action taken by someone within the agency. The review would look at the process and the merits involved in the decision or action, and would be taken at a level no less senior than the officer whose decision or action was being reviewed. This reviewing officer should not have been involved in the matter prior to this review stage.

It would be essential that the reviewing officer have a thorough understanding of the procedures for investigating complaints and have appropriate authority and discretion to make decisions concerning the complaint.

3. **An independent external review body** to carry out further investigation if matters remain unresolved after internal review.

A mechanism should be in place for unresolved complaints to be referred to a specific complaints handling body such as the Office of the Ombudsman. Alternatively, a person's right to seek a review or appeal to a Tribunal or Council should be made known in an appropriate manner at the time of advising of the outcome of the internal review.



CEO'S COOPERATION LEADS TO BETTER OUTCOMES

There is no doubt that if a Chief Executive Officer becomes personally involved in a particular matter being handled by my Office there is real potential for better outcomes to be generated, even where there may have otherwise been some aspect of dispute or debate arising during the course of the consideration of a complaint. I have set out below an example where the Chief Executive Officer's direct involvement in the matter has facilitated positive outcomes. The example relates to the Department of Justice in regard to Northern Territory Correctional Services within the Department of Justice.

OFFICIAL VISITORS

In May 2001 I commenced an own motion investigation, specifically in regard to the role of, and functioning of, official visitors in Northern Territory Correctional Centres. The own motion investigation was prompted by a complaint by a prisoner that they had not had access to an official visitor at the Alice Springs Correctional Centre for some 3 months.

As is required by the *Ombudsman (Northern Territory) Act*, pursuant to section 16 and 19, formal notification of the intention to conduct the own motion investigation was given to the then Minister for Correctional Services, the Hon Daryl Manzie, MLA and the Chief Executive Officer of NT Correctional Services.

Both the then Minister and the Commissioner for Correctional Services disputed my jurisdiction to commence an own motion investigation in this particular instance. As a result, I sought legal advice from senior counsel into the specific issue of whether or not I had jurisdiction to carry out the own motion investigation into the role and function of the official visitors.

On 27 September 2001 I wrote to the then Minister for Correctional Services, the Honourable John Ah Kit, MLA and to Mr Dave Moore, Commissioner for NT Correctional Services, advising them of the fact that I had obtained advice from senior counsel and that having considered that advice I had formed the view that I was entitled to conduct an own motion investigation, that I did have jurisdiction in regard to such an investigation and that I intended to proceed with the investigation. I did not receive any response to this correspondence and I assumed, in these circumstances, that my jurisdiction was no longer in dispute.

An own motion investigation was then conducted which involved examining the records as to the regularity and scope of visits carried out by official visitors, particularly in the Alice Spring Correctional Centre, the processes and procedures in place relating to the appointment, training of official visitors and the administrative action taken to ensure that the official visitors were carrying out their role and functions in accordance with the Act.

I would note that the Commissioner for Correctional Services, Mr David Moore, did immediately respond to the fundamental concern in regard to a lack of Official



Visitors. He did this by ensuring their numbers were increased and within this female Official Visitors were specifically appointed to ensure there were adequate numbers to visit female prisoners. I considered this a good interim response, but was of the view that the systemic issues relating to the administration of the scheme had not been addressed.

On 16 October 2002 I forwarded a draft report to both Mr Dave Moore, Commissioner for NT Correctional Services and the Minister for Justice and Attorney-General, the Honourable Peter Toyne, MLA who, as a result of the restructuring of government agencies, was also the Minister responsible for Correctional Services.

In a somewhat unusual situation, the draft investigation report identified deficiencies with regard to the administration of the official visitor scheme both within the context of the role of the responsible agency for NT Correctional Services, namely the Department of Justice, and also within the context of the responsibility of the Minister's Office in terms of the appointment and reporting of official visitors.

On 13 December 2002 Mr Richard Coates, Chief Executive Officer of the Department of Justice, responded to my draft report and again raised the issue of my jurisdiction. Importantly, however, whilst he was of the view that jurisdiction remained in dispute, he indicated his willingness to discuss the issues raised by the draft report and possibly implement a process of review which would address my concerns in any event. The Chief Executive Officer initiated a meeting to take place between myself, himself, the Commissioner for Correctional Services, Mr David Moore, and representatives of the Department of Justice.

A meeting subsequently took place on 21 January 2003.

On the question as to the dispute of jurisdiction, I indicated to Mr Coates my concerns that the issue was not resolved at the time I wrote to the Commissioner of Correctional Services and the then Minister on 27 September 2001 wherein I had indicated my view as to jurisdiction and my intention to proceed with an investigation.

As a result of the discussion, Mr Coates and myself agreed to a process whereby, if disputes arose in future as to jurisdiction and initial legal advice obtained by the agency and myself did not specifically resolve the issue, then we would, where appropriate, agree to pursue a third independent legal advice if possible and if available through the auspices of the Solicitor-General or, alternatively, by way of an agreed brief to senior counsel.

Whilst this arrangement will depend upon the circumstances of an individual case, it recognises the fact that resolution of such disputes through the courts should be avoided if possible. In saying this, it is recognised by myself and Mr Coates that there would be occasions where the appropriate venue for resolving such disputes may well be through the courts. This, however, should be a last resort given the objectives of the Ombudsman's legislation.



It was recognised at the meeting that there had been an unfortunate delay in resolving the issue of jurisdiction and that this, in all the circumstances, need not be a stumbling block to addressing my draft report on the official visitor scheme. Mr Coates, for his part, recognised that the scheme had been in operation for some considerable time and there was a good basis for a review of the scheme. He indicated that the concerns raised by me within my draft report could be addressed within the review.

In view of this sensible suggestion I agreed to participate in the process of review to be instigated by the Department of Justice so that any concerns I had raised with regard to the official visitor scheme could be addressed.

Subsequently, an officer within the Department of Justice was allocated the task of reviewing the official visitor scheme. This review resulted in a decision to establish a permanent secretariat for the official visitors within the Department of Justice, with the specific function of ensuring that official visitors were appointed, trained and inducted into the role. The secretariat will also be responsible for ensuring that official visitors visit NT Correctional Centres in accordance with the legislation and that their reports are forwarded to the Attorney-General for consideration and action and if necessary, referred to NT Correctional Services for any follow up action.

A procedural manual is also being prepared for distribution to all official visitors to ensure that they are fully aware of the nature of their role, their functions and reporting responsibilities.

As a result of the review, and my involvement in the process of review and being able to comment on the initiatives being considered, I was able to be satisfied that my major concerns with regard to the operation of the official visitor scheme, under the provisions of Part 5 of the *Provisions (Correctional Services) Act*, were being dealt with. There was also no need for the matter to be resolved by way of the jurisdictional dispute which would have delayed any outcome and would have required the commitment of scarce resources in order to resolve the issue.

In overall terms a win win outcome was achieved and for my part I was satisfied that the matter could be resolved in the manner set out above.

I have not proceeded to issue a final report as I believe that the draft report has been a basis for a proper review and appropriate action being taken in regard to the official visitor scheme. More importantly, this is an example where the co-operation of the Chief Executive Officer has led to an improved process at a systemic level without the need for an unnecessary adversarial approach to the issues raised. I am grateful for both the assistance of the Chief Executive Officer of the Department of Justice, Mr Richard Coates, and also for the willingness of the Commissioner, Mr Dave Moore, to resolve this particular issue in the manner set out above.

I would also note that, as a result of the agreement between myself and the Chief Executive Officer of the Department of Justice, the Minister for Justice and Attorney-General, Mr Peter Toyne, wrote to me on 23 April 2003 confirming the outcome of



our discussions and his support for the processes agreed to. In his final paragraph the Minister stated *'I appreciate your considered advice in respect to the official visitor scheme, and I trust that the initiatives outlined above will satisfy your concerns and result in a better, more efficient service to the public and prisoners'*. I believe the Minister more than adequately encapsulated the role of the Ombudsman in this last paragraph and it evidences the need to be willing to move beyond adversarial processes in order to resolve a matter for the good of those most likely to be affected by the matters about which concerns were raised.

THESE AGENCIES DO IT WELL (ACCOLADES)

It has been my practice in recent annual reports to refer specifically to agencies which I felt had been particularly responsive to complainants and had co-operated well with my Office with the objective of resolving complaints made.

As I have observed previously, on the whole, my Office does enjoy cordial and professional relationships with agencies against whom complaints are made. Tensions do arise from time to time with respect to individual specific complaints that are under consideration. This tension, however, is to be expected, is natural and, indeed, is appropriate given the nature of the role of the Ombudsman.

It is the objective of the Ombudsman to work collaboratively with agencies and complainants in order to reach appropriate resolutions to complaints. A fundamental key to the success of the Ombudsman is the ability to obtain, in a timely and appropriate manner, information from agencies as to what has happened in any particular given circumstances which has given rise to a complaint. It does not matter whether or not a complaint is ultimately substantiated or unsubstantiated. It is the process in terms of addressing the complaint which is fundamental to the integrity of the role of the Ombudsman and, indeed, the very effectiveness of the process for resolving complaints.

This year I particularly wish to acknowledge two agencies who would not necessarily be normally perceived as having demonstrated a willingness to be responsible to complaints and to work with my staff in the resolution of complaints. That is because, in many ways, these agencies are either very high profile in terms of their interface with the public and are often perceived in a negative light because of major issues confronting them from time to time.

NT CORRECTIONAL SERVICES UNDER THE DEPARTMENT OF JUSTICE

NT Correctional Services are one of the areas of responsibility of the Department of Justice that gives rise to a significant number of complaints. This is perhaps not surprising given the context under which NT Correctional Services operate. NT Correctional Services have been confronted with a number of ongoing issues relating to:

- transfers of prisoners from Darwin to Alice Springs



- periods of lock down of prisoners
- access of prisoners to facilities to speak to friends and relatives when a prisoner is located in a correctional centre that is distant from where those friends and relatives reside.

The implementation of the new telephone system for prisoners, which provides prisoners with direct access to my Office, has not unexpectedly resulted in a significant increase in the level of complaints against NT Correctional Services. I have been particularly pleased, on a number of different fronts, with regard to the response of NT Correctional Services to this increased level of complaints.

In the first instance, as a result of the new telephone system, prisoners have been provided with direct access to my Office. Calls made to my Office are free of charge and there is no doubt that prisoners now have a process for contacting my Office which addresses the very significant concerns I have had in the past as to the real ability of prisoners to make a complaint to my Office, particularly where prisoners do not have English as a first language and/or where they are not able to write to me to make a complaint.

NT Corrections, in conjunction with my Office, has developed effective processes for handling complaints that are received via the new telephone system. I was particularly pleased to be invited to comment on the proposed procedures to be implemented internally by NT Correctional Services and, indeed, where I made several suggestions for change or improvement, those suggestions were willingly adopted.

In regard to the increased level of complaints, the procedures adopted as between my Office and NT Correctional Services has seen a significant proportion of those complaints referred back to NT Correctional Services to deal with in the first instance because a prisoner has not raised the matter directly within the Correctional Centre. There are many reasons why this may have occurred but I am particularly pleased that NT Correctional Services has been willing to follow up on those complaints and, indeed, to keep my Office informed as to any action taken.

In overall terms the new processes are working well, prisoners have a much more significant level of access through the new telephone system, not only to my Office but to their friends and relatives and the processes are working well. The level of co-operation between my Office and NT Correctional Services is, in my view, very effective. I believe NT Correctional Services should be commended for their willingness to instigate good administrative practice in this area and, indeed, for their co-operation with my Office for dealing with the complaints that have arisen.

DEPARTMENT OF HEALTH AND COMMUNITY SERVICES

The Department of Health and Community Services has undoubtedly been in the public eye in the last 12-18 months. A significant review of that Department has occurred and as a result the Department has been undergoing a significant change process.



My Office, however, throughout this process has continued to receive a significant level of complaints in respect to the activities of the Department such that there has been an ongoing need for the Department and, indeed, individuals with the responsibility of addressing those complaints, to respond in a positive and timely manner.

In my view this Department should be commended for its efforts in regard to responding to what have often been quite difficult, complex and contentious complaints, both in a timely and appropriate manner. A number of quite difficult issues have arisen in areas of jurisdiction and legal interpretation of legislation. The Department has at all times been willing to meet and discuss, and to try and find logical and sensible ways to resolve concerns.

I have also found individual members of the Department have been highly professional in their interaction with my Office despite, in many cases, those individuals having concerns as to the outcomes of the internal review process and, indeed, even in some cases, as to whether or not they will continue to have the position they were currently holding.

The Department, at the time of writing this report, is involved in a number of internal reviews which will impact upon this Office in some instances. In particular, the *Community Welfare Act* and child protection processes are being reviewed with a view to reform and refinement of legislation. My Office has been invited to participate in the review process, recognising the fact that we have been involved in complaints relating to the child protection process. This recognises the healthy level of respect and co-operation that exists between my Office and the Department, particularly in the child protection area and the willingness of those involved in the child protection area (despite being under considerable criticism and pressure) to work co-operatively to resolve complaints in an open, transparent and accountable manner.



CHAPTER 4

PERFORMANCE

The *Ombudsman (Northern Territory) Act* provides the Ombudsman with the power to investigate administrative actions, decisions, practices and procedures of government agencies, statutory bodies, local government councils and the NT Police.

As Ombudsman, it is my responsibility to ensure the Office of the Ombudsman's major initiatives and day to day services are in accordance with legislative provisions and aligned to client needs. I do this through an annual planning cycle, by ensuring that:

- the Ombudsman's Business Plan leads to the achievement of its corporate goals;
- staff performance is monitored to ensure they are working towards the objectives of the Business Plan; and
- regular feedback is provided to the public, stakeholders, the Chief Minister and the Legislative Assembly.

The activities the Ombudsman undertakes are:

1. To provide an independent, just, fair and accessible mechanism for resolving complaints.
2. To utilise the information gained through the complaint resolution process to improve the delivery of services provided by agencies.
3. To promote access and awareness of the role of the Ombudsman to the public and agencies.
4. To ensure the Office of the Ombudsman meets all its legislative and employment responsibilities.

OVERALL PERFORMANCE OF THE OFFICE OF THE OMBUDSMAN

The overall performance of the Ombudsman in undertaking these activities during 2002/03 (as stated in Budget Paper No. 2) follows:

Performance Measures	Unit of Measure	2000/01 Achieved	2001/02 Achieved	2002/03 Achieved
Quantity	1. Number of approaches	1905	1638	2082
	2. Number of access and awareness visits.	46	30	37



Quality	1. Percentage of reviews of decisions requested	Not available	Not available	11
	2. Percentage of consumer satisfaction feedback	Not available	Not available	Available from 01/01/04
Timeliness	1. Percentage of complaints closed within 90 days.			
	a) General	71%	64%	62%
	b) Police	30%	14%	49%
	2. Percentage of formal investigations resolved within 180 days	N/A	Not available	0% ⁴

Note: A new case management system commenced at the beginning of 2002/03 and therefore some of these Performance Measures were not available under the previous computerised case management system.

ACTUAL EXPENDITURE ON OMBUDSMAN ACTIVITIES

Actual expenditure to undertake the Ombudsman's activities for 2002/03 was:

Total expenditure by the Office of the Ombudsman	\$1,566,000
LESS expenditure by Ombudsman's Office attributed to the Health and Community Services Complaints Commission	<u>\$128,500</u>
ACTUAL TOTAL:	\$1,437,500

I estimate that of the \$1,437,500 expended, the proportion spent against the corporate goals of the Ombudsman during 2002/03 were as follows:

Table 3: Expenditure of funds against corporate goals

GOAL	2000/01 \$	%	2001/02 \$	%	2002/03 \$	%
1. Resolution of Complaints	1,029,000	75	1,203,000	77.5	1,114,060	77.5
2. Equitable and Impartial Delivery of Services	\$68,600	5	\$77,600	5	71,880	5
3. Access and Awareness	\$68,600	5	38,800	2.5	35,940	2.5
4. Management of the Office	\$205,000	15	\$232,900	15	215,620	15

⁴ There was only one formal investigation completed and it took longer than 180 days to be finalised



ACTIVITY 1: RESOLUTION OF COMPLAINTS

DESCRIPTION

To provide an independent, just and accessible mechanism for resolving complaints against Territory Government agencies, police and local government councils.

OUTCOME

Resolution of complaints against Territory Government agencies, police and local government councils.

OUTPUTS

1. Accept enquiries and complaints.
2. Assess complaints in a timely, fair and independent manner.
3. Investigate complaints in a timely, thorough and independent manner.
4. Take appropriate action as a result of investigations.

COST

Total expenditure by the Ombudsman's Office on this activity was:

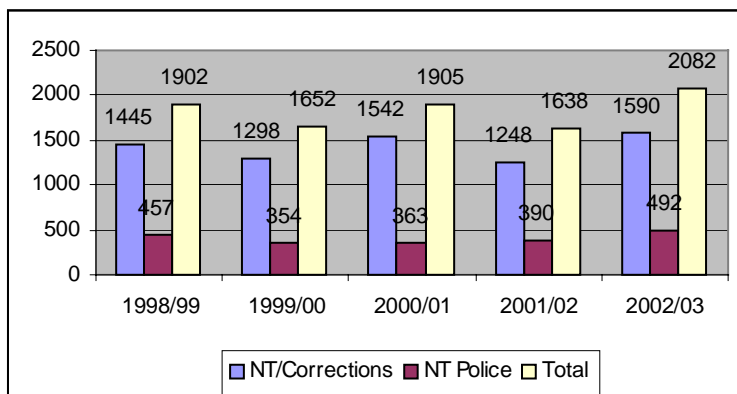
77.5% of Ombudsman's actual expenditure \$1,114,060

OVERALL HIGHLIGHTS

APPROACHES (ENQUIRY/COMPLAINT NUMBERS) OVERALL

Approaches to the Office are made up of enquiries and complaints received in person, by telephone or in writing. Many enquiries can and are handled quickly, without the need for the complainant to provide more detail.

Graph 5: *New approaches for NT Agencies, NT Police and combined*





Of particular interest in relation to Graph 5 above is the trend that has emerged where the number of approaches to the Office is high one year and low the next. There has been a significant rise in the number of approaches for both the police (27%) and general (27%) jurisdictions this year which has culminated in a 27% increase in the number of approaches overall. This trend does not appear likely to continue with approaches for the first quarter of 2003/04 indicating a 13% increase from the same period in 2002/03.

A comparison between approaches received over the past three years broken down between enquiries and complaints is provided at Table 4.

Table 4: Comparison between approaches received over past 3 years

Approaches	2000/01	2001/02	2002/03
Enquiries	1045	850	1472
Complaints	860	780	610
Total	1905	1638	2082

It can be seen from the above breakdown that during the year under review, of the 2082 approaches, 1472 were enquiries and 610 were complaints. Compared to last year there has been a 75% increase in the number of enquiries received while the number of formal complaints dealt with has reduced by 21%. Of all approaches to the Office this year only 30% needed to be dealt with as formal complaints under the Act. This is a significant change on the previous two years where 45% of all approaches were dealt with on a formal basis.

These figures highlight that:

- the employment of two Enquiry Officers has provided the Office with the capacity to better deal with enquiries informally and immediately without the need for any formal action; and
- improved process for assessing and resolving enquiries in the first instance are working effectively.

As previously highlighted, I believe the increase in approaches to the Office is as a result of the following:

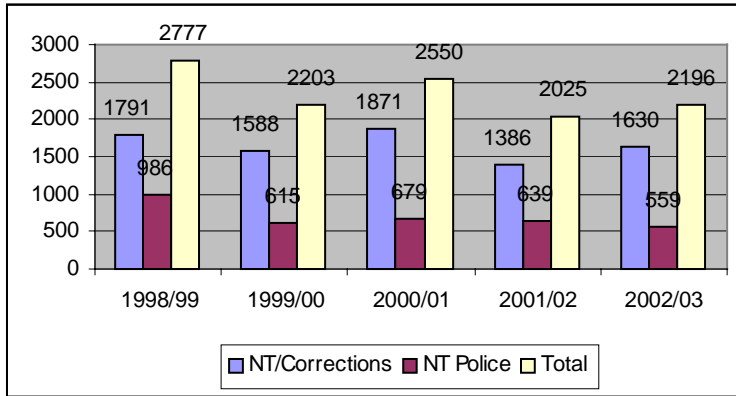
- stabilisation of the new administrative arrangements;
- better targeting of the funds utilised for access and awareness;
- improved staffing of the Office, both in Darwin and Alice Springs; and
- it would also appear to reflect a normal trend over the past six years.

OVERALL MATTERS OF COMPLAINT

Many approaches that are made to the Ombudsman include more than one matter which is the subject of their complaint, ie, one complaint may have three matters. Refer to Appendix 5, pages 106 to 117 for a detailed breakdown of the matters complained about.



Graph 6: Total matters of Enquiries/Complaint

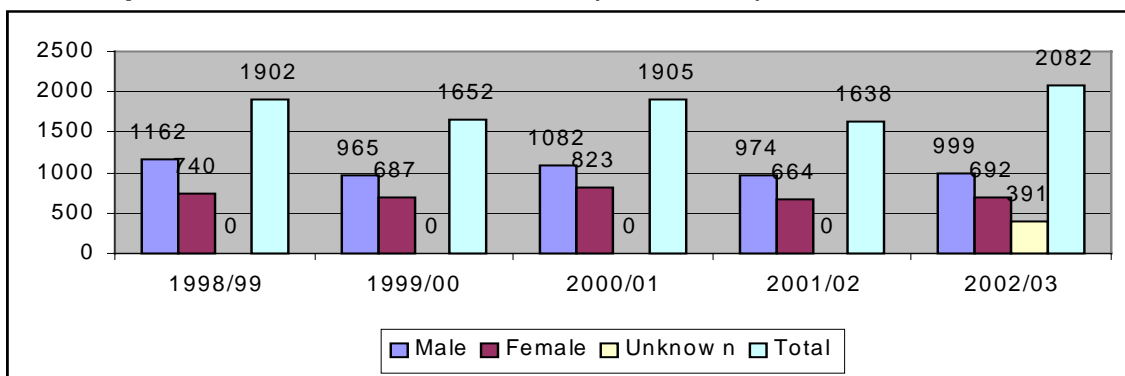


The comments provided above in relation to the overall numbers of approaches made to the Office are also relevant here.

WHO COMPLAINS?

Unfortunately with the introduction of the new data base this financial year there were a number of approaches to the Office where the gender of the complainant was not identified. This error has now been rectified and will not occur in future reports. The gender breakdown over the past five years is shown at Graph 7.

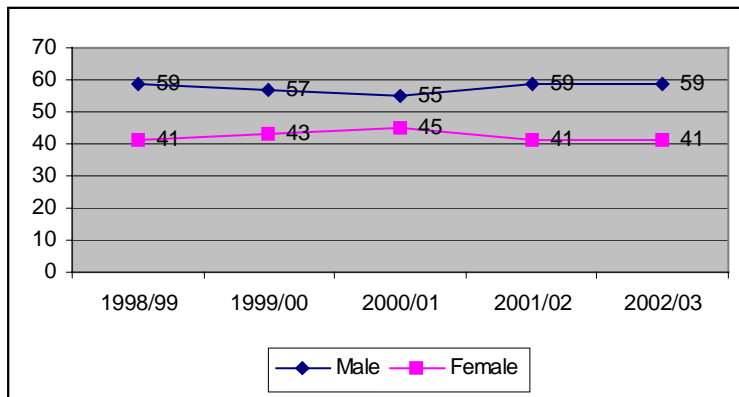
Graph 7: Gender Breakdown all Enquiries/Complaints



As Graph 8 shows, over the past five years the gender breakdown of people approaching the Office has only varied slightly. The above percentages can be compared with the overall male to female ratio in the Northern Territory which is 52:48, a somewhat different situation to that in other parts of Australia where the percentage is the reverse.



Graph 8: Gender percentage comparison over five years



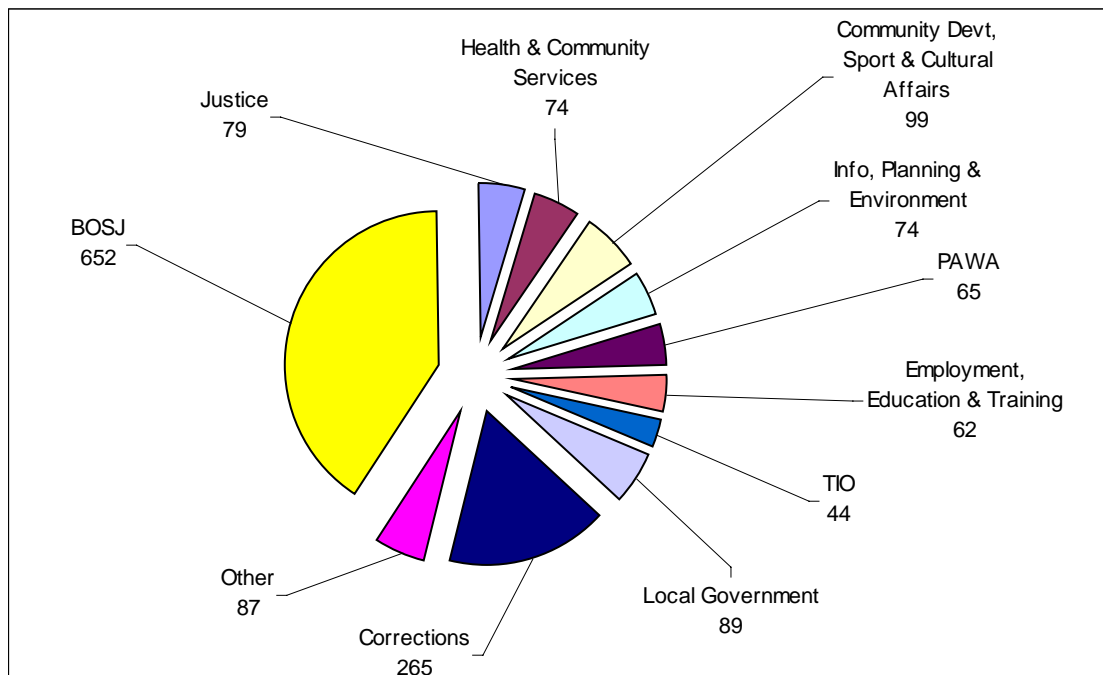
A detailed statistical analysis of all enquiries and complaints received during 2002/03 can be found at Appendix 5, pages 106 to 117 and examples of case studies are at Appendix 6, pages 118 to 139.

NORTHERN TERRITORY AGENCIES (INCLUDING NT CORRECTIONAL SERVICES)

WHICH AGENCIES DO PEOPLE COMPLAIN ABOUT?

Chart 1 below provides a breakdown of agencies that have been the subject of complaint, excluding complaints against Police, over the past year.

Chart 1: Agencies subject to complaints





Note: BOSJ refers to complaints made to the Ombudsman concerning bodies that are outside the jurisdiction of the Ombudsman and complainants were referred to appropriate bodies to action.

Agencies included in the Other category are: Batchelor Institute of Tertiary Education (4), Bush Fires Council (2), Business, Industry and Development (15), Development Consent Authority (3), Department of the Chief Minister (4); Police, Fire and Emergency Services (administrative actions only, 14); Department of Corporate and Information Services (14); Treasury (12); Legal Aid Commission (11); NT Tourist Commission (3); Office of the Ombudsman (5).

The following table shows the variation between approaches to agencies over the past two financial years.

Table 5: Agency approaches over previous two years

Agencies	2001/02	2002/03	Variation
Justice	82	79	-3
Health & Community Services	90	74	-16
Community Development, Sport & Cultural Affairs	103	99	-4
Info, Planning & Environment	65	74	9
PAWA	55	65	10
Employment, Education & Training	54	62	8
TIO	44	44	0
Local Government	53	89	36
Corrections	89	265	176
Other	76	87	9
BOSJ	537	652	119
TOTAL	1248	1590	342

Unlike previous years, the greatest number of approaches were from prisoners about the activities of Correctional Services. These approaches increased from the previous year by 200%, that is from 89 approaches to 265. It is not a coincidence that this increase has occurred since prisoners have had greater access to a telephone line whereby they can contact the Ombudsman's Office directly where this call is free and not monitored. In relation to the two major Corrections facilities, the variation over the two years is as follows:

Table 6: Approaches about Correctional Centres over previous two years

Facility	2001/02	2002/03	Variation
Darwin	37	174	137
Alice Springs	39	81	42

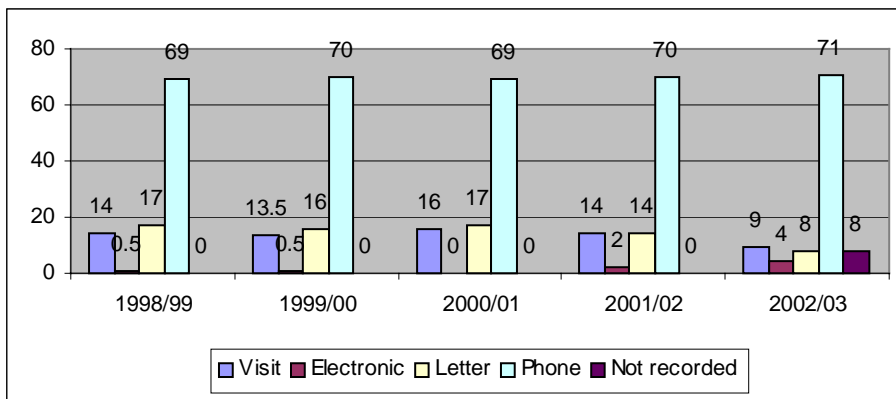
The other significant variation in approaches is in relation to the Local Government area where there has been an increase of 60%, from 53 approaches to 89. Just under 50% of these approaches related to the Darwin City Council.



MANNER OF APPROACH

The Ombudsman's Office can receive complaints in a number of ways. As depicted in Graph 9, 71% of complaints were received via the telephone. This is a slight increase on last financial year.

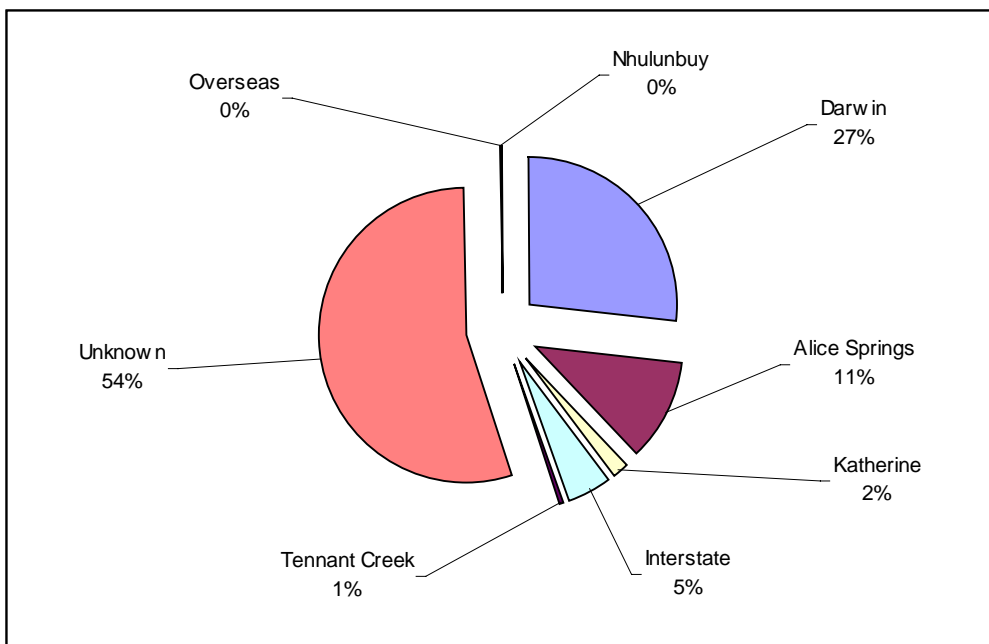
Graph 9: Manner of approach to the Ombudsman by %



The manner in which complainants approach the Ombudsman's Office has not significantly changed over the past four years. This financial year there were 154 approaches (8%) where the manner of approach was not recorded. This was due to the introduction of the new case management data base and has been rectified so that next year this will not be a problem.

GEOGRAPHIC SOURCE OF COMPLAINT

Chart 2: Geographic source of complaint





With the introduction of the new database, it was not possible until the latter part of the financial year to record the geographical location of complainants. As a consequence, 54% of approaches did not have their geographic location recorded. This has now been rectified and it will be more effectively recorded next year.

Of those that were recorded, not surprisingly, Darwin continues to be the area where the majority of complaints come from with Alice Springs being the next largest area.

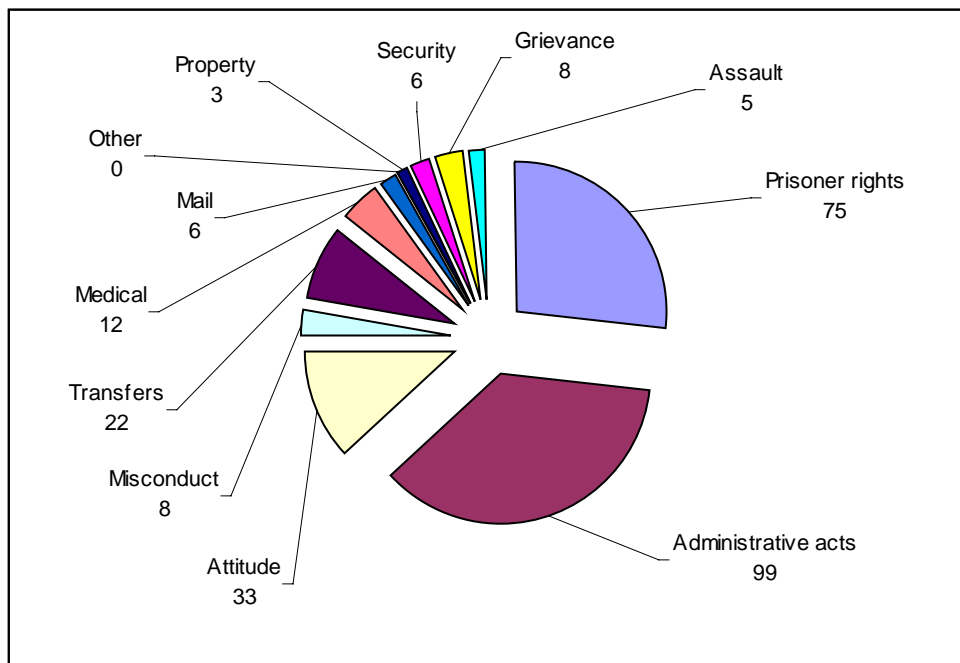
MATTERS COMPLAINED ABOUT

Information is recorded about the matters described in every enquiry and complaint. Different matters are identified for complaints against Correctional Services and those for the remainder of NT agencies, including local government.

The matters people complained about for these two areas were as follows:

Correctional Services

Chart 3: Matters Raised in Enquiries/Complaints for Correctional Services



There were 265 approaches in respect of NT Correctional Services (89 in 2001/02) raising 277 matters of complaint (130 in 2001/02).

As can be seen from Table 7, there has also been a marked change from last year in the major matters complained about.



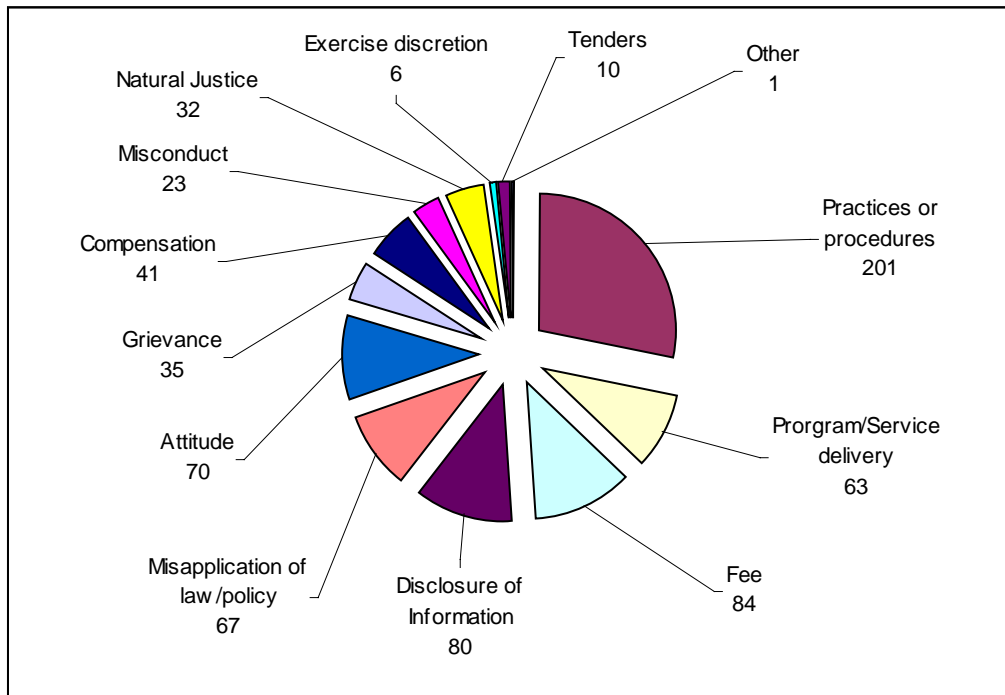
Table 7: Corrections matters most complained about – Three year comparison

Matter	2000/01		2001/02		2002/03	
	No.	%	No.	%	No.	%
Prisoner rights	84	35%	29	22%	75	27%
Administrative acts	39	16%	22	17%	99	36%
Attitude	25	10%	33	25%	33	12%
Transfers	15	6%	5	4%	22	8%
Medical	11	5%	13	8%	12	4%

There has been a significant decline in complaints relating to attitude and a significant increases in complaints about prisoner rights and administrative acts or omissions.

NT Agencies (excluding Correctional Services)

Chart 4: Matters Raised in Enquiries/Complaints for NT Agencies (excluding Correctional Services)



There were 686 approaches in respect of NT agencies, excluding those out of jurisdiction and NT Correctional Services (558 in 2001/02) raising 713 matters of complaint (743 in 2000/01). Although there has been a large increase in approaches the number of matters associated with those approaches has not increased proportionally.

As can be seen from Table 8, there has also been a marked change from last year in the major matters complained about.



Table 8: Matters most complained about – Three year comparison

Matter	2000/01		2001/02		2002/03	
	No.	%.	No	%	No	%
Practices & procedures	332	20%	399	32%	201	28%
Refusal to provide service	237	15%	99	8%	63	9%
Fees	82	5%	52	4%	84	12%
Disclosure of information	72	4%	36	3%	80	11%
Misapplication of law/policy	54	3%	25	2%	67	9%
Attitude	50	3%	57	5%	70	10%

There has been a significant reduction in complaints about agency practices and procedures (399 in 2001/02 compared to 201 in 2002/03) and complaints relating to agencies refusing to provide services (99 in 2001/02 compared to 63 in 2002/03). On the other hand complaints about matters associated with fees, disclosure of information, misapplication of law and attitude of staff have all increased. I observed in my last report that the amalgamation of a number of agencies into larger agencies at that time resulted, in my opinion, in increased complaints relating to matters associated with the way agencies provided services, not the substance of the service itself. I then went on to predict that this trend would reverse as the new agencies become more uniform and cohesive as entities and possibly service delivery improved as a result. This would appear to be borne out by the figures.

OUTCOMES OF FINALISED COMPLAINTS

Outcomes Achieved

Chart 5: Outcomes achieved from finalised complaints (NT Agencies)

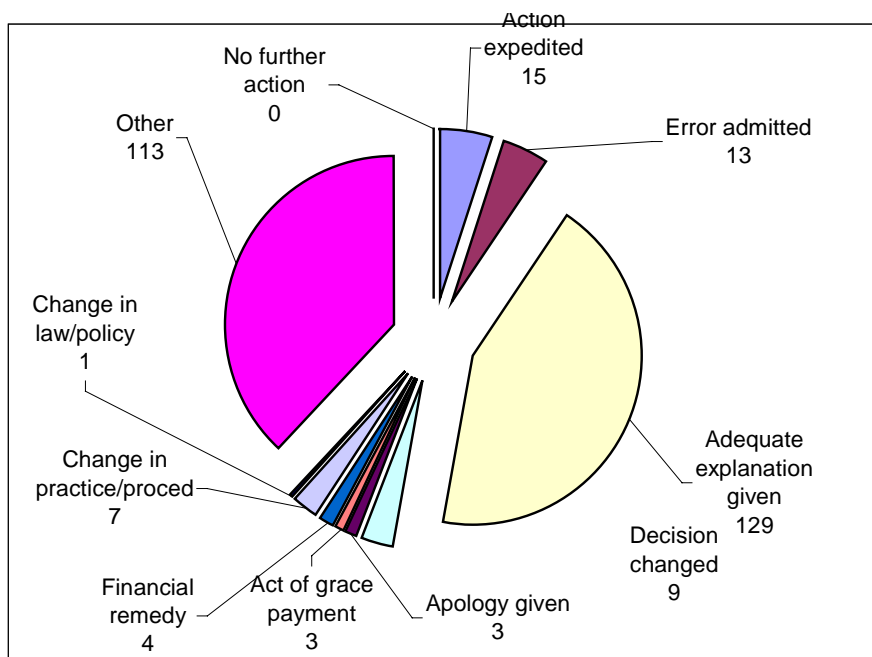




Chart 5 identifies the outcomes achieved from matters of complaint finalised in 2002/03. Of significance is the fact that:

- 43% (24% in 2001/02) of cases were resolved as a result of the complainant being provided with an adequate explanation;
- 5% (7% in 2001/02) of cases resulted in action by the department being expedited; and
- 4% (8% in 2001/02) of cases were resolved by the department admitting an error had occurred.

Extent to which outcome favoured the complainant

Chart 6: *Extent to which outcome favoured the complainant (NT Agencies)*

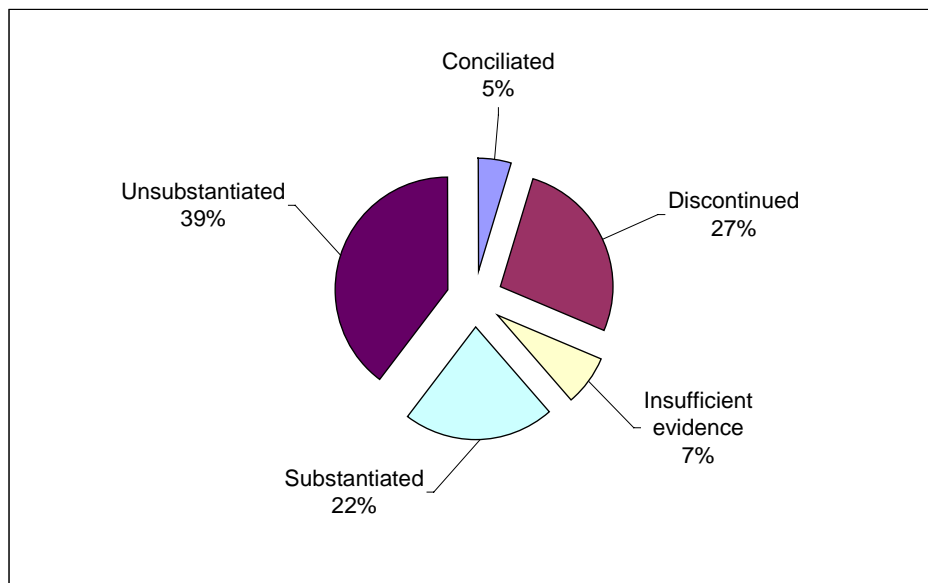


Chart 6 above sets out the practical outcome of complaints. This chart reflects an assessment made by the case officer as to whether the issues associated with each complaint were substantiated or not.

It can be seen from the above chart that 39% of all the issues of complaint were not substantiated and that 22% were substantiated.

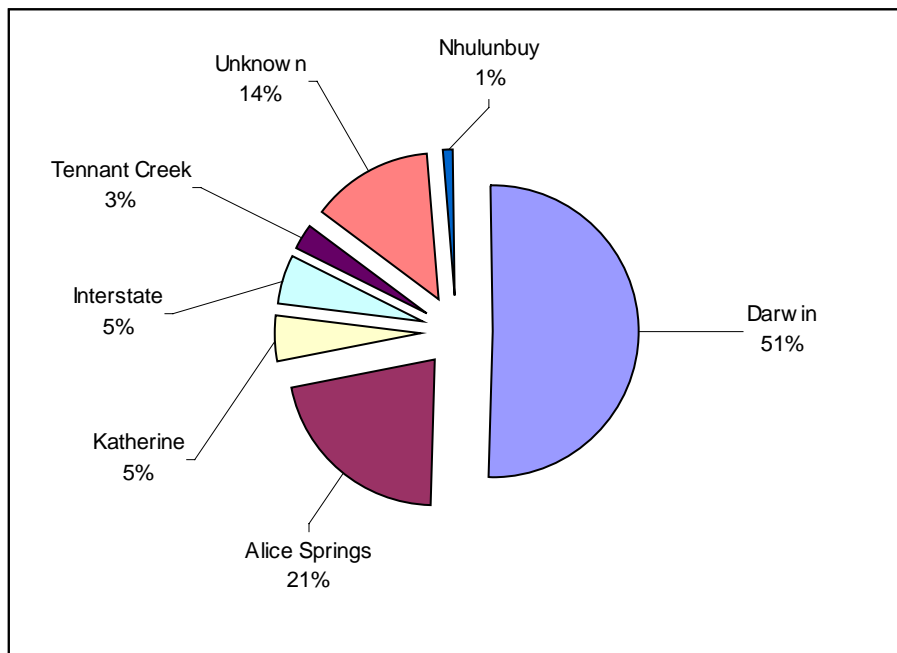
I would make one important observation here and that is, that the majority of complaints received by the Ombudsman are resolved by other than formal investigation processes. In effect, informal dispute resolution processes are utilised to generate, wherever possible, timely and relevant outcomes for both complainants and agencies. It is the encouragement of this process which has resulted in 27% of issues being discontinued, often after some form of resolution has been received, and 5% being specifically conciliated by this Office.



NORTHERN TERRITORY POLICE

GEOGRAPHIC SOURCE OF COMPLAINT

Chart 7: Geographic source of complaint



As is the case with complaints against other NT agencies, Darwin continues to be the area where the majority of police complaints come from (51%) with Alice Springs being the next largest area (21%). It is interesting to note that there has been a 10% drop in the approaches from Darwin and an increase of 6% for Alice Springs. 14% of approaches regarding police came from areas outside the major population centres.

These figures however continue to reinforce to me the need to undertake access and awareness campaigns outside of the two major centres of Darwin and Alice Springs. As already stated, funding shortfalls and consequent staffing difficulties have impacted on the initiatives implemented over the past two years in regard to the Access and Awareness Program.

MANNER OF APPROACH

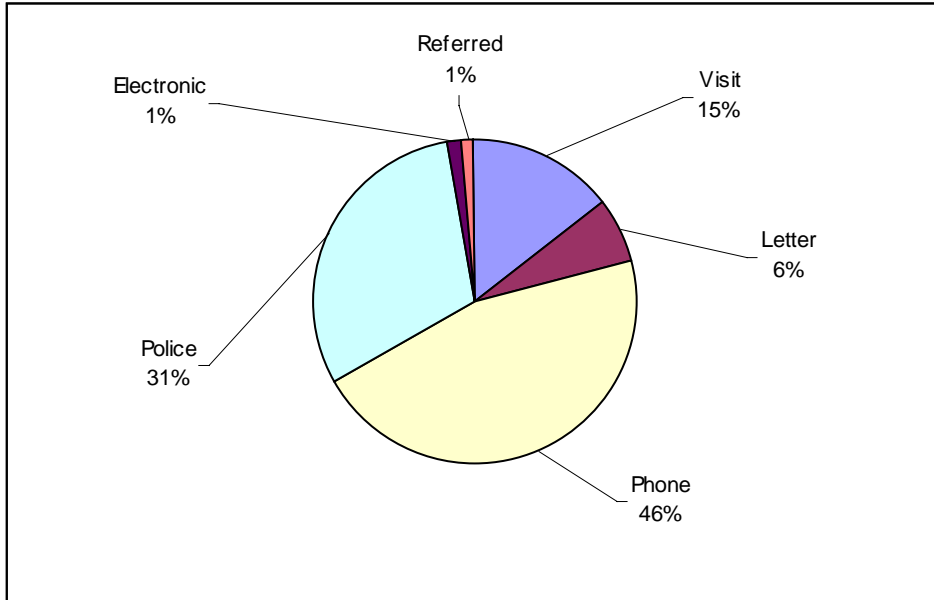
Persons making complaints against police may do so directly to my Office, to the Commissioner of Police or to a police station. The legislation requires that I notify the Commissioner of Police as to the receipt of such complaints and, similarly, the Commissioner of Police is required to notify me of complaints received by the NT Police.

Chart 8 shows, as in previous years, most people (46%) lodged their complaints against police to my office by telephone. 31% of complaints were lodged directly with



police whilst 69% were lodged directly to my Office. Only 6% of complaints regarding police were received in a written form.

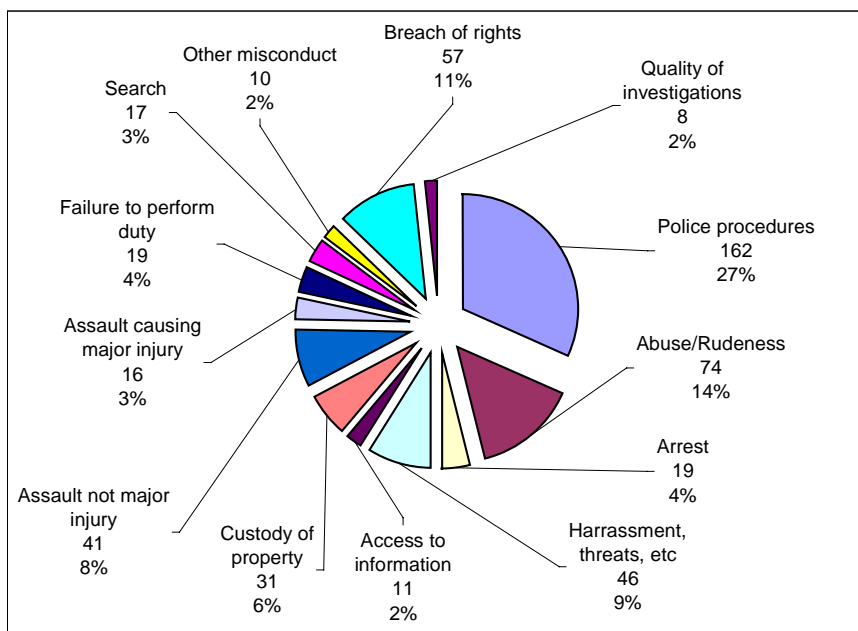
Chart 8: Manner of approach to the Ombudsman (Police)



MATTERS COMPLAINED ABOUT?

Information is recorded about the matters described in every enquiry and complaint received about police. The twelve matters most complained about are depicted in Chart 9.

Chart 9: Matters Raised in Complaints (Police)





In addition, complaints were also received in relation to the following matters:

- Prosecutorial discretion (1)
- Inadvertent wrong treatment (5)
- Custodial/watchhouse/detention (5)
- Corruption (14)
- Traffic (6)
- Warrants (4)
- Juveniles (11)
- Seizure/use of firearms (2)

As in previous years, the three most common matters complained about concerned issues associated with police procedures (27%), abuse and rudeness (14%) and harassment (9%).

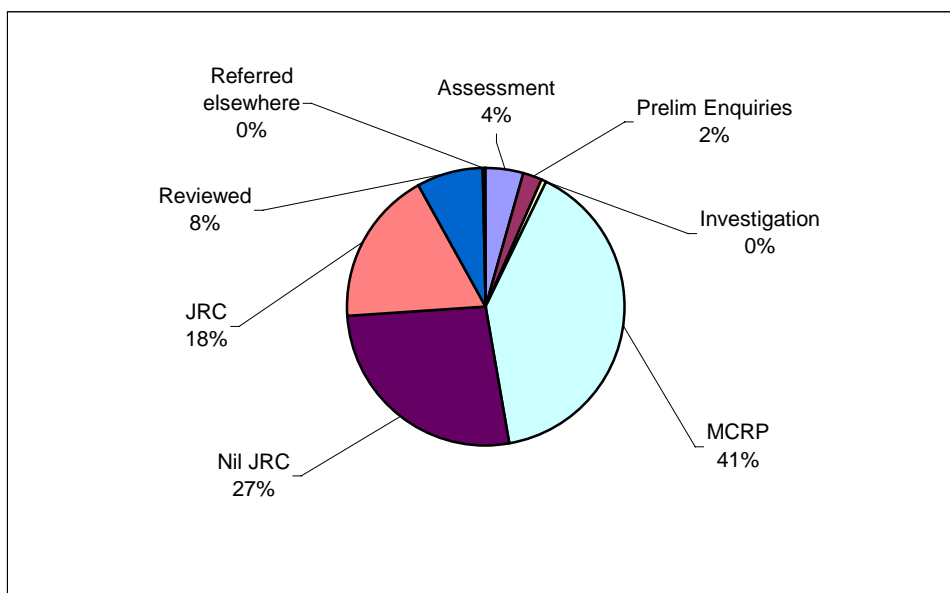
There were a number of significant variations from last year, namely:

- 70% reduction in complaints relating to issues associated with arrest ;
- 70% reduction in complaints regarding issues associated with access to information; and
- 150% increase in issues associated with breach of rights.

HOW COMPLAINTS WERE FINALISED

In all, 252 complaints were finalised in 2002/03. Of these, 206 or 82% were finalised by referring them to police to deal with in accordance with the Guidelines, agreed to between the Commissioner of Police and the Ombudsman, for the handling of complaints against police.

Chart 10: Finalisation of complaints (Police)





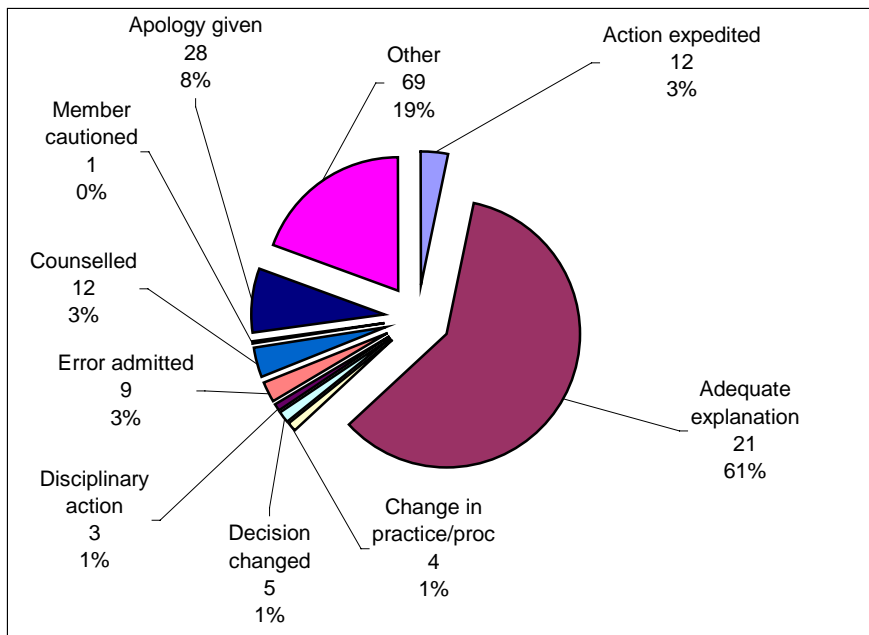
Of the 206 complaints finalised by referring them to police, 100 were resolved by the Minor Complaints Resolution Process (MCRP), 67 through the Nil JRC process and 39 through the JRC process. I am particularly pleased that of the 252 complaints finalised, 41% were resolved by utilising the MCRP process.

OUTCOMES OF FINALISED COMPLAINTS

Outcomes Achieved

Chart 11 below shows the outcome of complaints and the action taken by the NT Police to implement recommendations. As can be seen the outcome most achieved (61%) was to provide an adequate explanation to the complaint. This was followed by some form of apology being given (8%).

Chart 11: Outcomes achieved from finalised complaints



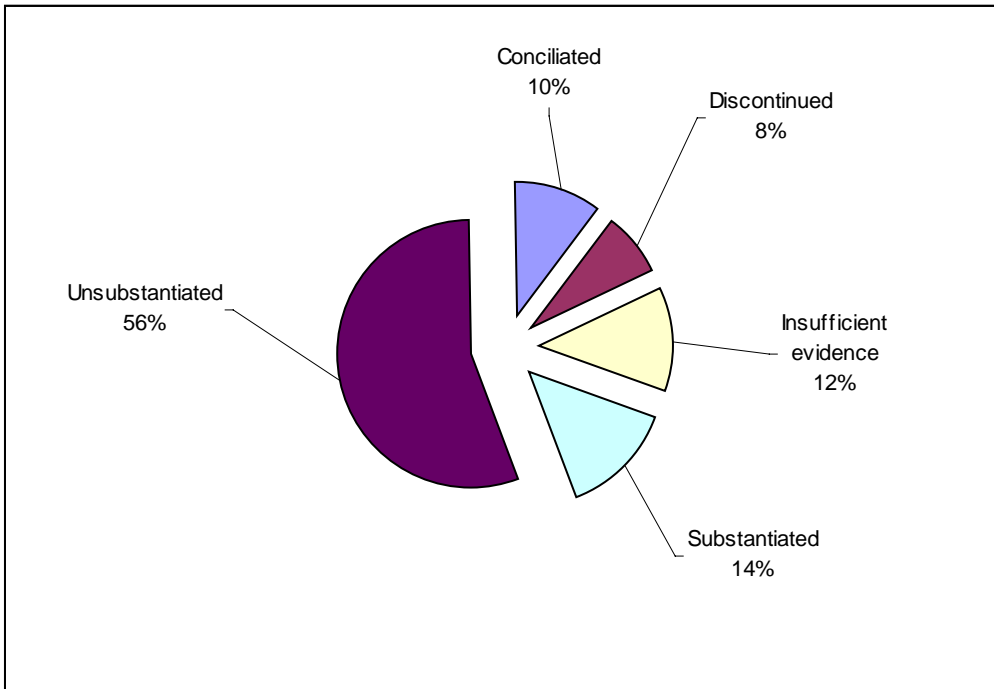
Extent to which outcome favoured the complainant

Chart 12 below sets out the practical outcome of complaints. This chart reflects an assessment made by the case officer as to whether the issues associated with each complaint were substantiated or not.

It is important to note that over 50% of the issues of complaint were not substantiated. This is an increase from last year when 43% of the issues of complaint did not favour the complainant. 12% of the issues of complaint could not be determined one way or the other as there was insufficient evidence to make such a decision.



Chart 12: *Extent to which outcome favoured the complainant (Police)*





ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES

DESCRIPTION

To utilise the information gained through the complaint resolution process to provide reports and make recommendations to address any defective administration and improve the delivery of services.

OUTCOME

Agencies improving the manner in which they deliver services to ensure they are fair, equitable and impartial.

OUTPUTS

1. Recommendations made to agencies and other appropriate bodies.
2. Follow-up on implementation of recommendations.

COST

Total expenditure by the Office on this activity was:

5% of Ombudsman's actual expenditure	\$71,880
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HIGHLIGHTS

The number of complaints the Ombudsman receives and handles over 12 months and the time taken to conclude matters associated with those complaints is a measure of the efficiency of the Office. The Office's effectiveness is also to be considered and evaluated. One method of achieving this is by reviewing whether improvements to services have occurred or are likely to occur as a result of the complaint being addressed.

Examples that reflect the Ombudsman's achievements in improving services during 2002/03 include the following:

SCHOOL ENROLMENT CONFIRMATION FEES (Department of Employment, Education and Training)

The complainant was the father of a student enrolled at a Northern Territory High School due to commence Year 8 in 2003. Following an interview by the school regarding the enrolment he received a letter advising of his child's acceptance and also that, to verify the enrolment acceptance, there was a requirement of a confirmation fee. The letter did not advise that at the commencement of the school year the fee is refundable on request and may be used to pay their school council contribution.



The complainant approached the High School and was referred to the School Council to appeal/dispute the introduction of the confirmation fee. The complainant remained unhappy and contacted the Minister's Office and my Office.

The complainant was initially satisfied with the Minister's response, however, on receiving a letter from the School Council he again contacted this Office because he considered the advice from the School Council was not in accordance with that of the Minister.

I conducted preliminary inquiries into the complaint and was advised by the Department that they acknowledged the letter to parents regarding the confirmation fee was deficient and that they would institute changes. As a result of my enquiries the Department advised that their procedures had changed and all parents of students enrolled in Year 8 2003 would now be notified at the start of the year that their confirmation fee could be refunded on request or used to pay their school council contribution. I was also advised that in future the high school would ensure that the letter to parents offering a student enrolment clearly stated that the confirmation fee would be reimbursed in the first two weeks of the new year unless parents indicated otherwise.

COMPLIANCE AND ENFORCEMENT OF WATER LICENCE (Department of Infrastructure, Planning and Environment)

The complainants are rural landowners, adjacent to a body of water in the Northern Territory, who hold recreational easements over the body of water. The complainants expressed concerns to me regarding a lack of appropriate action by the Department in regard to apparent breaches, by the licensee, of the terms and conditions of the licence applicable to the body of water.

An initial review of the Department's records suggested that the stringent measures imposed by the Licence's terms and conditions, with regard to water quality monitoring and testing may not have been the subject of appropriate and reasonable oversight, enforcement and administration by the Department. As a result, I commenced a formal investigation into the issues of complaint, which covered a period of five years.

My investigation found that during the period 1997 – 2002, the Department appeared to be sufficiently diligent in regulating the use of water resources as per their charter, through the issuing at various stages of the License. However, it appears that the Department was unable to effectively assess and monitor compliance in regards to terms and conditions set for that regulated use thus, discounting in my view, any effectiveness of the relevant legislation (the *Water Act*) and regulations in the first place. In this regard, I found that the administrative actions taken or lack of administrative actions taken by the Department during this period in relation to the Licence were unreasonable.



As a result I recommended that the Department undertake a review of its procedures in relation to the administration of the *Water Act* and that this be formulated as a priority. I also recommended that the Department re-examine its system of compliance and enforcement with a view to improving its effectiveness. I further recommended that the Department liaise with the Department of Health and Community Services (DH&CS) with a view to establishing whether the body of water's current status poses any health risk to members of the public.

The Chief Executive of the Department, has since advised me of the steps that have been taken to give effect to my recommendations. A direction has been given that an independent expert is to be engaged to prepare guidelines as to the processes involved in the investigation, use, control, protection, management and administration of water resources within the Northern Territory. The independent expert will also examine the system of compliance and enforcement in place for the administration of the *Water Act*. I am further advised that in conjunction with DH&CS, the current status of the water body in regard to public health will be assessed and the complainants will be informed.

I consider that the implementation of my recommendations will increase the Department's ability to provide a high standard of service delivery to all residents of the Northern Territory.

WHEN IS A CONFLICT OF INTEREST A CONFLICT OF INTEREST (Education Facility)

I received an anonymous complaint alleging that a senior manager of an Education Facility had contacted the facility's human resources section advising that a family member needed work and directed that the next available position was to be given to the family member. As a result, it was alleged that one hour later the senior staff member was advised that the family member could start at the facility the following week. I observe that the position offered was of a temporary nature and the procedures for such a placement are not necessarily as rigid as if it had been a permanent position.

With respect to the anonymity of the complainant, I determined that in the circumstances it was an appropriate occasion to accept the complaint as an anonymous complaint. Such decisions are not taken lightly and I am aware of the impact of such processes on a person or entity complained about. I am of the view that the reasons for accepting an anonymous complaint in this instance were reasonable. The complaint detail alleged that the employment processes and procedures utilised to employ the family member had been improper. As such I considered the issues raised to be significant; they could be investigated without further involvement or input from any specific complainant, and they required investigation. An important factor in determining to investigate this matter was the fact that it had been referred to several other entities to action but those entities had determined there was no jurisdiction for them to become involved and they had advised that the matter be referred to my Office.



I conducted a formal investigation into the complaint, which involved interviewing a number of persons under oath and examining the relevant records. As a result of my investigation I determined that there was a number of versions of events as to the circumstances surrounding the initial employment of the family member, however, as the events happened some 7 to 9 months prior to my investigation, this was not overly surprising.

To my mind, a conversation did occur in which a senior manager did advise a number of facility employees that the family member was seeking employment. However, I am not of the view that this conversation was any more than that and as such I would not draw any adverse conclusions in this regard;

The senior manager's own evidence indicates that they did in fact contact the Human Resource section of the Institute and advised that section that they wished for the family member's name to be placed on the 'list' as the family member was seeking employment. I was unable to locate any evidence to suggest that the senior manager did issue a direction or instruction that the family member was to be employed by the facility. I am concerned however that the senior manager's action could have presented a perception that this was their desire despite the senior manager not having actually stated this.

I noted, through the senior manager's own admissions, that they expressed concern to the family member about the family member seeking employment at the facility. In my view, whilst there are no impediments to a family member seeking employment within the same organisation, the senior manager clearly was concerned as to the possible perceptions that may arise if the family member was to seek employment at the facility. In this regard, I consider that the subsequent action of the senior manager contacting the facility's Human Resource section personally to place the family member's name on the 'list' to have been both unwise and inappropriate. As such, pursuant to section 26(1)(g) of the *Ombudsman (Northern Territory) Act* I am of the opinion that the senior manager's action was in all the circumstances wrong.

It is my view that the senior manager should have distanced themselves completely from the family member's actions of applying for a position at the facility. This would not of course precluded suggesting to the family member that they consider applying for positions or that they submit a resume. But, at that point it was in my view incumbent on the senior manager to act to avoid any potential conflict of interest, real or perceived. Further, I am of the view that the senior manager should have notified the chair of the facility's council of the situation as it was clearly a situation that presented a conflict of interest or at the very least, the perception of a conflict of interest.

No conflict should ever exist or appear to exist between the private interests of an employee and their official duties. The integrity of any organisation is ultimately shaped by the individual integrity of each of its employees and as such, there was an obligation for the senior manager to not simply follow procedure but to also act in a



manner so scrupulous that it would bear the closest of public scrutiny. In my view it was incumbent on the senior manager to lead by example in such a case.

I advised the chair of the facility's council that if any employee, acting reasonably and in good faith, concludes at any time that there is a conflict of interest or that there are reasonable grounds for a perception of conflict of interest, then the employee has a duty to disclose the matter to his or her immediate supervisor and to remove the conflict. As such I recommended that the Facility's Council re-emphasises the importance for all employees at the facility to ensure that when a conflict of interest exists or where there may be a perception of a conflict of interest, that employees abide by the facility's Code of Conduct and disclose that conflict of interest to the Director or in the case where the conflict of interest involves the Director, the Director is to inform the facility council's chair.

The chair advised that he agreed with my recommendation and to give it effect he intended to table the council's directions to all employees of the facility on the issue of both the codes of conduct and the conflict of interest. The chair also advised that he would approach the Minister of Education to provide similar direction to the council and the employees.

I considered that the chair's implementation of my recommendation in the manner outlined would assist in maintaining the integrity of the Institute and would reduce the likelihood of similar complaints in the future.

IS YOUR HOUSE TOO HIGH? IS MINE?

(Department of Infrastructure, Planning and Environment and the Development Consent Authority - DCA)

This complaint concerns the actions of the Department and the DCA in relation to alleged height encroachments by residences with reference to the Darwin Town Plan ('DTP'). Initially there were 2 separate complainants in regard to the same issue. For the purpose of this case summary I will only refer to the complainants (a husband and wife) who primarily pursued the issue and were most directly involved in the course of events that followed. The primary issues of concern evolving from the complaints involved the:

- Department and DCA complaint handling process;
- Policies and techniques for checking compliance with the Town Planning Scheme;
- Enforcement of Town Planning Regulations;
- Department's regulatory processes for the building industry;
- DCA's actions in relation to perceptions of impropriety;

The background to this complaint was that in early 1999, the complainants contacted the Department to express their concerns that a building under construction in the Town of Darwin would, when completed, exceed the height limitations set out in Clause 22.5 of the DTP. The complainants were concerned that the over-height building would obstruct their visual amenity and that this building and others were



creating a precedent for over-height houses in the area. Eventually after a number of exchanges with the Department, the complainants were informed that the actual decision with regards to the issue of height lay with the then Northern Territory Planning Authority, now known as the DCA.

The DCA advised the complainants that the building under construction did not comply with the DTP and that when the construction was completed, the building would exceed the height restrictions by *'just over a metre'*. The complainants further alleged that they were advised in an intimidatory manner that they *'should not make too much fuss about Lot...as it may be that our own house could be found to not comply'*. Shortly afterwards, the DCA advised the complainants in writing, that the DCA was now in receipt of a complaint that the complainants' house was in breach of the height controls by approximately 1 metre.

The complainants were subsequently advised by the then Minister for Lands and Planning that amended plans for the construction of the building had been lodged with the height levels confirmed by a licensed surveyor. Further that on site measurements were taken from the finished level of the block at the time of title issue and the height determined to be just under 7.1 metres for an area of approximately 2 square metres on two corners at the front of the house. The then Minister advised the complainants that:

...this minor encroachment is considered to have no planning implications, and in fact, the difference in the building height of around 6 centimetres over the small area involved will be imperceptible from your house.

The complainants disputed this. Further, the complainants received another advice from the DCA advising that another complaint against their house had been received and that *'any variation to a clause requires a development application to be submitted...the fee is \$100'*.

Subsequently complaints were lodged with me concerning the response of the Department and the DCA to the complainants' objections regarding the construction under dispute and the circumstances surrounding the DCA's advice that their own house may also be in breach of the DTP.

I commenced inquiries with the DCA and the Department and as a result received written responses from both the Department and the DCA. The responses by the Department and the DCA were relayed to the complainants, however, the complainants maintained that the construction was substantially over-height despite the assurances otherwise from both the Department and the DCA. Additionally, the complainants continued to regard the DCA's requests that they either show that their own houses were compliant with the DTP or apply for a waiver were unwarranted.

As a result of the obvious break down in negotiations between the complainants, the Department and the DCA, I proposed that I chair a meeting between the complainants and the Department and the DCA. The meeting was proposed in



order to determine what action could be taken to resolve the disputed measurements for the construction originally complained of and the complainant's own residence and to generally discuss issues of ongoing concern. The then Chairman of the DCA, declined, by way of letter, to attend the meeting and stated that '*...I think the meeting would be both inappropriate and unproductive.*'

The DCA further advised that '*...the clear over-height of the first complainant's residence*' remained an outstanding issue with the DCA.

The complainants and the Department attended the meeting with the outcome being that the Department agreed to further review the height of the building complained of, which by then had been constructed. The purpose of undertaking this review was to obtain a view as to whether an independent expert should be engaged to determine whether the complainants' concerns regarding over-height were justified. In respect of the complaint against the complainant's residence, the complainants agreed to deliver a true copy of their 'as constructed' plans to the Department for measurement and to allow an inspection of the property to check the actual construction.

Upon examination of the complainants' plans, the Department determined that the '*...dwelling would be assessed as not complying with clause 22.5 of the Darwin Town Plan*' and would need an on-site measurement to ascertain its compliance status. As a result, a brief to an independent surveyor for measurement of both buildings was prepared by the Department and agreed to by the complainants, the owner of the Lot initially complained of and myself.

The independent surveyor conducted the individual measurements of each home in the presence of each individual home owner, a Departmental representative and myself. The reports advised of the measurements that had been taken of the ceiling of the highest habitable space in each building in accordance with the DTP and with reference to DCA Policy 11 which provides clarification for the application of Clause 22.5.

An interpretation of the survey reports in accordance with the formula provided to myself by the surveyor indicated that the construction of the building originally complained about was substantially over-height.

The reports also suggested, allowing for stated margin of error given changes to the section since construction that the complainants' construction complied with the DTP 7 metre height restriction.

The results of the surveys suggested there was a basis for resolution of the complaints between the complainants and the Department via a process of conciliation. However, the DCA did not accept the margin for error adopted by the surveyor and remained of the belief that the complainants' residence was in breach of the DTP.



In regard to the original building complaint, it was the position of the DCA and the Department that no decision could be made as to the issue of the building being substantially over height (although this did not appear to be disputed). This was because a decision of the Planning Tribunal in respect to a similar case was still pending. It was indicated that the decision was likely to provide direction as to how such issues could be dealt with. Unfortunately the DCA focus then appeared to be primarily on the alleged overheight of the complainant's residence. This issue became a stalemate between the DCA and the complainant.

Over the next several weeks, neither the Department nor the DCA contacted the complainants to advise whether the results of the independent survey were accepted and as to what action would now be taken. In some degree of frustration, the complainants complained to the DCA about a number of other buildings they claimed were in breach of the DTP height restrictions. It was becoming clearly apparent that communication between the Department, the DCA and the complainants were unlikely to lead to a negotiated resolution. Subsequent attempts between the complainants and the Department to resolve issues failed. As a result, the complainants approached me and requested I undertake an investigation. Subsequently I indicated my intention to commence a formal investigation into the complaint handling process of both the Department and the DCA.

I was also advised by the complainants that following a title search by their lawyer, it was brought to the complainant's attention that the title of their house in the Land Titles register contained a notation that read 'alleged height encroachment of two storey residence'. Due to the complainants ongoing concern during their dealings with the agencies as to whether they were being treated in a fair manner, they were concerned to know why the notation had been placed against their house title. The complainants considered that until the dispute over the height of their house was resolved, there was no good reason for the Department to record the allegation, particularly as the notation could be detrimental to them, should they ever wish to sell their property.

Resulting from my investigation with respect to the specific issues of complaint, firstly I formed the view that neither the Department nor the DCA had an effective mechanism in place for handling complaints from members of the public about alleged breaches of building or planning regulations. Specifically, it is my view that the Department and the DCA had:

- no clearly established process for responding to complaints, obtaining independent checking as necessary or subsequent auditing of amendments; and
- a lack of guidelines for determining who can complain about what and an inability to address complaints due to a delayed release of the Northern Territory Planning Tribunal determination that was considered relevant to the issues (the decision was delayed for approximately 2 years and was the subject of separate action by myself).

I was therefore of the view that pursuant to section 26(1)(b) of the *Ombudsman (Northern Territory) Act* the actions of both the Department and the DCA in this regard were unreasonable.



Additionally, I am of the view that the lack of an effective complaint handling process does not facilitate the regulation and auditing of the self-certification process currently in place within the building industry. No action appears to be taken by either the Department or the DCA against apparent breaches of the DTP by self-certifying building practitioners thereby giving the appearance of tacit approval to these breaches. This complaint has again brought to attention the fact that self-regulation does not appear to be working. In my mind, the reasoning behind this is inadequate resources, poor practices and a lack of real auditing resulting in a lack of compliance.

Secondly, with respect to the policies and techniques for checking compliance with the Town Planning Scheme, the DCA's failure to take an appropriate lead in this matter is graphically illustrated when it subsequently wrote to both parties saying it would approve waivers, thereby acknowledging what it appeared to have previously denied and rejected in that the construction initially complained of was in breach of the DTP.

The DCA is to be criticised for failing to respond to the complainants' objections to its claims of having achieved an accurate measurement of their house. It neither provided an adequate rebuttal of the complainants' objections, nor suggested any alternative method of finally resolving the dispute. Further, when an alternative method was suggested – a re-survey by an independent expert – it declined to participate in or to endorse the action. Finally, it refused to accept the results of that survey, without in my view, providing a convincing argument for its reasons.

It is the responsibility of the DCA to determine how disputes such as this may be resolved, by identifying reasonable methods for measuring houses. However, it did not provide such means and having failed to do this, it then also failed to accept the methods negotiated by the parties involved in the dispute and agreed to by all, including the Department.

For some three years there was in effect a standoff between the DCA and the complainants. The DCA steadfastly maintained the complainants' residence was in breach of the DTP and made constant demands that this be addressed. The complainants took legal advice and strongly disputed that there was any breach. In my view the DCA failed to initiate any reasonable process to resolve the dispute, despite there being regulatory processes available to the DCA to do so.

There is no doubt in my view that the complainants were subjected to unnecessary and unreasonable delay, expense and angst in regard to this issue. In my view the DCA failed to provide the complainant with an appropriate avenue of redress so as to be able to have the issue resolved. The complainants were effectively left in limbo with no reasonable prospect of resolution in one way or the other.

With the above in mind, I was of the view that pursuant to section 26(1)(b) of the *Ombudsman (Northern Territory) Act*, the actions of the DCA with respect to its handling of this matter had been unreasonable.



Thirdly, with respect to the enforcement of Town Planning regulations, I am critical of the DCA's about-face in relation to the alleged breaches without good cause and after having failed for three years to take decisive action other than threatening regulatory action, which did not eventuate.

It is clear overall that the DCA and the Department have not adequately enforced the town planning regulations and have given insufficient consideration to the consequences of their failure to do so. I was of the view that pursuant to section 26(1)(b) of the *Ombudsman (Northern Territory) Act*, the actions of the DCA in this regard had been unreasonable.

One must ask what impact their actions have on public confidence in the building and planning approval systems and what guarantees there are left that future buildings will not be in breach of the DTP.

Fourthly with respect to the **Department's Regulatory Processes for the Building Industry**, in 1993, a system of non-government-industry practitioner, self certification-building controls was introduced in the Northern Territory. With the introduction of the new system it was foreshadowed that it would be accompanied and backed up by an effective and systematic auditing process. The auditing process was to ensure that those registered practitioners who did not fulfil their statutory obligations would be promptly identified and appropriately dealt with.

It is clearly evident from my investigation that this has not occurred. The Department has demonstrated a lack of action in relation to apparent breaches of the regulations by private certifiers and with reference to the auditing of certifiers. It appears that the auditing of the self-certification system does not go beyond auditing the actual plans and that no compliance check of the physical buildings occurs to ascertain if compliance is genuine or real. This may be due to a lack of adequate resources, however, I regard this as a significant issue as responsibility for adequate regulation of private certifiers is a fundamental role of the Department. It is noted that in the Department's annual report for 1999-00, the Department reported that it needed to do more to develop a regular program of auditing of private certifiers.

I was of the view that the Department's actions with respect to enforcing compliance have, pursuant to section 26(1)(b) of the *Ombudsman (Northern Territory) Act*, been unreasonable.

Fifthly with regard to the DCA's actions in relation to perceptions of impropriety there was a clear perception by the complainants that they were being treated unjustly, merely in response to their individual complaints to the Department and the DCA. Having examined the chain of events, I can well understand how their perception arose.

In addition, the lack of participation by the DCA in attempts to resolve the issue upon my involvement, also appears to indicate that the DCA did not desire to quickly come to a resolution of the matter. This is further evidenced by the fact that the issue of the complainants' house remains unresolved.



Sixthly with respect to the Department's role in the notation on the complainants' title. Given the Department's advice that such notations are routinely made and that a similar notation appears on the records of all the properties under my investigation, there would not appear to be cause for criticism for the initial notation. I am, however, of the opinion that these notations should not remain on the register once the matter in dispute has been resolved as it is no longer an issue requiring notification to interested parties. These notations are not made by instrument and are therefore not subject to the same level of requirement to remain on the register.

Another aspect to these notations on the register that raises my concern is that parties affected by the notations i.e. the property owners, are not advised by the relevant custodian that such a notation is being placed on the land title register.

My investigation resulted in the following recommendations:

- An effective and efficient process for accepting and dealing with complaints needs to be developed by both the Department and the DCA. This process needs to clearly establish procedures in relation to:
 - the receipt and recording of complaints;
 - the appropriate person or body with whom the complaint is to be taken up with;
 - the actions able to be taken under legislation regarding a complaint;
 - the timeliness of the complaint handling process;
 - procedures for monitoring unresolved complaints;
 - whether and under what circumstances complainants can appeal the decision; and
 - who will review the decision.

Whilst the Department has gone some way towards establishing a formal complaints handling process, I am still pursuing this issue as I believe the Department has not gone far enough.

- A clearly stated policy is required to be developed by the Department and the DCA as to how complaints will be handled when the complaint concerns both agencies. This needs to incorporate the policy for deciding who will be the lead agency in the handling of the complaint and in doing so will enable the complainant to be advised as to whom they should contact regarding the progress of their complaint.
- A clear set of guidelines needs to be established through liaison between the Department and the DCA as to what matters may be accepted for formal complaint. The situation in which a person can lodge a complaint against any house at any time is not conducive to peace of mind or quiet enjoyment as home owners have a right to expect. By allowing only those complainants that are directly affected by the issue of their complaint to lodge a formal complaint, the risk of malicious or vexatious complaints is reduced. Consideration needs also to be given to legislative review to address this issue. This is under consideration.



- The DCA should formulate and adopt a reasonable independent method for physically measuring the height of houses constructed that are subject of a complaint. Clear guidelines are required so as to identify acceptable agreement by all parties involved, to identify original site levels and the process for calculating the applicable margin of error relevant to the site. Adoption of an appropriate method should ensure that future height disputes are able to be quickly resolved based on a clear and definitive process for measuring the residence under dispute, which can readily determine compliance or non-compliance.
- There is a clear need for the DCA to develop and adopt a written policy that ensures that waiver applications are not granted indiscriminately and without any thought being given to the individual circumstances of each application. This is under consideration.
- It is clear that the Department needs to develop a proactive program of auditing certifiers to ensure compliance with the legislation or at the very least, rectify the deficiencies contained within its current auditing system. As mentioned, this was an issue that the Department itself identified in its annual report, however, no effective action in this respect appears to have been initiated.
- Guidelines need to be established by the Department as to when to undertake action on identified breaches of the Act by private building certifiers. Awaiting two years for a Tribunal outcome is not a sufficient reaction to identified breaches of the legislation and does not encourage building practitioners and certifiers to comply with town planning rules.
- The DCA needs to develop an effective and efficient process for accepting and dealing with complaints. Included in this process, is the necessity to provide an alternate person within the DCA to manage the complaint if there has been any suggestion by the complainant of inappropriate behaviour by the complaint manager. Of particular importance, is the need to identify an appropriate process in dealing with a complaint, if the complaint manager is the DCA chairman himself. The necessity to proactively avoid a conflict of interest allows the DCA to remain above reproach and ensures that its integrity will not be questioned.

The complainant has approached the Minister on the basis of my report seeking compensation in respect of the costs incurred by them pursuing their concerns.

In regard to my recommendations at the time of writing this report, most of them are under active consideration and I am confident that, in the main, they are being acted upon. I will report further on the actions taken by the Department and the DCA in relation to my recommendations in the next Annual Report.



PITFALLS IN REGULATION OF DEVELOPING INDUSTRY **Department of Infrastructure, Planning and Environment)**

The complainant alleged that the former Parks and Wildlife Commission of the Northern Territory had mismanaged the emerging indigenous wild timber harvesting industry, of which the complainant was an early, if not original, entrepreneur. A number of specific allegations were made about the Commission's actions, some of which extended beyond the charge of mismanagement into charges of unfair and vindictive treatment and breaches of the relevant statutory provisions.

Extensive inquiries conducted pursuant to section 17A of the *Ombudsman (Northern Territory) Act* revealed some instances of deficient administration. It was apparent that policy and administrative processes were still being established and fine-tuned as knowledge and experience in the management of the timber harvesting industry grew. In such circumstances, there may be times when practice precedes policy development and legislative change. Such a context could give rise to perceptions of lack of consistency and arbitrariness and indeed it appeared that such a perception did arise.

I found there was a strong reliance on the Director's right to establish policy at his absolute discretion, combined with a relative lack of available written policy. I identified several instances in which the Commission asserted policy, which, whilst it appeared to have been applied in a consistent manner, did not have specific statutory support.

In the absence of legislative support, the rationale for the policy needs to be clearly articulated and the consistency of its application made clearly evident. Preferably, legislative amendments to support policies are introduced in a timely manner. Recommendations were made that the Commission seek legal advice when there is any doubt as to whether its actions, in respect of its developing policy, are lawful.

The inquiries did not reveal evidence of systemic maladministration or of unfair or vindictive treatment. In large part, the allegations related to matters which were legal in nature rather than administrative. These included matters in which, on the available evidence, there was prima facie justification for the Commission's actions from an administrative point of view; however the legality of its actions was open to challenge. Questions of the legality of its actions were also raised regarding the existence and extent of financial loss as a result of its actions. The complainant was advised he needed to pursue resolution through legal avenues.

DARWIN NIGHT PATROL **(Department of Health and Community Services)**

I commenced an own motion investigation arising out of a number of complaints received by me that included allegations in relation to actions of the Darwin Night Patrol staff. Although each of the individual complaints were resolved, I was concerned that the Night Patrol were taking on a 'policing' role and, in particular,



were purporting to exercise coercive powers. This appeared to be in conflict with the widespread assertion that Night Patrols operate on the basis that the individuals who are 'picked up' have given their consent to be transported and 'detained'. Extensive inquiries were conducted in regard to the matter, including consulting various stakeholders in respect to the Night Patrol. The stakeholders included Mission Australia, who are responsible for running the Darwin Night Patrol under contract to the Department of Health and Community Services, the Northern Territory Police and the Department of Health and Community Services (DHCS). I obtained copies of relevant documentation, including the request for proposal documents to set up the Darwin Night Patrol, the service agreement between DHCS and Mission Australia and the guidelines for the Night Patrol officers.

The Night Patrol was originally established by DHCS who provided funding to the Aboriginal and Islander Medical Support Service (AIMSS) from the wine cask levy. This arrangement was cancelled in May 2000 when DHCS took over the management of the service, as an interim measure only. In June 2001 they advertised calling for an organisation or local business to operate the Night Patrol or Community Patrol Service in Darwin. A contract was subsequently awarded to Mission Australia to operate both the Community Patrol and the Caryota Place Sobering Up Shelter.

The scope of my investigation also extended, in a limited way, to the operation of the Caryota Place Sobering Up Shelter because of its inter-relationship with the Community Patrol.

Jurisdiction

The Community Patrol Service is provided by Mission Australia (MA) pursuant to an agreement with DHCS. I was therefore of the view, pursuant to Section 14(9) of the *Ombudsman (Northern Territory) Act* that I had jurisdiction to investigate the matter and this was not disputed. Section 14(9) provides that:

'Where any administrative action is taken by a person or body to which this Act does not apply under any powers and functions conferred on or instructions given to it by a department or authority to which the Act applies, the administrative action so taken shall, for the purposes of this Act, be deemed to be the administrative action of the department or authority to which this Act applies, and the powers of the Ombudsman with respect to that action may be exercised accordingly.'

Investigation findings

As a result of my investigations, I found that:

1. The Community Patrol and Sobering Up Shelter are widely considered to be invaluable services and have strong support from both community groups and police. The framework by which the Community Patrol is established and within



which it operates contains several inconsistencies and ambiguities and may imply that officers of the Community Patrol hold coercive powers.

The Community Patrol Service is seen as an important component in the 'partnership' between police and the community in maintaining law and order.

2. The *Procedural Agreement between Mission Australia Sobering Up Shelter and Mission Australia Community Patrol* (the agreement) appears to contain several statements that need clarification so that they more accurately explain the level of power held by the Community Patrol Officers. For example, under the heading of 'Operations of Mission Australia Community Patrol' it is stated that the Community Patrol will transport the client to NT Police cells if the sobering up shelter is full. I am of the view that the statement should make it clear that transportation to the police cells under these circumstances is voluntary, so as to remain consistent with the rest of the process.
3. The mandate mentioned in the second paragraph of the agreement makes no reference to the fact that intervention is by consent. I feel that clarification of the rights of the clients and the powers of the patrol workers is necessary to prevent confusion.
4. An examination of the Guidelines for Community Patrol Officers (the guidelines) raised some concerns with the use of ambiguous wording. For example, the phrase 'community patrols are a community based intervention strategy that usually operates by mediating disputes and disturbances', tends to suggest there are other processes used to resolve these disputes, however, it does not clarify these methods, leaving the meaning open to interpretation.
5. The same can be said for the use of the phrase 'partnership between Police and the community'. Without clarification, this phrase could easily be construed as the two agencies having similar powers and roles.
6. Although the powers of the Community Patrol are briefly mentioned in the guidelines, I feel that they do not go into enough detail when describing the limitations on these powers.

During the course of my investigation I was advised that the Community Patrol processes and protocols were being reviewed by Mission Australia. I was also advised that proposed protocols between the NT Police and Mission Australia were under negotiation but had not yet been finalised.

Recommendations

As a result of my investigation I recommended that the contract between DHCS and Mission Australia be varied when the opportunity presents (either through variation of funding or by specific negotiation) to incorporate provisions:

- Emphasising the limitations on the powers of members of the Community Patrol.



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- Dealing with specific regular and additional training for members of the Community Patrol; the suggested training being designed to ensure that the patrol members understand the limitations on their powers and that this is regularly reinforced.
 - Establishing a complaints handling process which makes reference to the Ombudsman's Office for complaints that cannot be internally resolved and a requirement for Mission Australia to report all complaints received to DHCS.
 - That any future request for a proposal by DHCS for the service be reviewed to ensure there are no express or implied references to any coercive powers or police-type role or powers.
 - That the Guidelines for the Operation of Sobering-up Shelters (February 2001) be reviewed to ensure there are no express or implied references to any coercive powers.
 - That the protocols with police, required under the service agreement between Mission Australia and DHCS, be finalised as a matter of urgency.
 - That the general protocols with police relating to all Territory 'Night Patrol' or 'community-type patrol services' be finalised as a matter of urgency.

Responses to recommendations

NT Police

The NT Police were requested to respond to my recommendations. In its response, dated 25 March 2003, it advised that it was conducting a Commonwealth funded project under the National Crime Prevention capacity building grants entitled 'Development of Common Night Patrol Protocols and Practices'. It was pointed out that, as part of the project, six regional workshops had been conducted throughout the Territory with key Community/Night Patrol personnel. The workshops were being run to identify problems and issues to develop constructive, community owned and managed solutions. In view of this project the Commissioner of Police indicated that he would prefer not to comment on the recommendations until after the workshops and a final conference on the matter.

Department of Health and Community Services

The Department of Health and Community Services, in a response dated 26 March 2003 by Mr Robert Griew, Chief Executive Officer of DHCS, indicated that the recommendations made were entirely in line with comments made by officers of DHCS and the recommendations were fully supported.

It was indicated that negotiations for a service agreement, commencing from 1 July 2003, were due to commence with Mission Australia and this would include



agreements for the Day Patrol, Community Patrol and a Sobering Up Shelter. It was stated that the recommendations would be included in the new service agreement.

In regard to the protocols between the NT Police, Sobering Up Shelter and the patrols, DHCS noted that the police had yet to respond, and this was consistent with the response received from the Commissioner of Police.

Mission Australia

Mission Australia responded on 11 April 2003 indicating that they had submitted an application for funding to engage a project officer to undertake the recommendations outlined in my report. They indicated, however, that work in the area would commence forthwith.

I will report further on the progress with regard to my recommendations, particularly in respect to the implications of the project being conducted by the NT Police for Night Patrols and Community Patrols Territory-wide.



ACTIVITY 3: ACCESS AND AWARENESS

DESCRIPTION

To educate and inform the public about the role and functions of the Office of the Ombudsman and promote and facilitate access to its services.

OUTCOME

Ombudsman's services being known and appropriately accessed by users throughout the Territory.

OUTPUTS

1. Distribute Ombudsman brochures.
2. Provide a brochure in 10 different ethnic languages.
3. Give presentations on the Ombudsman's role and functions.
4. Utilise the media (radio, television and newspaper) to educate the public and increase awareness about the Ombudsman.
5. Visit rural and remote communities.

COST

Total expenditure by the Office on this activity was:

2.5% of Ombudsman's actual expenditure	\$35,940
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HIGHLIGHTS

The program has two distinct objectives:

- raising public awareness about the Ombudsman's role and functions; and
- facilitating a complainant's access to the Ombudsman's services.

In all other States and Territories in Australia, the Ombudsman only has an Office in the capital city of their respective State or Territory. In contrast, in the Northern Territory, I have offices in Darwin and Alice Springs. The Northern Territory Government has maintained a commitment to provide services and access to services to Territorians in Central Australia, hence the Alice Springs Office is an integral part of the goal of providing access to the Ombudsman and promoting awareness of it.



MAINTAIN ACCESS AND AWARENESS AT THE NATIONAL LEVEL

Australian Institute of Administrative Law National Conference

This conference took place in Fremantle, Western Australia on 4-5 July 2002.

The theme of this conference was on the structures, procedures, theories and operating principles that underpin the success of those agencies set up by parliaments to regulate individual, corporate and official behaviour in the public interest.

The 2004 conference examined the performance of a range of regulatory agencies from a public law perspective in order to understand the appropriateness of the regulatory models used to protect the public interest and the nature of the public accountability mechanisms designed to govern the operation of regulatory agencies.

The conference attracted a number of informative and interesting speakers on a wide range of issues relevant to the conference theme.

I was invited to present a paper on the subject of the 'Role of Ombudsman in Oversight of Police Services'. A copy of the paper presented to the conference entitled as above, can be found at Appendix 9, page 177.

Some of the other topics covered were:

- the performance of regulatory agencies and the reform of administrative law in Western Australia
- Commonwealth regulators: national experience and international models of independence and accountability
- regulatory agencies in the court: successful challenges to agency conduct
- watching over the watchdogs: regulatory theory and practice with particular reference to the environment
- a GP examines the specialist - a paper presented by the Commonwealth Ombudsman, Mr Ron McLeod
- Queensland's public accountability framework: effective regulation or effectively over-regulated – a paper presented by Mr David Bevan, Queensland Ombudsman
- rule setting and rule enforcement: problems in financial agency regulation.

The Australian Institute of Administrative Law was established in 1989. The principle objectives of the Institute are to promote knowledge of and interest in Commonwealth, State and Territory Administrative Law and to provide a forum for exchange of information on all aspects of administrative law and administrative practices.

In the Northern Territory I have been involved in the establishment of the Northern Territory Chapter of the Australian Institute of Administrative Law and currently hold the position of President of the NT Chapter.



Meeting of Australian Ombudsmen

In conjunction with the AIAL National Conference in Fremantle, Western Australia, a meeting of those Ombudsmen attending the conference took place on 4 July.

The meeting was an opportunity for the Australian Ombudsmen to meet and update each other on issues of significance in regard to each jurisdiction.

Other topics discussed included:

- establishing contacts within each Office to be responsible for maintaining cross-agency contact and keeping updated on reports and current issues of interest;
- the use of the title 'Ombudsman' by agencies or entities other than an Ombudsman in the traditional sense; and
- the nature of computerised case management systems utilised within each office.

Talk to Staff of the WA Ombudsman's Office

In conjunction with my attendance at the AIAL National Conference I attended the Office of the Western Australian Ombudsman in Perth and gave a talk to the staff of the police section, primarily along the lines of my proposed paper to the conference. The meeting provided an informal opportunity to discuss matters of common interest relating to the handling of complaints against police. I was particularly pleased to be updated on events pertaining to the handling of police complaints in Western Australia.

International Institute for Public Ethics Biennial Conference 2002

In conjunction with the 9th Annual Conference of the Australian Association for Professional and Applied Ethics, this conference was held in Brisbane, Queensland, from Friday 4 October until Monday 7 October 2002. The theme of the conference was 'Reconstructing "the public interest" in a globalising world: business, the professions and the public sector'.

The conference program involved over 150 speakers from approximately 20 different countries. The conference topics were diverse, interesting and stimulating. Topics included:

- Preventing Corruption by Mr Brendan Butler, Chairperson, Crime and Misconduct Commission, Queensland, Australia
- Strengthening Public Trust in Government Institutions through Values and Ethics by Ms Janice Cochrane, Deputy Co-Champion on Values and Ethics in the Public Service of Canada
- Preventing Corruption by Mr David Luna, Special Advisor, Anti-corruption and Governance, US Department of State, USA
- Professional Ethics in the Public Interest by Mr Len Scanlan, Auditor-General, Queensland, Australia
- Judicial Ethics and Accountability by the Hon Justice Christie Weeramantary, former Vice-President, International Court of Justice, The Netherlands
- Police Ethics by Commissioner Bob Atkinson, Queensland Police



- Public Interest and Public Policy: unruly horses alike? By the Hon Justice Paul de Jersey, AO, Chief Justice, Supreme Court of Queensland
- Public Interest or Common Good of the Community?: bringing order to a dog's breakfast by the Hon Alan Demack, AO, Integrity Commissioner, Queensland
- Protecting and Respecting Human Rights for Americans and Non-Americans during a 'War' on Terror by Dr Mort Halperin, Director, Open Society Institute, USA
- Legislating for the Public Interest by the Hon Rod Welford, Minister for Justice and Attorney-General, Queensland.

20TH Australasian and Pacific Ombudsmans' Conference

This conference was held in Sydney on 5 & 6 November 2002 and attended by myself and the deputy Ombudsman. The venue for the conference was the New South Wales State Parliament House. This conference is held every year except when the International Ombudsman Institute's World Conference is held, which occurs every 4 years. The conference is attended by Ombudsmen from Australia, New Zealand, the Pacific and Asia. In addition, Ombudsmen from all over the world are invited to attend the conference. The conference also provides an opportunity for the Australian and Pacific Ombudsman Region, a part of the International Ombudsman Institute, to meet and consider matters relevant to the Institute.

The conference provides an important opportunity for each Ombudsman attending to report in regard to significant changes to legislation and judicial decisions effecting their office as well as any other significant issues or developments. Other items on the agenda included:

- conducting effective investigations
- exercising powers
- special reports
- mutual support and assistance
- future relationships with government
- Industry Ombudsmen
- preparing for the future

A diverse and interesting range of speakers presented papers, some from outside the Ombudsman's specific area, including Mr Roger Wilkins, Director General, Cabinet Office, New South Wales, speaking on the future issues affecting the relationship between government and the Ombudsman, from a government agency perspective and Mr Rick Snell, a Senior Lecturer at the University of Tasmania, speaking on future issues affecting accountability of Ombudsmen.

The conference determined that the next Australasian and Pacific Ombudsman Region Conference would be held in Papua New Guinea.



The 4th National Investigation Symposium

In conjunction with the Australasian and Pacific Ombudsman's Conference, the 4th National Investigation Symposium was held on 7 & 8 November 2002 in Manly, New South Wales. The symposium was attended by myself, my Deputy Ombudsman and my Principal Investigation Officer.

The theme of the symposium was 'Sherlock or Sheer Luck?' The symposium was an opportunity for investigators from a wide variety of organisations to come together to discuss topics of common interest and increase knowledge of modern investigation approaches. I was a Session Leader at the symposium in relation to the session relating to Planning and Management of an Investigation.

The symposium was jointly hosted by the Independent Commission Against Corruption and the New South Wales Ombudsman. The keynote address at the symposium was delivered by Mr Brendan Butler, Chairperson of the Crime and Misconduct Commission in Queensland, the topic being 'Investigation: seeking out offending-with feeling'. A keynote address was also given by Mr Damian Grace, Senior Lecturer at the University of New South Wales, whose topic was 'Ethics for Investigators'.

Topics at the symposium included:

- investigation strategies that assist dispute resolution
- the challenges of investigating crime in minority communities
- international police approaches to investigating violent incidents in minority communities
- legal obligations and protections for non-statutory investigations
- using the tap root methodology in incident investigations
- dealing with difficult people
- case management in the 21st Century
- truth, justice and the administrative way: building on the organon of fairness
- avoiding the pitfalls in disciplinary investigations
- cause and effect: balancing professional conduct with identification and remedy of poorly designed systems.

ACCESS AND AWARENESS THROUGHOUT THE TERRITORY

Access and Awareness Sessions

During the year under review, myself and staff from the Office undertook many access and awareness sessions throughout the Territory.

Specific access and awareness sessions were undertaken in Darwin, Palmerston, Alice Springs, and remote communities such as Mataranka, Maningrida, Belyuen and Jabiru.



A more detailed breakdown of sessions and conferences attended is provided at Appendix 4, pages 104 to 105.

Written Material

The Office has continued to distribute its pamphlets and posters throughout the Northern Territory and to target organisations and consumer groups. In particular, the Office's new poster specifically targeting Aboriginal people, and the multi-language brochure targeting different ethnic groups have been well circulated.

Community Newsletters

The Office, in order to reach members of the Territory's diverse population, recognises the usefulness of community and group newsletters. As a result of approaching many of these newsletter editors, information concerning the Office has appeared in newsletters produced for many community groups, including those living in remote areas, professionals, and organisations which service specific communities.

Advertising

Although the Ombudsman has a limited budget for paid advertising we did utilise newspapers, newsletters and radio advertising during the year. No use was made of television advertising.

Outreach visits are always advertised by community radio, such exists, and in local newspapers. When visits are made to remote communities contact is made with community government councils, local schools and other organisations to advise of the visit, promote awareness of the Ombudsman's role and to facilitate access to the community.

During the year under review regular advertisements appeared in the NT News and the Centralian.

Website

People throughout the Northern Territory, and indeed worldwide, can access the Ombudsman through our website on www.omb-hcsc.nt.gov.au. By logging onto the site people can make a complaint, access information (including the latest Annual Report), review our legislation or ask questions without the need to formally contact the Office.

The website is shared with the Health and Community Services Complaints Commission.



ACTIVITY 4: MANAGEMENT OF OFFICE OF THE OMBUDSMAN

DESCRIPTION:

To ensure the Ombudsman meets all his legislative and employment responsibilities and that the Office of the Ombudsman is well managed and resourced.

OUTCOME:

Operations of the Office of the Ombudsman are carried out in accordance with the Ombudsman's legislative and employer responsibilities.

OUTPUTS:

1. Production of an Annual Report.
2. Compliance with the *Ombudsman (Northern Territory) Act*.
3. Compliance with the *Financial Management Act* and *Public Sector Employment and Management Act*.
4. Compliance with policies and procedures associated with:
 - Equal Employment; and
 - Occupational Health and Safety.
4. Compliance with the *Information Act*.
5. Management of resources.

COST

Total expenditure by the Office on this activity was:

15% of Ombudsman's actual expenditure	\$215,620
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CORPORATE GOVERNANCE

LEGISLATIVE FRAMEWORK

As Ombudsman I am responsible for the administration of the *Ombudsman (Northern Territory) Act*.

I am the accountable officer for the Office of the Ombudsman and have the responsibility under the *Financial Management Act* for the efficient, effective and economic conduct of the Office.

Under the *Ombudsman (Northern Territory) Act*, I am independent of the Government and I am not accountable to a Minister, but rather to the Legislative Assembly as a whole. However, under the Administrative Arrangements Orders, where relevant, the

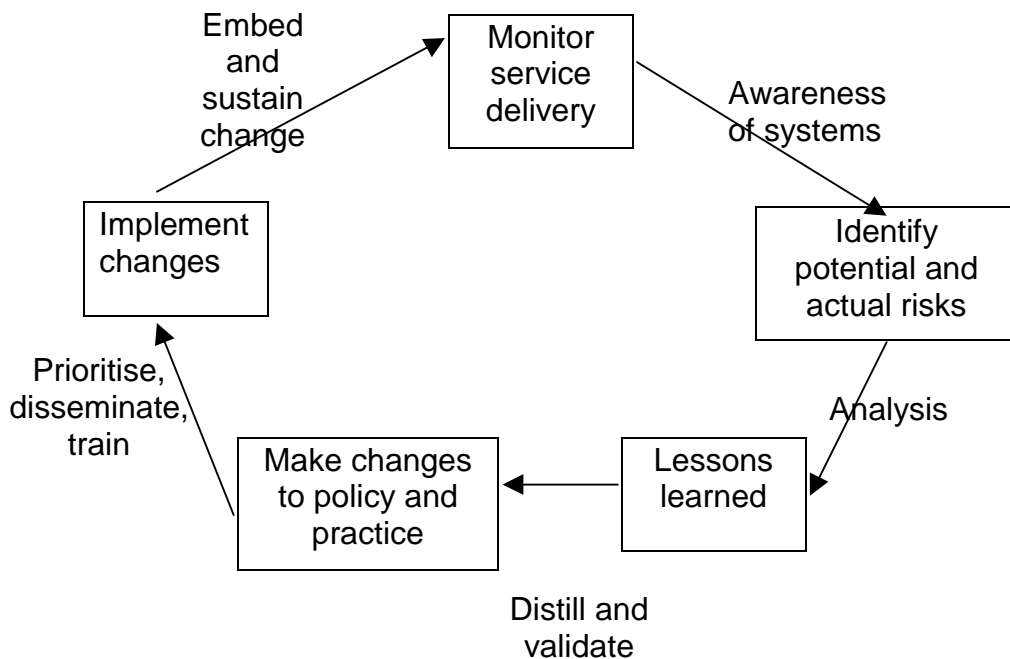


Ombudsman (Northern Territory) Act is the administrative responsibility of the Chief Minister.

PLANNING AND REVIEW CYCLE

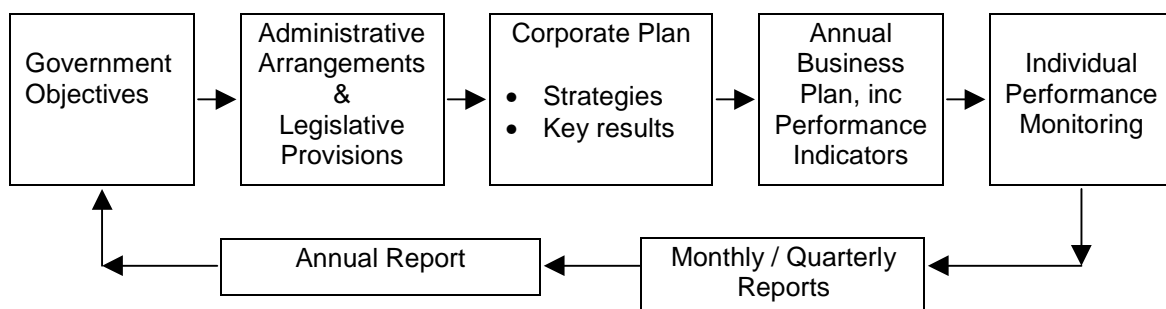
The Office of the Ombudsman has developed and adopted a continuous planning and review cycle. This is based on the principle that we learn from what we have done - the positives and the negatives – and as a result of that learning, we make changes that lead to improvements in service delivery.

Diagram 1: Planning and Review Cycle



In relation to the strategic planning framework, the Office of the Ombudsman operates in the following way:

Diagram 2: Strategic Planning Framework



The Corporate Plan for the Ombudsman’s Office was developed in mid 1998 and reviewed in March 2002. As a result, the Plan was amended slightly to provide



direction for the next five years. The Corporate Plan provides guidance for the Office of the Ombudsman and is a reference point for all staff in relation to where we are heading and what we are trying to achieve. An annual Business Plan is prepared and this provides specific direction and performance indicators and this in turn cascades down into individual performance plans. Monthly performance reports are provided to the management team and overall performance of the Ombudsman's Office is reported on annually to the Legislative Assembly.

The Vision, Mission and Goals of the Ombudsman as identified in the Corporate Plan are detailed in Chapter 2, page 19.

PERFORMANCE MANAGEMENT SYSTEM

There are a number of ways that performance is monitored during the course of the financial year. These include the following:

- Short weekly meetings with staff to identify priorities and action required during the week.
- Open door policy to discuss day to day management of files and complaints.
- Fortnightly case meetings between senior investigation staff and their supervisors to discuss and monitor progress on cases and, where appropriate, determine action on the more difficult cases.
- Case meetings every three months between Ombudsman, Principal Investigation Officer, Case Manager and Case Officer to determine priorities and discuss cases.
- Monthly meetings of the Management Committee and regular staff meetings.
- Progress reports relating to the Business Plan being provided to the Ombudsman.
- Individual performance being measured at least annually against agreed performance indicators.
- Achievement of the detailed strategies and performance indicators being reported on in the Annual Report.

INTERNAL ACCOUNTING CONTROL PROCEDURES

The internal control procedures expected to be adopted by accountable officers for their agency are defined in the *Financial Management Act* and Treasurer's Directions. Part 3 of the Treasurer's Directions defines the internal control procedures to be established and incorporated into an agency's Accounting and Property Manual.

The Office of the Ombudsman's control procedures have been determined in conformity with these requirements and recorded in the Ombudsman's Accounting and Property Manual.



EQUITY AND MERIT PROGRAM

The Ombudsman has an Equal Opportunity Management Plan with the following objectives:

- Foster an understanding and commitment to equity and diversity principles, activities and outcomes by all employees in the agency;
- Equity and diversity in all HRM policies and practices;
- Eliminate workplace discrimination and harassment; and
- Balancing work, family and cultural responsibilities.

Through its Equity and Merit Plan the Office of the Ombudsman aims to ensure best and fairest employment practices by:

- Providing an opportunity for all staff to contribute to and benefit from the achievement of the Agency's objectives; and
- Establishing and maintaining a work environment free from discrimination and harassment in which all individuals are guaranteed equitable access and treatment in all aspects of treatment including conditions of service, recruitment and staff development and training.

In addition, the Office of the Ombudsman has an Aboriginal and Career Development Plan and continues to examine how to better utilise the skills of those it employs to improve the Ombudsman's ability to provide culturally appropriate services to Aboriginal people.

Table 9: Ombudsman's establishment – By gender and position level

Position Level	Male	Female	Total
Ombudsman ⁵	1	0	1
Deputy Ombudsman ⁶	1	0	1
Administrative officer 8	0	1	1
Administrative Officer 7	1	2	3
Professional Level 2	0	1	1
Administrative Officer 5	1	3	4
Administrative Officer 4	0	1	1
Administrative Officer 3	0	3	3
Total	4	11	15

Refer to Chapter 2, page 22 for a breakdown of the Ombudsman's establishment by gender and classification.

⁵ The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints

⁶ The Deputy Ombudsman is also the Deputy Commissioner for Health and community Services Complaints.



STAFF TRAINING AND DEVELOPMENT PROGRAMS

As a result of consultation with staff and management, a performance appraisal framework has been developed to meet the needs of the Ombudsman's Office and the Health and Community Services Complaints Commission.

The framework ensures that both employees and supervisors are provided with the opportunity to:

- focus on goals and tasks and the achievement of targets;
- define expectations, roles and responsibilities;
- give feedback on each other's performance;
- discuss work related concerns constructively and confidentially;
- discuss learning and development needs and activities; and
- plan for the next performance period.

This framework is designed to assist employees and supervisors to appraise performance and plan for the future – it is not a performance management program.

A major objective achieved through the implementation of this program is the development of individual annual training and development programs for all staff.

This process is incorporated into the Business Plans for both the Ombudsman's Office and the Health and Community Services Complaints Commission.

The expenditure on staff training and development during 2002/03 amounted to \$8,574.00. This is represented by a total figure of 80 training hours comprised of 13 training opportunities. This is significantly less than for last financial year where there were 183 training hours representing 44 training opportunities provided to staff. As noted previously, budget constraints have impacted in this area.

OCCUPATIONAL HEALTH AND SAFETY PROGRAM

I take my responsibility for the safety, health and well being of staff very seriously and have developed an overall Occupational Health and Safety (OH&S) plan of the Office of the Ombudsman.

The presence of health and safety risks within my Office has consistently been assessed as low. Even so, staff awareness is actively encouraged and staff involvement in occupational safety and health issues is still part of the regular staff meeting agenda. The OH&S Officer prepares monthly reports for staff and management drawing attention to any practices, procedures or equipment which may be hazardous.

The Ombudsman's Office has a contract with Employee Assistance Services NT (EAS) to supply counselling and other services to staff on an as needed basis. The availability of this service is actively promoted to all staff and EAS have presented an information session to all employees on the services they provide.



Some important OH & S initiatives completed during the year were:

- Completion of OH & S Audit by DCIS OH & S qualified consultant;
- Workplace risk assessment including inspection of OH & S policies and procedures;
- OH & S Policies and procedures reviewed and updated;
- Ergonomic Assessment of workstations completed;
- Alcohol and other drugs awareness presentation by EAS; and
- Support for participation in local Corporate Cups social and sporting events held during the year, as part of encouraging a safe and healthy team spirit and work environment.

During the year the combined number of sick day absences for both NT Ombudsman and Health & Community Services Complaints Commission amounted to 214.

Employee safety and physical security has been improved with the following initiatives:

- Duress alarm system upgrade;
- Office renovations to create better visibility into reception area and interview room; and
- Review and update of office security procedures.

During the year the combined number of sick day absences for both the NT Ombudsman and the Health & Community Services Complaints Commission amounted to 214. This is an increase from the previous year where there were 108 sick day absences.

PREMISES, PLANT AND EQUIPMENT

An additional \$60,000 was made available during 2001/02 for additional minor new works which was going to be used to make space for an additional office utilising the current floor space. Because of other priorities throughout the Office, these minor new works were not commenced.

The funds were carried forward into 2002/03 and they have been utilised on arranging for a new office, alterations to the front counter area, sound proofing of offices and some minor partitioning works.

AUDITS

An Agency compliance Audit was conducted by the Auditor General's office in March 2003.



The audit found that, subject to the exceptions listed below, the accounting and control procedures examined provided a reasonable assurance that the responsibilities of the Accountable Officer, as set out in the Treasurer's Directions and Procurement Directions, will be met. The exceptions were:

- Procurement procedures not complied with – non gazettal of new computer software.
- Lack of an adequate internal audit capacity.
- The Accounting and Property Manual is not up to date.

These issues identified by the Auditor General were referred to the Management Committee and have been addressed.

STRATEGIC AUDIT AND RISK MANAGEMENT

No further audits were planned for 2002/03 primarily due to the completion of the organisational structure and ongoing review of legislation. It is, however, anticipated that, in conjunction with Risk Management Services of the Department of the Chief Minister, ongoing risk management and audits will be implemented to assess performance in key areas.

FOI ANNUAL REPORTING REQUIREMENTS

Section 11 of the *Information Act* sets out the information a public sector organisation must publish annually in relation to its process and procedures for accessing information. A detailed description of the Ombudsman's obligations under Section 11 of the Act are provided at Appendix 7, pages 170 to 174.



Appendix 1

SERVICE STANDARDS OF THE OFFICE OF THE OMBUDSMAN

THE OMBUDSMAN'S STAKEHOLDERS:

The Ombudsman's stakeholders are:

- Citizens of the Northern Territory.
- Government Agencies and Statutory Authorities.
- Local Government and Community Councils.
- Northern Territory Police Service.
- The Legislative Assembly of the Northern Territory.

THE OMBUDSMAN'S COMMITMENT:

1. Fairness

- You will be treated fairly and with respect.
- You will be given the right to be heard during the complaint process.
- Our decisions will be balanced, taking into account all available evidence and points of view.
- We will explain our decision and reasons to you.

2. Independence

- Our staff are independent, objective and impartial.

3. Professionalism

- Our staff are ethical and honest and will respect your confidentiality.
- Our staff will be courteous, helpful and approachable.
- Our staff are trained and competent and will provide information about our role and processes.
- Our staff will declare any interest which conflicts with the duty to properly determine complaints.
- Our staff will provide appropriate referrals if your complaint is beyond our jurisdiction.

4. Accountability

- We will act lawfully and in accordance with the *Ombudsman (Northern Territory) Act*.
- We will treat complaints against this office seriously and with integrity.



- We will be open and transparent in all our dealings.
- We are responsible for the appropriate use of our resources and will act on a complaint according to the nature and seriousness of the grievance and the reasonable needs of other complainants.

5. Accessibility

- Our ordinary office hours are 8.00 am to 4.30 pm Monday to Friday.
- Staff will visit regional centres on a regular basis.
- Toll free telephone access within the Northern Territory will be maintained.
- Information material about our work will be freely available.
- Staff are trained in the use of translation and interpreter services.
- We will use plain language in our letters and interviews.
- You are welcome to bring a friend or mentor with you to talk with us, or to assist you in your complaint.
- Wheelchair access is provided at both Darwin and Alice Springs Offices.

6. Timeliness – unless otherwise advised

- Your complaint will be assessed within 7 days and you will be promptly informed of the action taken.
- Telephone, facsimile and email messages will be answered promptly.
- Letters will be acknowledged within 7 days of receipt.
- You will be informed of the progress of the complaint regularly and ordinarily every 6-8 weeks.
- We will be flexible in our approach and try to achieve a conciliated resolution of the complaint when appropriate.
- We will respond promptly to letters and requests for information.

7. What the Ombudsman cannot do

The Ombudsman must comply with the terms of the *Ombudsman (Northern Territory) Act*. The Act states that he cannot:

- provide legal advice or representation;
- act as an advocate; or
- assist with complaints about politicians, most employment disputes, decisions of the courts or actions of private individuals or businesses.



Appendix 2

CERTIFICATION OF FINANCIAL STATEMENTS

The accompanying Financial Statements in respect of the operation of the Ombudsman for the Northern Territory have been prepared in accordance with the *Financial Management Act* and the Treasurer's Directions. They represent a true and accurate disclosure of all financial transactions during the year under review.

The Ombudsman Activity consists of two programs:

- Ombudsman; and
- Health and Community Services Complaints Commission (HCSCC).

We the undersigned have received an assurance from DCIS that the functions they undertake on our behalf are carried out in accordance with the Treasurer's Directions and we are not aware of any circumstances, as at 30 June 2003, or occurring since the end of the financial year, to date, which would render any of the particulars included in the accompanying financial statements misleading or inaccurate.

PETER BOYCE
Ombudsman and Accountable Officer

KAREN LEWIS
Business Manager



Budget Comparison

	Published Budget 2002-03 (1)	Final Estimate 2002-03 (2)	Actuals 2002-03 (3)	Budget Variance (1) – (2)	Actual Variance (2) – (3)
	\$000	\$000	\$000	\$000	\$000
Output Appropriation	1733	1784	1784	51	0
Statement of Financial Performance					
Operating Revenue (a)	1761	1812	1810	51	-2
Operating Expenses (b)	1765	1836	1854	71	-18
Net Operating Surplus/Deficit	-4	-24	-44	-20	-20
Statement of Cash Flows					
Net Cash from Operating Activities (c)	0	-297	-257	-297	40
Net Cash from investing and financing activities (d)	0	297	293	297	-4
Statement of Financial Position					
Change in Equity (e)	-159	-147	-166	12	-19

Variations:

(a)	- One off funding for unexpected termination expenses - Increase in IT Outsourcing funding - Long Service Leave Transfer to Central Holding Authority - Reinstatement of Long Service Leave Transfer	50 20 -65 46
(b)	- Increase in Depreciation expense for Computer Software	20
(c)	- Recovery of costs from other NT Government Agencies, including employee expenses	40
(d)	- Finance Lease for Microsoft Licences	4
(e)	- Net Long Service Leave transfer to Central Holding Authority	-19



OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF FINANCIAL PERFORMANCE
For the year ended 30 June 2003

OPERATING REVENUE	NOTE	2003 \$'000
<i>Sales of Goods and Services</i>		
Output Revenue		1784
Other Agency Revenue		26
TOTAL OPERATING REVENUE	2	<u>1,810</u>
OPERATING EXPENSES		
Employee Expenses		1,455
<i>Administrative Expenses</i>		
Purchases of Goods and Services		369
Repairs and Maintenance		1
Depreciation and Amortisation	5	28
Interest Expense	13	1
TOTAL OPERATING EXPENSES	2	<u>1,854</u>
NET OPERATING SURPLUS/ (DEFICIT)	10	<u>(44)</u>

The statement of financial performance is to be read in conjunction with the notes to the financial statements.



OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF FINANCIAL POSITION
As at 30 June 2003

ASSETS	NOTE	2003 \$'000
Current Assets		
Cash and Deposits	3	63
Receivables	4	12
Prepayments		1
Total Current Assets		<u>76</u>
Non-Current Assets		
Property, Plant and Equipment	5	47
Total Non-Current Assets		<u>47</u>
TOTAL ASSETS		<u><u>123</u></u>
LIABILITIES		
Current Liabilities		
Accounts Payable	6	66
Borrowings and Advances	7	4
Provisions	8	218
Total Current Liabilities		<u>288</u>
TOTAL LIABILITIES		<u><u>288</u></u>
NET ASSETS		<u><u>(165)</u></u>
EQUITY		
Capital	9	(122)
Accumulated Funds	9	(44)
TOTAL EQUITY		<u><u>(166)</u></u>

The statement of financial position is to be read in conjunction with the notes to the financial statements



**OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF CASHFLOWS
For the year ended 30 June 2003**

	NOTE	2003 \$'000 (Outflows)/ Inflows
CASH FLOWS FROM OPERATING ACTIVITIES		
Operating Receipts		
Output Revenue Received		1,784
.....Arrangement with Commonwealth Ombudsman		26
Other Agency Receipts		41
Total Operating Receipts		<u>1,851</u>
Operating Payments		
Payments to Employees		(1,400)
Transfer of Long Service Leave Liability		(297)
Payments for Goods and Services		(409)
Interest Paid		(1)
Total Operating Payments		<u>(2,107)</u>
Net Cash from Operating Activities	10	<u>(257)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Financing Receipts		
Equity Injection		297
Total Financing Receipts		<u>297</u>
Financing Payments		
Finance Lease Payments		(4)
Total Financing Payments		<u>(4)</u>
Net Cash from Financing Activities		<u>293</u>
Net Increase in Cash Held		36
Cash at Beginning of Financial Year		27
CASH AT END OF FINANCIAL YEAR	3	<u>63</u>

The statement of cash flows is to be read in conjunction with the notes to the financial statements.



OMBUDSMAN FOR THE NORTHERN TERRITORY
Notes to and forming part of the Financial Statements
For the year ended 30 June 2003

1 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) Objectives and funding

The Ombudsman for the Northern Territory includes the Health and Community Services Complaints Commission. The Ombudsman's role is to receive, investigate and resolve complaints made by members of the public about any administrative action to which the *Ombudsman (Northern Territory) Act* applies. The Commission's role is to inquire into, conciliate, investigate and resolve health and community services complaints within the Northern Territory.

The Department is predominantly funded by parliamentary appropriations. The financial statements encompass all funds through which the Department controls resources to perform its functions.

In the process of reporting on the Department as a single Agency, all intra Agency transactions and balances have been eliminated.

(b) Working for Outcomes

Stage 1 of the Territory's new financial and performance management framework *Working for Outcomes* was introduced on 1 July 2002. Stage 1 introduced the fundamental reforms of accrual accounting, accrual reporting and accrual output budgeting underpin the framework. Appropriation reforms were also introduced as part of Stage 1. Two distinct types of appropriation were introduced, output and capital, and appropriation is now provided on a net basis, net of Agency revenue rather than Activity level.

As 2002-03 is the first year the Agency has adopted accrual accounting and reporting under the new framework, comparatives for 2001-02 have not been provided in the financial statements and accompanying notes, except where detailed.

Central Holding Authority

The Central Holding Authority is the 'parent body' that represents the Government's ownership interest in Government controlled entities.

The Central Holding Authority also records all Territory items. Territory items are revenues, expenses, assets and liabilities controlled by the Government and managed by Agencies on behalf of the Government. The main Territory item is Territory revenue, which includes taxation and royalty revenue, Commonwealth general purpose funding (such as GST revenue), fines, and statutory fees and charges.

The Central Holding Authority also holds certain Territory assets not assigned to agencies as well as certain Territory liabilities that are not practical or effective to assign to individual agencies.

Territory items

The Central Holding Authority recognises all Territory items, therefore the Territory items managed by the Agency on behalf of Government are not included in the Agency financial statements. However, as the Agency is accountable for the Territory items



they manage on behalf of Government, these items have been separately disclosed in Note 20, titled Schedule of Territory Items.

(c) Basis of accounting

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act* and Treasurer's Directions.

Except where stated the financial statements have been prepared in accordance with the historical cost convention.

The following is a summary of the material accounting policies, which have been adopted in the preparation of the financial statements.

(d) Revenue recognition

Revenue is recognised at fair value of the consideration received net of the amount of goods and services tax (GST). Exchanges of goods or services of the same nature and value without any cash consideration are not recognised as revenues.

Output revenue

Output revenue represents Government funding for Agency operations and is calculated as the net cost of Agency outputs after taking into account funding from Agency revenue.

The lack of accrual data history necessitated interim arrangements for appropriation during 2002-03. The net cost of Agency outputs for output appropriation purposes does not include any allowance for major non-cash costs such as depreciation.

Revenue in respect of this funding is recognised in the period in which the Agency gains control of the funds.

Rendering of services

Revenue from rendering services is recognised in proportion to the stage of completion of the contract.

(e) Goods and services tax

Revenues, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred on a purchase of goods and services is not recoverable from the Australian Tax Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables are stated with the amount of GST included.

The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payable in the Statement of Financial Position.

Cash flows are included in the Statement of Cash Flows on a gross basis. The GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the ATO are classified as operating cash flows.

Commitments and contingencies are disclosed net of the amount of GST recoverable from, or payable to, the ATO.



(f) Interest expenses

Interest expenses include interest and finance lease charges and are expensed as incurred.

(g) Cash and deposits

For the purpose of the Statement of Financial Position and the Statement of Cash Flows, cash includes cash on hand and cash at bank.

(h) Receivables

The collectibility of debtors or receivables is assessed at balance date and specific provision is made for any doubtful accounts.

Trade debtors to be settled within 30 days and other debtors to be settled within 30 days, are carried at amounts due.

(i) Property, plant and equipment

Acquisitions

All items of property, plant and equipment with a cost, or other value, equal to or greater than \$5,000 are recognised in the year of acquisition and depreciated as outlined below. Property, plant and equipment below the \$5,000 threshold are expensed in the year of acquisition.

The cost of property, plant and equipment constructed by the Agency includes the cost of materials and direct labour, and an appropriate proportion of fixed and variable overheads.

Depreciation and amortisation

Items of property, plant and equipment, including buildings but excluding land, have limited useful lives and are depreciated or amortised using the straight-line method over their estimated useful lives.

Amortisation applies in relation to intangible non-current assets with limited useful lives and is calculated and accounted for in a similar manner to depreciation.

The estimated useful lives for each class of asset, for the current year, are in accordance with the Treasurer's Directions and are provided as follows:

	<u>Period</u>
Plant and equipment	10 Years
Intangibles	3 Years

Assets are depreciated or amortised from the date of acquisition or, in respect of internally constructed assets, from the time an asset is completed and held ready for use.



(j) Leased assets

Leases under which the Agency assumes substantially all the risks and benefits of ownership are classified as finance leases. Other leases are classified as operating leases.

Finance leases

Finance leases are capitalised. A leased asset and a lease liability equal to the present value of the minimum lease payments are recorded at the inception of the lease. Lease payments are allocated between the principal component of the lease liability and the interest expense.

Operating leases

Operating lease payments made at regular intervals throughout the term are expensed when the payments are due, except where an alternative basis is more representative of the pattern of benefits to be derived from the lease property.

(k) Accounts payable

Liabilities for trade creditors and other amounts payable are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Agency. Trade creditors are normally settled within 30 days.

(l) Employee benefits

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and annual leave. Liabilities arising in respect of wages and salaries and annual leave expected to be settled within twelve months of the reporting date are measured at their nominal amounts based on remuneration rates which are expected to be paid when the liability is settled.

No provision has been made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken indicates that accumulated sick leave will never be paid.

Employee benefits expenses are recognised in respect of the following categories:

- wages and salaries, non-monetary benefits, annual leave, sick leave and other leave entitlements; and
- other types of employee benefits are recognised against profits on a net basis in their respective categories.

As part of the introduction of *Working for Outcomes*, the Central Holding Authority assumed the long service leave liabilities of Government Agencies, including Ombudsman for the Northern Territory. The actual liability was transferred from Agency ledgers during 2002-03. This resulted in a reduction in the Ombudsman for the Northern Territory liabilities of \$297,000 and a corresponding increase in its equity of \$297,000.



Technical requirements within the reporting and accounting system necessitated the transferring journals to be recorded as cash transactions. There is no net cash effect. However, the inflow and outflow are reported in the financing and operating sections of the Statement of Cash Flows respectively.

(m) Superannuation

Employees' Superannuation entitlements are provided through the NT Government and Public Authorities Superannuation Scheme (NTGPASS), Commonwealth Superannuation Scheme (CSS) and non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The Agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or the non-government employee nominated schemes. Any liability for government superannuation is met directly by the Central Holding Authority and the Agency has and will continue to have no direct superannuation liability.

(n) Rounding of amounts

Amounts in the financial statements and notes to the financial statements have been rounded to the nearest thousand dollars.

2 STATEMENT OF FINANCIAL PERFORMANCE BY OUTPUT GROUPS	2003 \$'000			
	Output Group 1	Output Group 2	Output Group 3	Total
OPERATING REVENUE				
<i>Sales of Goods and Services</i>				
Output Revenue	1784			1784
Other Agency Revenue	26			26
TOTAL OPERATING REVENUE	1810			1810
OPERATING EXPENSES				
Employee Expenses	1258	197		1455
<i>Administrative Expenses</i>				
Purchases of Goods and Services	278	91		369
Repairs and Maintenance	1			1
Depreciation and Amortisation	28			28
Interest Expense	1			1
TOTAL OPERATING EXPENSES	1566	288		1854
NET OPERATING SURPLUS/ (DEFICIT)	244	(288)		(44)
3 CASH AND DEPOSITS				
Cash on hand				
Cash at bank			63	
			<u>63</u>	
4 RECEIVABLES				
Current				
Trade debtors			10	
Less: Provision for doubtful trade debtors			0	
Other receivables			2	
Total receivables			<u>12</u>	



5 PROPERTY, PLANT AND EQUIPMENT

2003
\$'000

Plant and equipment

At cost	66
Accumulated depreciation	(24)
	<u>42</u>

Intangibles

At cost	9
Accumulated amortisation	(4)
	<u>5</u>

Total property, plant and equipment

47

Reconciliations

Reconciliations of the carrying amounts of property, plant and equipment at the beginning and end of the current financial year are set out below:

	Plant & Equipment	Intangibles	Total
Cost			
Value at the beginning of the year	Nil	Nil	Nil
Assets introduced on adoption of accrual accounting	66		66
Additions		9	9
Disposals			
Transfers			
Revaluation			
Value at the end of the year	<u>66</u>	<u>9</u>	<u>75</u>
Accumulated depreciation			
Value at the beginning of the year	Nil	Nil	Nil
Assets introduced on adoption of accrual accounting			
Depreciation and amortisation	24	4	28
Disposals			
Transfers			
Value at the end of the year	<u>24</u>	<u>4</u>	<u>28</u>
Written down value			
Value at the beginning of the year	Nil	Nil	Nil
Value at the end of the year	<u>42</u>	<u>5</u>	<u>47</u>

2003
\$'000

6 ACCOUNTS PAYABLE

Trade creditors	21
Other creditors	45
	<u>66</u>

7 BORROWINGS AND ADVANCES

Current

Finance lease liability (Note 15)	4
	<u>4</u>

Total borrowings and advances

4



8 PROVISIONS

Current

Employee benefits

Annual leave	169
Leave loading	23
• Other current provisions	
Other provisions	25
Total provisions	218

9 EQUITY

(a) Capital

Balance at the beginning of year	Nil
Equity recognised on adoption of accrual accounting	(419)
Equity injections	0
Equity withdrawals	0
Assumption of long service leave to Central Holding Authority Note 1 (l)	297
Balance at the end of year	(122)

(b) Accumulated Funds

Balance at the beginning of year	Nil
Current year operating surplus / deficit	(44)
Balance at the end of year	(44)

10 NOTES TO THE STATEMENT OF CASHFLOWS

Reconciliation of net operating surplus / deficit to net cash used in operating activities.

Net Operating Surplus/(Deficit)	(44)
<i>Non-Cash Items</i>	
Depreciation	24
Amortisation	4
<i>Changes in Assets and Liabilities</i>	
Decrease/(Increase) in receivables	6
Decrease/(Increase) in prepayments	(1)
(Decrease)/Increase in accounts payable	11
(Decrease)/Increase in provision for employee benefits	(266)
(Decrease)/Increase in other provisions	9
Net cash flows from/(used in) operating activities	(257)

Non-cash financing and investing activities

Finance Lease Transactions

During the financial year the Agency acquired plant and equipment / computer equipment and software with an aggregate fair value of \$9,000 by means of finance leases.

11 SERVICES RECEIVED FREE OF CHARGE

Contract administration	267
Internal audits and reviews	
Risk Management Services	4



12 COMMITMENTS

(i) Finance lease payment commitments

Future finance lease commitments are payable:

One year and no later than five years

6

Less Future lease finance charge

Lease liabilities provided for in the financial statements:

Current

6

Total lease liability

6

The Agency purchased software licenses under a finance lease expiring from 1 to 5 years.

13 FINANCIAL INSTRUMENTS

A financial instrument is any contract resulting in a financial asset of one Agency and a financial liability of another Agency.

(a) Interest Rate Risk

The Agency's exposure to interest rate risk and the average interest rate for classes of financial assets and financial liabilities is set out below. The average interest rate is based on the outstanding balance at the start of the year.

	Weighted Average interest rate %	Variable interest \$'000	Fixed Interest Maturity			Non- Interest bearing \$'000	Total \$'000
			Under 1 year \$'000	1 to 5 years \$'000	Over 5 years \$'000		
2003 Financial Assets							
Cash assets							
Receivables							
Financial Liabilities							
Accounts payable							
Borrowings and advances							
Lease liabilities				(1)			
Net Financial Assets/(Liabilities)		nil	nil	(1)	nil	nil	nil

14 CONTINGENT LIABILITIES AND CONTINGENT ASSETS

a) Contingent liabilities

- As a result of an Agreement for enhancements to the ProActive Complaint Management System. The liability may arise where a third party relies on incorrect information supplied by the system. The risk to the Territory under the Agreement is considered to be minimal and the contingent liability resulting from this undertaking is unquantifiable.

15 ACCOUNTABLE OFFICER'S TRUST ACCOUNT

N/A

16 WRITE OFFS, POSTPONEMENTS AND WAIVERS Write offs, postponements and waivers authorised under other legislation

Nil



Appendix 3

COMPLAINT PROCESS

NT AGENCIES (GENERAL)

Who can complain?

The Ombudsman accepts complaints from individuals, businesses community groups, legal aid organisations and anyone who feels they have been disadvantaged by the actions or decisions of a Northern Territory Government Department, Statutory Authority, NT Police or Local Government Council.

How to complain

Complainants are always encouraged to contact the Agency or Local Government Council first. In some cases it is easier for the Agency or Local Government Council to fix the problem. Many Agencies have very effective dispute handling processes. The Ombudsman will not ordinarily investigate a matter if a complainant has not first tried the agency unless there are special or extenuating circumstances that would warrant the Ombudsman to exercise discretion to investigate the matter in the first instance.

Complaints can be made in writing, by telephone or by a person attending the Office of the Ombudsman in Darwin or Alice Springs. Provision has also been made for a complaint or query to be made by way of the internet on the Office's website, www.omb-hcsc.nt.gov.au.

Non English speakers

The Ombudsman's Office will provide interpreters to assist in the making of a complaint and these service are free of charge.

Cost and confidentiality

Investigations by the Ombudsman are free of charge and confidential. A complainant can ask that their complaint be treated anonymously in which case their name would not be given to the agency concerned unless absolutely necessary for the effective investigation of the complaint. In that event the matter would first be discussed with them.

How long does an investigation take?

The length of time for investigating a matter will depend upon the complexity of the issues raised by a complaint. Many complaints are resolved almost immediately or



within a week or two. More complex cases involving disputed facts, systemic problems or criminal matters may take some months to resolve.

Other complaint handling agencies

If the Ombudsman is not able to investigate a complaint he may refer a complaint to another complaint handling agency such as:

- the Anti-Discrimination Commissioner;
- an industry Ombudsman scheme such as the Telecommunications Industry Ombudsman or the Banking Ombudsman; or
- Consumer Affairs

Method of investigation

The *Ombudsman (Northern Territory) Act* confers on the Ombudsman power to make enquiries of the department concerned for the purposes of determining whether jurisdiction exists to investigate a complaint for the purpose of exercising the various discretions to decline an investigation. The Ombudsman can decline to investigate a matter if a complaint is vexatious or trivial, if the complainant has insufficient interest, if the complaint is out of time (more than twelve months old) or where the Ombudsman considers that an investigation or further investigation is unnecessary or unjustified. The Ombudsman is also not entitled to investigate a matter where the complainant has a right of review before a court or tribunal. There is, however, a discretion by which the Ombudsman can investigate matters despite there being a right of review before a court or tribunal, provided the Ombudsman is satisfied it is in the interest of justice to do so or the complainant would not otherwise be expected to pursue such avenues.

Pursuant to Section 17(A)(b)(ii) of the Act, the Ombudsman may make 'informal' enquiries of the agency complained against for the purposes of resolving the complaint expeditiously. Most complaints are investigated and resolved by means of such enquiries. This process often enables the Ombudsman to use alternative dispute resolution methods. This also means that flexible and timely methods of resolution can be utilised.

Where the Ombudsman considers a complaint should be formally investigated and it will not be resolved expeditiously by enquiries of the agency, an investigation in pursuance with section 14(1)(a) of the Act is commenced and the Ombudsman may exercise powers equivalent to a Commission of Inquiry, including powers of compulsion, entry and search in order to secure evidence. The Ombudsman may, in certain circumstances, provide reports to Ministers and, ultimately, the Legislative Assembly.

The Ombudsman cannot direct the Agency to implement his recommendations. The Ombudsman, however, can report his findings and recommendations to the Legislative Assembly, and, in some circumstances, can release a public report. Very few agencies do not act on the Ombudsman's recommendations.



Natural justice

If the Ombudsman finds that an agency has done something wrong or he considers it necessary to make an adverse comment against an agency or any individual, he must allow the agency or individual the opportunity to consider the adverse comment and provide an explanation, and fairly report that explanation in any report the Ombudsman makes. This process can take some time to ensure all parties are provided with procedural fairness.

Criteria for assessing the propriety of conduct

The criteria the Ombudsman must use in assessing the propriety of administrative actions are not well known. Section 26(1) of the Act obliges the Ombudsman to form an opinion as to whether the administrative action:

- a) appears to have been taken contrary to law;
- b) was unreasonable, unjust, oppressive or improperly discriminatory;
- c) was in accordance with a rule of law or a provision of law in force in the Territory or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irregular grounds, or on the taking into account of irrelevant considerations;
- e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been given;
- f) were based wholly or partly on a mistake of law or tort; or
- g) was wrong.

It will be seen that the Ombudsman is not confined to determining whether the administrative act was lawful or not. The Ombudsman has the power to consider whether such action, whilst lawful, was 'unreasonable' or, indeed, simply 'wrong'. This is the greatest strength of the Ombudsman concept and why it is such a benefit to citizens and agencies in that the merits of a complaint can be considered.

Complaints by persons in custody

The *Ombudsman (Northern Territory) Act* in Section 17(5) makes special provisions in respect of persons in custody who wish to make a complaint either against the facility in which they are held in custody or any person working therein, or in regard to any other matter otherwise within the jurisdiction of the Ombudsman.



The introduction of the prisoner telephone system in NT Correctional Centres provides all prisoners with direct access to the Ombudsman's Office. Calls made are free, not monitored and prisoners can make a call at most times.

A person in custody must be provided with facilities for preparing a complaint in writing and such complaint must be placed in a sealed envelope and cannot be the subject of any censorship by custodial authorities. The sealed envelope is required to be delivered to the Ombudsman without undue delay and without being opened or tampered with.

Similarly, any correspondence with the Ombudsman to a person in custody must not be opened or censored and must be delivered sealed directly to the person to whom it is addressed.

Persons in custody are encouraged to try and resolve their concerns directly with the correctional centre or authority involved. They can ask to speak to the Superintendent of a Correctional Centre or write directly to the Commissioner of Correctional Services in the first instance. If they wish to make a complaint concerning any other agency they can write direct to that agency head.

The Professional Standards Unit of NT Correctional Services plays a pivotal role in ensuring that appropriate administrative standards are maintained. This Unit is also the primary contact point for the Ombudsman when complaints are received, and assists in collating information for any enquiries that may be undertaken. On occasions, the Ombudsman may refrain from investigating a complaint to allow the issue to be investigated in the first instance by the Professional Standards Unit.

Prisoners are able to access the official visitor scheme through which they can obtain assistance in resolving any problems that they may have.

It is only the more serious complaints or those that cannot be resolved by the agency or correctional centre concerned in the first instance that are usually referred to the Ombudsman.

Prisoners who cannot write can utilise the telephone system or can request an officer of the Ombudsman to visit and discuss any concerns they may have. Such a request can be conveyed either through the Official Visitor, a prison officer, a legal representative, a relative or any other representative nominated by the person in custody.

NT POLICE

In the Northern Territory, the Ombudsman is responsible to oversight complaints against police. Any person may complain to the Ombudsman and assistance is provided to make a complaint if needed. Unlike other Government agencies, the Ombudsman role is not limited to the investigation of the administrative action of police. It extends to the consideration of the conduct of police officers in the



performance of their duties or in connection with or incidental to the exercise of their powers, duties and functions as police officers. In practice this means that the Ombudsman has a broad statutory charter to independently oversight police action whether of an operational, policy or administrative nature and to provide the Commissioner of Police with recommendations and views for his consideration.

The Ombudsman's legislative framework for police complaints is particularly complex and is one of the principal areas addressed in the review of the Act.

Mutual referral of complaints by Ombudsman and Commissioner

The Act requires the Ombudsman to investigate complaints against police. By a statutory scheme of mutual referral, the Act also clearly contemplates the involvement of the Commissioner of Police who is charged with the control and management of the Police Force. Specifically, the legislation requires the Commissioner of Police to refer complaints received by members of the Police Force to the Ombudsman. In turn the Ombudsman is required to refer all complaints made directly to him, to the Commissioner.

Interim guidelines for dealing with Police complaints

Pending review of the legislation, the Commissioner of Police and the Ombudsman have agreed to Interim Guidelines for the processing of complaints against police, as between the two offices.

These guidelines cover the following subject matter:

- The various roles of:
 - Ombudsman;
 - Commissioner of Police;
 - Professional Responsibility Division; and
 - Joint Review Committee;
- Investigative powers of Ombudsman and Commissioner;
- Notification, processing and reporting of complaints;
- Classification of complaints; and
- Outcome of complaints.



Appendix 4

ACCESS AND AWARENESS SESSIONS

VISITS MADE TO RECEIVE COMPLAINTS

- Katherine (1)
- Pine Creek (1)
- Mataranka (1)
- Elliott (1)
- Daly Waters (1)
- Batchelor (1)
- Litchfield (1)
- Palmerston (1)
- Maningrida (1)
- Jabiru (1)
- Alice Springs (2)
- Belyuen (1)
- Cox Peninsula (1)

TALKS

Speaker	Date	Details
Peter Boyce, Ombudsman	3 July 2002	Police Complaints Section, WA Ombudsman's Office
Peter Boyce, Ombudsman	10 July 2002	Prison Officer-in-Training Course, Darwin
Peter Boyce, Ombudsman	30 July 2002	Discovering Democracy Workshop, Presented by Dept of Employment, Education and Training and NT Law Society
Dez Wilde, Investigation Officer	29 August 2002	Katherine High School
Peter Boyce, Ombudsman	25 February 2003	Darwin South Rotary Club



Vic Feldman, Dep Ombudsman Cindy Bravos, PIO	15 April 2003	Batchelor Institute
Peter Boyce, Ombudsman	7 May 2003	Investigation Course, Office of the Public Service Commissioner
Peter Boyce, Ombudsman/Commissioner and staff	8 May 2003	Staff members (2) from Office of the Chief Minister regarding operations of Office

CONFERENCES/MEETINGS

Peter Boyce, Ombudsman	4-7 July 2002	<ul style="list-style-type: none"> • Australian Institute of Administrative Law (AIAL) Conference • Meeting of Australian Ombudsmen, Perth • Talk to WA Ombudsman's staff
Peter Boyce, Ombudsman	3-8 October 2002	International Institute for Public Ethics Biennial Conference 2002, Brisbane
Peter Boyce, Ombudsman Vic Feldman, Dep Ombudsman	4-6 November 2002	20 th Australasian & Pacific Ombudsman Conference, Sydney
Peter Boyce, Ombudsman Vic Feldman, Dep Ombudsman Cindy Bravos, PIO	7-8 November 2002	4 th National Investigation Symposium, Manly, NSW



Appendix 5

DETAILED COMPLAINT STATISTICS FOR 2002/03

ENQUIRIES/COMPLAINTS RECEIVED

NT AGENCIES (INCLUDING CORRECTIONS AND LOCAL GOVERNMENT)

As detailed in Table 10, a total of 1590 new approaches were made about NT agencies, excluding complaints against police officers. Of the total 1595 active approaches for the year, 1430 or 90% were finalised. This resulted in 165 approaches remaining open as at 30 June 2003.

Table 10: Enquiries/Complaints open during 2002/03 (NT Agencies)

ITEM	2000/01	2001/02	2002/03
Open as at 1 July	80	138	5 ⁷
Received during the year	1542	1248	1590
Total for the year	1622	1386	1595
Finalised during the year	1484	1301	1430
Still open as at 30 June	138	85	165

NT POLICE

As detailed in Table 11, a total of 492 new approaches were made about NT police officers. Of the total 595 active complaints for the year, 421 or 71% were finalised. This resulted in the 174 approaches remaining open as at 30 June 2003.

Table 11: Enquiries/Complaints open during 2002/03 (Police)

ITEM	2000/01	2001/02	2002/03
Open as at 1 July	65	74	103 ⁸
Received during the year	363	390	492
Total for the year	428	464	595
Finalised during the year	355	381	421
Still open as at 30 June	73	83	174

⁷ Because of the introduction of the new Case Management System it has not been possible to reconcile cases across the new and old system. As a consequence the number of cases carried forward does not reconcile. I am satisfied that the cases carried forward to 2003/04 is correct.

⁸ As per footnote 7 above



NUMBER OF ENQUIRIES/COMPLAINTS MADE BY AGENCY

The following is a detailed breakdown of the number of enquiries/complaints received by the Office of the Ombudsman for each Agency.

NT AGENCIES (EXCLUDING CORRECTIONS AND LOCAL GOVERNMENT)

AGENCY	2001/02	2002/03
Aboriginal Areas Protection Authority	0	0
Auditor General	0	0
Batchelor Institute of Tertiary Education	0	4
Bushfire Council NT	0	2
Business, Industry and Resource Development	0	15
Asian Relations and Trade	0	0
Industries and Business	0	0
Mines and Energy	0	1
Primary Industry and Fisheries	0	14
Chief Ministers	2	4
Department	0	0
NT Electoral Office	1	0
NT Remuneration Tribunal	0	0
Protocol and Public Relations	0	1
Women's Policy	0	0
Ethnic Affairs	0	0
Office of Senior Territorians	0	0
Office of Indigenous Policy	0	0
Office of Territory Development	1	3
Community Development, Sport and Cultural Affairs	103	99
Arts and Museums	0	1
Territory Housing	87	81
Local Government	7	6
NT Libraries	0	1
Pool Fencing Authority	0	8
Sport and Recreation	2	2
Regional Communities Aboriginal	4	0
Regional Development	0	0
Corporate and Information Services	14	14
Corporate and Information Services	4	2
Contracts Branch	2	9
Finance	1	0
NT Fleet	2	0
Property Management	1	0
Salaries	3	2
Communications	1	1
Darwin Port Authority	1	0
Development Consent Authority	0	3



Employment, Education and Training	54	62
Curriculum and Assessment Division	0	0
Strategic Services and Operations	6	0
Operations Support Branch	3	1
Operations – North	4	1
Operations - South	0	1
Pre School	0	1
Primary School	13	8
High School	5	2
College	3	0
Territory Schools Sports Council	0	0
NTETA	3	2
Commissioner for Public Employment	3	7
Work Health	4	23
NT University	10	14
NT Open Education Centre	0	2
Health and Community Services	90	74
Adoptions and Substitute Care	3	2
Aged and Disability Services	7	4
Child and Family Protective Services	6	3
Community Dental Clinic	2	0
Community Health Centre	0	1
Departmental Executive	5	9
Disability Services Bureau	0	0
Environmental Health	3	3
Family and Children's Services	26	30
Hospitals	22	0
Mental Health Services	3	0
Menzies School of Health	0	0
PATS	5	3
Pensioner Concessions Unit	3	1
Population Health Unit	0	0
Professional Registration Boards	2	7
Public Health Services	2	7
Remote Health Services	1	4
Sexual Assault Referral Centre	0	0
Industrial Land Corporation	0	0
Industrial Land Corporation	0	0
TDZ	0	0
Infrastructure, Planning and Environment	65	74
Lands, Planning and Environment	12	12
Natural (Water) Resources Division	1	4
Planning Appeals Tribunal	0	0
Planning Authority	4	2
Planning Authority Support	1	0
Plumbers, Drainers and Licensing Board	0	0
Valuer-General	0	0



Transport and Works	6	9
Darwin Bus Service	0	0
Marine Branch	2	0
Motor Vehicle Registry	26	23
Road Development	0	1
Transport Division	0	5
Parks and Wildlife	5	2
Bush Fire Council	0	0
Territory Wildlife Park	0	0
Alice Springs Desert Park	0	0
Building Advisory Services Branch	8	16
Justice	82	79
Fines Recovery Unit	2	0
Anti-Discrimination Commission	6	3
Community Corrections	2	0
Consumer Affairs	11	13
Coroner's Office	3	6
Correctional Services (Administrative)	0	15
Office of Courts Administration	7	13
Crime Prevention	0	0
Escort Agency Licensing Board	1	0
Family Law Court	0	0
Land Titles Office	2	1
Legal Practitioners Complaints Committee	0	0
Magistrates Court	8	1
Public Prosecutions	3	9
Public Prosecutions – Victims Support Unit	1	1
Public Trustees Office	10	10
Registrar Generals Office	4	5
Solicitor for the NT	2	0
Supreme Court of the NT	0	0
Small Claims Court	2	2
Property Agents Licensing Board	1	0
Legal Aid Commission (NT)	16	11
Department of the Legislative Assembly	1	0
Legislative Assembly	0	0
Table Officers – Clerk	1	0
Building Management	0	0
Ombudsman and Health and Community Services Complaints Commission	6	5
Ombudsman	6	5
Health and Community Services Complaints Commission	0	0
Police, Fire and Emergency Services	17	14
Police Administration (not member)	14	11
Emergency Services	0	0
Fire Services	3	3



Power and Water Authority	55	65
Electric Generation and Supply	43	52
Public Water Supplies	4	2
Public Sewerage and Drainage Services	1	1
Water Operations	1	1
Water Services	5	9
PAWA - Admin	1	0
Territory Insurance Office	44	44
Tourist Commission	1	3
Treasury	7	12
Department	2	2
Commissioner of Taxes	1	0
Racing, Gaming and Licensing	2	7
Superannuation	1	0
Procurement Review Board	1	3

CORRECTIONAL SERVICES

Sections	2001/02	2002/03
Correctional Services	89	265
Executive	8	5
Correctional Centre – Darwin Prison	37	174
Correctional Centre – Alice Springs Prison	39	81
Juvenile Justice	3	5
Parole Board of the NT	2	0

LOCAL GOVERNMENT COUNCILS

Local Government Council	2001/02	2002/03
Councils	53	89
Alice Springs Town Council	8	8
Borroloola Community Government Council	0	1
Coomalie Community Government Council	6	2
Elliot District Community Government Council	4	1
Darwin City Council	12	39
Jabiru Town Council	1	0
Katherine Town Council	3	7
Litchfield Town Council	2	5
Palmerston Town Council	7	4
Pine Creek Community Government Council	2	0
Tennant Creek Town Council	6	0
Other	2	22

AGENCY OUT OF JURISDICTION

Agency out of Jurisdiction	537	652
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MATTERS IN ENQUIRIES/COMPLAINTS RECEIVED

Information is recorded about the matters described in every enquiry/complaint, and often more than one matter is recorded against a complaint. Standard matter descriptions are used and these are grouped under categories.

An understanding of the matters raised in complaints can serve to highlight areas where service and administrative improvement is warranted. This section provides information about the total number of enquiries/complaints received against the different categories

NT AGENCIES (INCLUDING LOCAL GOVERNMENT)

MATTER	CATEGORY	2001/02	2002/03
Practice or Procedures	Inadequate	76	40
	Unreasonable	179	38
	Failure	69	63
	Wrong	50	24
	Other	25	36
		399	201
Attitude/Behaviour of Staff	Rudeness	25	9
	Harassment	11	6
	Threats and intimidation	7	10
	Discrimination	3	9
	Use of physical force	2	0
	Assault	0	3
	General issues only	0	6
	Other	9	27
	57	70	
Fees and Charges	Level of charge/fee	31	36
	Penalties for no payment	5	6
	Other	16	42
	52	84	
Grievance/Complaint Procedures	Failure to investigate/respond	14	23
	Dealings with the Omb's Office	2	0
	Inappropriate techniques	5	2
	Other	8	10
	29	35	
Information	Negligent improper disclosure	4	6
	Refusal to give access to	8	4
	Refusal to alter records/info	1	0
	Fail to maintain confidentiality of info	3	5
	Loss of documents	0	6
	Failure to consider 3 rd party	0	0
	Other	20	59
	36	80	



Service – Program Delivery/Entitlement to Service or Program	Delayed action or response	19	13
	Failure to act/delay in taking act	25	12
	Poor or inadequate service	15	6
	Failure to advise or consult	7	3
	Failure to deal with reasonably	5	2
	Refusal to act	15	3
	Failure to provide benefit/entitle	11	10
	Other	2	14
	99	63	
Natural Justice	Denial of procedural fairness	10	22
	Failure to give reasons	0	8
	Other	0	2
	10	32	
Misconduct	Conflict of Interest	1	3
	Corruption	1	4
	Dishonesty	1	2
	Neglect	1	1
	Accepting benefits/favours	0	0
	Other	3	13
	7	23	
Misapplication or Law/Policy	Faulty procedures	7	14
	Objection to law	2	8
	Objection to policy	3	4
	Unreasonable demand	4	3
	Failure to enforce	0	6
	Use of statutory powers	6	2
	Other	3	30
	25	67	
Tenders/Contractual Matters	Tender practices, procedures	6	7
	Contractual issues	2	1
	Admin of contract payments	1	0
	Other	2	2
	11	10	
Damages and Compensation	Action re: property	1	9
	Damages/loss of property	7	9
	Injury to person(s)	6	5
	Other	4	18
	18	41	
Exercise of Discretion – as envisage by s26(1)(d)	Wrong	0	3
	Improper purposes	0	0
	On irrelevant grounds	0	0
	Irrelevant consideration	0	0
	Other	0	3
	0	6	



CORRECTIONAL SERVICES

MATTER	CATEGORY	2001/02	2002/03
Administration Acts or Omissions	Delay	1	3
	Refusal to act	1	0
	Refusal to provide a service	1	3
	Practice or procedure	16	6
	Misapplication of law/policy	0	1
	Disclosure of information	1	0
	Procedural fairness/nat justice	2	0
	Exercise of discretion	0	0
	Corrections issue only	0	75
	Other	0	11
		22	99
Assault – Unreasonable/Excessive Use of Force	By prison officers	5	2
	By prisoners	0	3
	By police officers	0	0
	By education/training staff	0	0
	By health care workers	0	0
	Other	0	0
		5	5
Attitude/Behaviour of Staff	Threats	13	13
	Harassment	14	6
	Other	6	14
		33	33
Misconduct/Behaviour of Staff	Segregation/separate confinement	1	1
	Loss of privileges	0	1
	Unreasonable/incorrect procedure	1	4
	Other	0	2
		2	8
Security Measures/Issues	Protection from other prisoners	0	2
	Cell search	0	0
	Strip search	0	0
	Drug testing	0	2
	Classifications	0	1
	Tactical response action to major	0	0
	Other	1	1
		1	6
Prisoners Rights and Privileges	Parole	2	5
	Work and day release	2	6
	Social/sporting amenities	0	0
	Telephones/teleconference	3	9
	Visits	4	5
	Accommodation	1	4
	Education, training	2	4



	Food, nutrition	4	2
	Recreation, hobbies	4	2
	Other	7	38
		29	75
Grievance/Complaint Procedures	Access to superintendent	0	2
	Failure to investigate adequate	1	1
	Improper techniques	0	0
	Dealings with Ombudsman	0	0
	Other	0	5
		1	8
Mail	Censorship and confidentiality	3	0
	Failure to dispatch	0	5
	Delays in receiving or dispatch of	1	0
	Other	0	1
		4	6
Medical/Health Issues	Delay to provide service	6	7
	Inadequate medical service	3	3
	Other	4	2
		13	12
Property Issues	Loss of/failure to account for	8	1
	Refusal or failure to release	1	1
	Refusal by PO's to receive gift	0	0
	Other	0	1
		9	3
Transfers – Intra and Interstate	Refusal	2	14
	Delays	1	1
	Other	2	7
		5	22
Other	-	6	0

NT POLICE

MATTER	CATEGORY	2001/02	2002/03
Abuse/Rudeness/Misdemeanour	Abuse, incivility, rudeness	63	41
	Racist	4	2
	Traffic abuse, incivility, rude	13	5
	Dress and bearing	2	0
	Police complaint issue only	0	5
	Other	6	21
			88
Arrest	Unjust/unreasonable arrest	18	2
	Unlawful arrest	9	2
	Transfer to a mental institution	0	0
	Unreasonable force	23	6
	Assault	4	5
	Apprehension for intoxication	5	1
	No reason given/warrant	3	1



	Use of power of arrest	2	1
	Use of handcuffs	3	1
	Other	3	0
		70	19
Assault Not Major Injury (Physical/Mental)	Without proceeding to arrest	8	12
	Prior to or during an arrest	12	8
	En route to police station	2	0
	At watchhouse	5	3
	In police cell	1	0
	During interview/questioning	1	2
	During search of premises	1	0
	During crowd control	3	4
	At other place of detention	2	5
	Other	9	7
		44	41
Assault Causing Major Injury (Physical/Mental)	Without proceeding to arrest	0	3
	Prior to or during an arrest	3	5
	En route to police station	0	0
	At watchhouse	0	3
	In police cell	1	0
	During interview/questioning	1	0
	During search of premises	0	0
	During crowd control	0	1
	At other place of detention	1	2
	Other	0	2
		6	16
Breach of Rights	Fail to provide/delay	2	15
	Unreasonable treatment	20	21
	Other	1	21
		23	57
Complaint Against Police Procedures	Failure to receive a complaint	5	8
	Failure to consider action	13	10
	Bias, prejudice	8	10
	Delay in investigation	9	21
	Failure to investigate	10	42
	Inadequate investigation	10	11
	Intimidation of comp/witness	16	0
	Improper techniques	22	34
		93	136
Corruption, Favouritism, Personal Advantage, Other Criminal Conduct	Accepting benefits/favours	2	1
	Gaining personal advantage	0	2
	Conspiracy/cover up	5	1
	Motor vehicle use	0	2
	Drug/alcohol use	1	0
	Fraud	0	0
	Perjury or false statement	0	3
	Other	3	5
		11	14



Custodial/Watchhouse/Detention	Refuse access to legal advice	2	0
	Access to medical treatment	6	0
	Care and hygiene issues	3	0
	Body searches	0	0
	Restraint/manhandling	1	0
	Padded Cell	0	0
	Other	1	5
		13	5
Custody of Handling Property	Damage to property in custody	3	3
	Failure/delays return property	6	17
	Handling of exhibits/drugs	1	1
	Failure to properly record	0	4
	Other	8	6
	Loss of property in custody	1	0
	Failure to provide receipts	3	0
	22	31	
Entry and/or Search	Faulty search procedures	8	8
	Unnecessary search/entry	9	3
	Unnecessary force/damage	3	1
	Strip/intimate search	2	0
	Other	9	5
		31	17
Failure to Perform Duty	To take crime report/invest	4	4
	Domestic situation	5	2
	Restrain & custody order	1	0
	Failure to provide ID as police	2	0
	Traffic	2	1
	Other	22	12
		36	19
Firearms	Discharge/use of firearms	0	2
	Seizure of firearms	1	0
	Other	2	0
		3	2
Harassment, Threats, Excessive Attention	Threats/victimisation	19	10
	Repeated traffic tickets	0	0
	Bona fide/warrant checks	0	0
	Surveillance	3	10
	Other	24	26
		46	46
Inadvertent Wrong Treatment	Property damage	1	1
	Other	12	4
		13	5
Information (incl photographic fingerprint info)	Failure to notify/give info	14	2
	Inapprop access/use of info	2	1
	Inappropriate disclosure of info	11	4
	Incorrect/Inaccurate records	1	1
	Provide false/incorrect info	6	0
	Failure to ensure confidentiality	0	0



	Improper acquisition/retention information management	2	0
	Treatment/use of crime Intel	0	1
	Other	5	2
		41	11
Investigations	Delay in investigating	3	1
	Failure to interview witness	1	2
	Fabrication of/false docs	0	0
	Conduct of interviews	2	2
	Fail to disclose evidence	3	0
	Other	9	1
	Investigation review Nil JRC	1	2
	Review JRC decision	1	0
		20	8
Juveniles	Arrest	1	4
	Interview	0	0
	Detention	1	0
	Notification of parents/guardian	4	0
	Other	0	7
		6	11
Practice and Procedures	General Orders	2	0
	Keeping of records	0	0
	Other	6	26
		8	26
Prosecutorial Discretion	Refusal to prosecute	9	0
	Inappropriate prosecution	2	0
	Victims charter	0	0
	Misuse of prosecution power	1	1
	Other	5	0
		17	1
Traffic	Traffic	11	6
		11	6
Warrants	Failure to execute	0	0
	Improper execution	1	4
	Other	5	0
		6	4
Other Misconduct	Misuse-Office/police power	16	1
	Conflict of interest	0	0
	Other	15	9
		31	10



Appendix 6

CASE STUDIES

NT AGENCIES

1. The Final Analysis (Northern Territory University)

The owner of a local Environmental Laboratory that provides the Northern Territory with specialist analytical services and facilities using a range of nationally accredited analytical techniques, sought my assistance to resolve a dispute with the Northern Territory University's Environmental Analytical Chemistry Unit, which also provides similar services and facilities.

The complainant claimed that the University had circulated brochures promoting services that were not available elsewhere in the Northern Territory. In essence, the complainant felt that this advertising was misleading and potentially damaging to the company. The complainant strongly refuted the University's claims and was of the view that the company was not only NATA accredited, but also offered far more services than the University claimed to offer.

The complainant advised that although legal advice had been sought initially, there was a reluctance to continue down that path. The complainant had also contacted the Australian Competition and Consumer Commission (ACCC) about the matter but they were unable to assist in the circumstances.

The complainant said that he supported the University in attempting to gain business and had tried to resolve the matter with them. The University, in acknowledging the complainant's concerns and advising that there was no intention to mislead, offered to remedy the situation and wrote to its client base indicating that it was not the University's intention to claim that it was the sole provider of such services and facilities. However, this did not appease the complainant.

The complainant then sought a list of all the clients that the University had sent its brochures to promoting its services, so that the complainant could refute the University's claims. However, the University was reluctant to provide that list. The complainant said that the alternative was to write to all known clients stating that the University was providing misleading information. The complainant advised that the company and the University enjoyed a good business working relationship, and in wishing to resolve the matter quickly, approached my office for assistance.

Following preliminary inquiries conducted with the University and an exchange correspondence with the parties, I decided that that the matter could be best resolved through mediation. I therefore held separate meetings with the complainant and the



University representative and came to an amicable agreement to resolve the situation.

The agreement provided that upon the University mailing out a number of the complainant's brochures discreetly to its client mailing list, the complainant would consider the matter resolved. The complainant for his part confirmed that he would not pursue any legal action in regard to the matter.

On receipt of the brochures, I forwarded them to the University representative, who arranged for them to be mailed out. On receipt of written confirmation of the mail out, I advised both the complainant and the University that, in the circumstances, as the matter was resolved, no further action would be taken. Both parties were appreciative that the matter had been satisfactorily resolved in an informal and expedient manner, without loss of face to either party and without the need for an unnecessary and protracted legal battle.

**2. A new family – what help can they and should they get?
(Department of Health and Community Services – Family and Children's Services)**

The complainant, who had lost contact with his young child from a previous marriage, assumed responsibility for the child's care after a breakdown in the child's family situation in a southern state. The child had challenging behaviour issues which impacted on how was to be cared for. An order for custody was made by a southern court, which also ordered that the complainant and his wife accept supervision from Family and Children's Services (FACS) for a two year period. A short time later FACS initiated a child protection investigation after having received a notification of alleged maltreatment of the child by the complainant's wife. The investigation resulted in the allegation of maltreatment being substantiated and the child was placed in foster care.

The complainant was aggrieved with the administrative actions of FACS because he considered that there was inadequate communication and support provided to him and his family when the child initially came to live with them; there was a failure to provide him and his wife with due procedural fairness prior to the decision to remove the child from their care; there was inadequate liaison with him and his wife during the child's subsequent foster care and there was a lack of cooperation with the court order for mediation.

I conducted a formal investigation into the complaint, resulting in my making findings that a number of the issues of complaint were substantiated. Specifically, I found that FACS had provided a poor and inadequate service to the complainants upon the arrival of the child into their home. I noted that at the time of the child's arrival, FACS did not have their current policy manual in place and as such I recommended that the Department ensure that procedures as outlined in the manual be followed in future matters. I also found that the Department did deny the complainants procedural fairness prior to the decision to remove the child from their care.



I recommended that the Department reiterates to its employees the need to follow the current FACS manual guidelines in all child protection investigations and that the Department apologise to the complainants for the manner in which the investigation was undertaken and for the lack of procedural fairness provided. With respect to the other issues of complaint, I found that the Department had acted appropriately.

The Department accepted my recommendations and issued instructions to all employees emphasising the need to follow procedures appropriately. The Department also issued a written apology to the complainants for the manner in which the complainant's dealings with the Department had taken place.

3. Love me Tender? (Department of Infrastructure, Planning and Environment)

The complainant is a construction contractor whose company regularly tenders for government contracts. The company tendered for a contract late in 2002 and was told in January that it had been unsuccessful. On the grapevine, the complainant learnt that the successful company was unable to take the job and that it was offered to the company, which put in the second best price. That company was likewise unable to take the job, and the complainant understood that their company had been the third most competitive bid on price and should therefore have been offered the job. Instead, when they approached the Department in February 2003 saying they felt they should get the job and were ready to go with it, they were told that the tender would be re-advertised. No other reason was given, according to the complainant. The complainant had no reason to think that their company's work was not of an acceptable standard for the Department, as periodic reports sent to them by the Department attested, however, they were starting to wonder, because in 2002 they had won two government tenders which had been "pulled" (not proceeded with) at the last minute before contracts were signed. Although they had accepted the Department's explanation of these events at the time, the combination of that and the recent decision not to award a job where they were next best on price and ready to go, was to their mind suspicious. They were concerned that there was something the Department was not telling them and as a result lodged a grievance with me.

My preliminary inquiries revealed that the Department had no concern with the performance of the complainant's work. On the contrary, performance indicators showed that the complainant's work was equal to or higher than industry standards. When the Department advised the complainant in January 2002 that its company had been unsuccessful, it offered (as is standard practice) to hold a debrief with the complainant as to the merits and deficiencies of its tender. The Department could not release details of the prices or ranking to the complainant, but the Department advised that the complainant's price on the tender was "not considered to represent value for money for this contract".

The Department provided a full explanation of the circumstances of the two jobs being pulled the previous year. In both cases the funding for the projects was withdrawn at the last minute, meaning that the Department could not proceed to contract with the successful tenderer. The situation in each case had been beyond



the control of the Department and it noted that even so, the complainant had been extremely unlucky to have that happen to him twice.

The complainant was advised that I considered the actions of the Department to have been reasonable and he was advised that the Department was more than willing to conduct a debrief with him regarding his unsuccessful tender.

4. Refusal to compensate for power surge (Power and Water Corporation)

A PowerWater customer approached me, aggrieved that PowerWater had refused to accept responsibility and pay compensation for damage to their television set, allegedly caused by a power surge at the complainant's property in an urban area. I commenced preliminary inquiries with PowerWater to ascertain whether its administrative actions had been reasonable in the circumstances.

PowerWater advised that on receipt of the claim, an investigation was conducted into the cause of the fault. The investigation revealed that a line patrol was conducted on the day of the fault, when first reported, and nothing untoward was found. The call out crew then went and checked the transformer located in the street and found that one of the fuses had blown. Once the fuse was replaced, full power was restored to customers in the area. The crew then conducted another line patrol to identify what might have caused the fuse to blow and also to investigate other reports of powerlines clashing in the area. The crew could not find any obvious cause of the problem, but believed that it could have been due to palm fronds or trees coming into contact with the power lines. The report stated that the high and low voltage power lines in the street met all the required standards and no faults were found. PowerWater believe that this eliminated any potential negligence on PowerWater's side of the network.

A further integrity check of the high and low voltage feeders in the street was later conducted. The report found that the system was intact and no faults or defects located. The report noted a number of properties in the area that had palms close to power lines, which had the potential to cause an interruption to supply. As a result, PowerWater dispatched a tree trimming crew to the area to deal with the problem. However, PowerWater stated that it did not have the resources to continually trim back palms in the area and that property owners need to take responsibility for this.

In addition, PowerWater advised that fact sheets are available for customers over the counter and via their Internet site in relation to electrical safety and storms. PowerWater runs a wet season campaign in the media each year commencing in October, designed to urge the community to be aware of the effect of wet season conditions on the provision of electricity, water and sewerage services. The message informs residents to ensure trees close to overhead power lines are trimmed and to be aware of the threat of lightning and storms.

In the circumstances, I considered that the complaint was given proper attention and PowerWater's response to the complainant was reasonable. PowerWater appeared



to have followed reasonable processes, taken prompt action, given due consideration to the complaint, provided a clear explanation of the reasons for declining liability and dealt with the complainant reasonably. I therefore declined to investigate the matter further.

Occasionally, I receive complaints from aggrieved consumers complaining of damage to appliances, due to power surges. However, my jurisdiction is limited to a review of the administrative actions of PowerWater. My role is to investigate the administrative actions of an agency and determine whether it has acted promptly, fairly and reasonably. I am unable determine issues of liability or negligence as that is a matter for the courts to decide.

5. Building Blues

(Department of Infrastructure Planning & Environment – Building Advisory Services)

The complainant purchased a house in Alice Springs in 1995, relying on Certificates of Occupancy obtained by the former owner ie. he did not obtain his own reports at the time of purchase. Upon resale of the property in 2002, a building certifier retained by the prospective purchaser identified non-compliant internal stairs at the property as well as some other problems, which caused the sale to fall through. The complainant then engaged the same certifier and spent in excess of \$20,000 rectifying the problems before finally selling his home. He then approached the Department's Building Advisory Services for compensation on the grounds that they had issued Certificates of Occupancy for a non-compliant structure. However, having not received satisfaction through the Department, the complainant then lodged a complaint with me. In addition to the compensation issue, the complainant was unhappy with the way that Building Advisory Service had dealt with his matter.

I undertook preliminary inquiries into the complaint, which was made more complex by the fact that the non-compliant stairs had been built in accordance with a building permit issued in 1976. My inquiries revealed that the Department did not appear to be liable for the non-compliance under the law in force at the time, and further, did not appear to be liable for the 1995 Certificates issued under the current certification scheme embodied in the Building Act. I suggested that the complainant may wish to obtain legal advice on these issues to fully satisfy himself of my findings in this regard.

My inquiries also revealed that had the complainant approached the Building Advisory Service prior to undertaking the rectification works, he may have received an undertaking from the Building Advisory Service that the non-compliance was within building tolerances and that no action would be taken by the Building Advisory Service. Unfortunately the complainant had not approached the Building Advisory Service until after the works were complete. It was suggested that the complainant take up this particular issue with the certifier. On a positive note, the complainant did receive an apology from Building Advisory Service about the way they had handled his complaint.



6. A successful conciliation (Department of Justice - Office of the Public Trustee)

The complainant approached my Office because she felt that she was unable to successfully negotiate her desired outcomes with the Office of the Public Trustee, which manages her husband's trust fund.

The complainant had concerns about the level and type of insurance cover on their house and vehicle. She advised that her vehicle had, at one stage, been unregistered for 3 months because the Office of the Public Trustee failed to renew the registration. The complainant also advised that she had, after many years, been able to arrange for the Office of the Public Trustee to send her regular financial statements relating to her husband's affairs. However, she also wished to receive copies of relevant invoices and copies of her husband's previous Taxation Notices of Assessment. The complainant had also had trouble obtaining a pensioner concession for her husband because the Public Trustee owns his motor vehicle and residence on his behalf. Darwin City Council had arranged for the concession to be deducted prior to the issue of the Rates Notice, however, PowerWater and the Motor Vehicle Registry were unable to deduct the concession up front and the complainant had been forced to claim the concession after payment through the Health and Community Services Pensioner Concession Unit. The complainant maintained that if she had not followed up on the matter of the pension concession, then the Office of the Public Trustee would have done nothing about it.

The complainant was also fearful about what might happen to her husband's estate if he died and she was unsure about whether her husband's will is valid. She was also concerned that his assets might be frozen, leaving her without an income. The complainant also wanted to know whether she is entitled to receive a carer's allowance from her husband's estate. The complainant was also concerned that the Office of the Public Trustee had made an accounting error in relation to a piece of furniture purchased by her and her husband. She also wanted to receive a full-certified copy of the title to their home, as she had previously only received an extract.

The Public Trustee readily agreed to meet with the complainant and my Office to discuss the complainant's concerns. As a result of the meeting, the complainant's insurance concerns were resolved. The Public Trustee conceded that the failure to renew the vehicle registration had been an oversight on the part of his Office. He readily agreed to provide the complainant with copies of invoices and previous Taxation Notices of Assessment. Arrangements have also been made with the Pensioner Concession Unit to back pay any outstanding concession amounts. The Public Trustee advised the complainant that there might be some unavoidable issues, should her husband die, but he undertook to provide her with information and support from his Office. In regard to accounting errors, the Public Trustee advised that an error had occurred during a computer upgrade, but had been rectified as soon as it was detected. In regard to a carer's allowance, the Public Trustee advised that the bottom line is that the trust funds will not last if spending is increased and, therefore the fund cannot afford to pay the complainant and her husband any more



than they are currently receiving. The Public Trustee also provided the complainant with a search certificate for their residence.

During the meeting, the complainant also expressed her frustration about past encounters with the Office of the Public Trustee. The Public Trustee listened sympathetically and said that his Office had never intended to make the complainant's life more difficult – they had merely been trying to manage the trust funds responsibly so there would be an adequate income for their lifetime. The complainant was pleased with the outcome of the meeting and I was satisfied that the Public Trustee had made considerable effort to resolve the issues of complaint.

7. Adequate provision of services for a disabled student (Department of Employment, Education and Training)

The complainant is the father of a young child who is a student with special needs. As a result of undergoing the agency's 'Education Needs and Resources Profiling' assessment, a recommendation was made that full funding be provided for an Inclusion Support Assistant (ISA) for the child. This allowed the child to be provided with the services of an ISA for the entire period of attendance at school during the term. However, the following term after the child had commenced school, the funding was dramatically reduced without consultation or input from the child's parents, resulting in the provision of an ISA for the child for less than half the child's attendance at school. The complainant contacted various persons within the Department and was advised that the initial funding was provided as a 'settling in' period and that the funding would now be based on the results of the initial assessment. The complainant remained dissatisfied with this response and requested information from the Department as to an appeals mechanism to which the complainant was advised to write to the Minister.

The complainant approached me, aggrieved with the actions of the Department, however, concurrently as a result of the complainant's approach to the Department, the funding of the ISA was eventually increased so as to allow for full ISA support for the child. Whilst the complainant was satisfied with this outcome, the complainant remained dissatisfied with the Department's application of the appropriate policies and guidelines.

My preliminary inquiries resulted in ascertaining that the Department had not made it clear to the complainant at the time of the initial ISA funding that this funding was temporary and was to assist the child's transition to pre-school. Further, that when the complainant was later advised of the reduced ISA hours, an error was made by the Department in that the complainant was incorrectly advised of a lower number of ISA hours than had been approved. The Department's administrative processes were examined and overall, its actions were found to have been reasonable. The process used to determine the funding is currently under review and the complainant was given the opportunity to provide input into this process.

However, I note that it is not the current process that the complainant is dissatisfied with, rather it is the way the Department understands, disseminates and applies the



process. As a result, I once again contacted the Department and confirmed that if assistance is sought in regard to children with disabilities or special needs, the Department will act to inform and assist parents in such cases. The Department also advised that in many cases, it is the school that identifies children suffering disabilities or impairment that have not been detected and they initiate the processes by which parents can access services under the relevant polices. On this basis, the Department expressed a reluctance to further consider the issues raised by the complainant other than to provide opportunity for the complainant to discuss his ongoing concerns directly with the Department.

8. Escort Licensing Requirements (Department of Infrastructure, Planning and Environment)

The complainant lodged a complaint regarding the requirements in the Northern Territory to be licensed as an Escort; a licence which enables the holder to escort vehicle loads in excess of 5.5 metres. The complainant had previously been advised that a National Project on Pilot/Escort licensing would resolve his issues with the current requirements that he needed to be a Northern Territory resident in order to hold an escort licence in the Northern Territory. This project had since drawn out considerably and the complainant was unhappy with his issues not being resolved within a reasonable time frame.

Preliminary inquiries were made with the Department to establish the current requirements for holding an escort licence in the Northern Territory. A proposed completion date for the National Project was also sought from the Department. The Department advised that this complaint had raised a number of issues, as the complainant was the first interstate licence holder to apply for a Northern Territory escort licence. They advised that the National Project did not seem to be drawing to completion as a number of states were in disagreement as to the final report. The Department did advise, however, that prior to the completion of the project, the Department would be implementing changes and introducing new training modules in an attempt to assist applicants that were not residents of the Northern Territory.

The complainant was advised of the new training modules and as to the appropriate course of action he would need to take with regards to obtaining the escort licence. The escort licence training provider was also advised of the slightly adjusted requirements and the Department clarified any confusion over differing requirements for the different licences.

9. Proof of income demand (Department of Community Development, Sport and Cultural Affairs – Territory Housing)

The complainant was aggrieved with the actions of Territory Housing and approached me with three issues of complaint. The complainant felt that Territory Housing acted inappropriately in serving a notice for him to quit on the complainant's son whilst the complainant was overseas; that the complainant was charged a higher rent while he was overseas as his son was living in his house; and that Territory



Housing incorrectly advised the complainant as to the proof of income that was required to maintain the same rental rebate.

I conducted preliminary inquiries with the Department and as a result, I explained to the complainant that in relation to the service of a notice to quit on his son, Territory Housing had not acted unreasonably. The complainant's tenancy agreement comes under the Tenancy Act 1998 which states that a notice to quit can be served on someone who appears to be living at the premises and appears to be over 16 years of age.

With regard to his second issue, the complainant was refunded an amount of \$2080 from Territory Housing out of the rental arrears that was accrued while the complainant was overseas. This occurred prior to my preliminary inquiries and as this issue was resolved to the complainant's satisfaction, I did not inquire further on this aspect.

As a result of my inquiries, Territory Housing admitted that their advice to the complainant, that his son needed to provide a profit and loss statement as a proof of income, was incorrect in that it was not in accordance with the current policy. However, Territory Housing felt that the complainant's son would not have suffered financial loss as a result. This was because the complainant's son was required to lodge a tax return by 31 October 2001 and the production of a profit/loss statement is an integral component of a business tax return.

My inquiries into this complaint, however, have led to a review by Territory Housing of their policy on 'proof of income'. Territory Housing have now changed their policy in relation to the use of a Business Activity Statement as a means of determining assessable income for self employed persons.

**10. I'm not a prisoner but I want to speak with my husband who is.
(Department of Justice – Northern Territory Correctional Services)**

The complainant is a Northern Territory resident whose husband is incarcerated in a Western Australian Correctional Centre. The complainant had previously utilised the video conferencing facilities of the Northern Territory Correctional Services to link up with her husband, however, after three link-ups she was told that she could no longer use the Correctional facilities and was told to find another location. The complainant had attempted to find an alternate facility and had contacted Telstra who had informed her that there were no public facilities in Darwin. The complainant lodged a complaint with me stating that she was aggrieved that she could not continue to use the Correctional Services video conferencing facilities.

Preliminary inquiries revealed that there is no obligation for Correctional Services to provide video conferencing facilities for use between interstate prisoners and their families in Darwin. Whilst Correctional Services had previously helped the complainant, they advised that their resources were now too stretched to continue the provision. It was found that in this respect, the actions of the Department had been reasonable although unfortunate.



It was by a stroke of luck that the Ombudsman's Executive Assistant had earlier that week, been organising video conferencing for an interstate meeting, free of charge through a little known government funded facility at Territory Perspective. I informed the complainant of this service and she was very happy that she could continue to link-up with her husband free of charge.

11. Kept in the Dark

(Department of Infrastructure, Planning and Environment)

The complainants were a couple who had resided in a caravan on government land for 4 years with the knowledge and approval of the former Department of Primary Industry & Fisheries. The complaint arose when the couple were informed by a person from an adjoining block that the land had now been leased and that the complainants had to move on. At the same time the adjoining owner terminated an arrangement whereby the couple had utilised the adjoining owner's electricity connection for which they made monthly payments. The couple had misplaced their copy of a letter from the Department outlining the arrangement and were not assisted by Department staff when they tried to obtain a copy. When the complainants lodged their complaint with me, they were very distressed.

Preliminary inquiries into the matter revealed that responsibility for the matter appeared to rest with the Department of Infrastructure Planning and Environment (as opposed to the Department of Business Industry and Resource Development who had assumed the primary industries portfolio). I clarified with the complainants that they were not claiming any permanent tenure in respect of the land. Rather, they felt that because they were there by agreement, they ought to be given reasonable notice if it in fact was time to move on.

As a result, this was explained to a senior public servant who was called in to liaise with the Department. The senior public servant was able to negotiate with the Department to secure an undertaking that reasonable notice would be given to the complainants. This was conveyed to the complainants who were more than happy with the undertaking.

12. Teacher's direction to student not appropriate

(Department of Employment, Education and Training)

The complainant alleged that her son was directed by a teacher at his primary school to clean up faeces using only toilet paper. The complainant had concerns for her son's health because he had come into direct contact with the faeces and as a result of the incident he was teased and harassed by other students. The complainant was concerned that the Department had not taken disciplinary action in relation to the incident and she also wanted to ensure that an incident of this nature would not be repeated.

Preliminary inquiries undertaken indicated that the Department acknowledged the lack of judgment by the teacher in relation to the incident and the Department



advised me of the action taken against the teacher in this regard. The Department requested that the complainant be referred back to them in the first instance because she had not raised her concerns with a senior departmental officer.

The complainant was advised that I had determined that the disciplinary issue was not within my jurisdiction. With regard to the other issue, that an incident of this nature does not recur, the complainant was referred back to the Department to afford them the opportunity to resolve the complaint in the first instance. Furthermore, whilst I was satisfied that the actions taken by the Department were reasonable on an individual level I believed the issue was one that warranted further action by the Department to ensure that it is not repeated. In this regard I recommended that the Department make it clear to all Principals that any similar action by teaching staff would not be tolerated and the individual concerned will be disciplined.

13. Misunderstanding **(Department of Justice – Fines Recovery Unit)**

The complainant received a fine from the Magistrates Court for the offence of driving without due care. He phoned the Fines Recovery Unit to inquire about how to appeal the matter and was told that he should contact the Office of the Ombudsman. The Notice of Fine issued to the complainant clearly stated that the complainant could apply to have the matter re-heard, but the complainant was apparently not provided with this information by the Fines Recovery Unit.

Upon receipt of the complaint, the Office of the Ombudsman advised the complainant of the option of applying to have his matter re-heard. Inquiries were then made with the Director of the Fines Recovery Unit to ascertain what information was given to the complainant. The Director was unable to determine which staff member the complainant spoke to, but advised that all staff are fully trained in the fines recovery process. The only explanation the Director could give was that there was a misunderstanding. However, as a result of the complaint, the correct processes were reiterated at a staff meeting.

The complainant was advised of the outcome of the preliminary inquiries. In the meantime, he applied to have his matter re-heard and the fine was subsequently reduced.

14.A 'fishy' payment **(Power and Water Corporation)**

The complainant received an account from PowerWater, which he understood to be due for payment on the 'due by' date shown on the account. However, the account contained a warning in small print, which stated that the complainant's electricity service was due for disconnection owing to arrears. Prior to the 'due by' date on the account, the complainant returned to his premises after being absent all day and found that the electricity had been disconnected. A number of exotic fish that were kept on the premises had died as a result of the electricity disconnection.



The complainant subsequently attended a PowerWater Office to pay his account and made the payment using 10 cent and 20 cent pieces. When a staff member asked him why he was doing this, the complainant told the staff member that PowerWater had cost him lots of money and he was now going to do it to them by wasting their time. The staff member retorted that she was going to tell all her friends not to use the complainant's business.

I conducted preliminary inquiries with the Managing Director of PowerWater which revealed that PowerWater were aware that a new billing statement format may have caused some confusion amongst customers and possibly contributed to the disconnection of power at the complainant's premises. PowerWater advised that consideration was being given to revising the format of the statements. With regards to the staff member, PowerWater advised that she was expressing her frustration at the delay caused to other customers in the queue.

When the complainant approached PowerWater about the situation, the reconnection fee was waived and the complainant was offered quarterly billing. PowerWater also agreed to reimburse the complainant for the cost of replacing the exotic fish. The staff member was apparently aware that her comments may have inflamed the situation and PowerWater advised that the incident was being treated as a staff training issue.

15. Assessment of income for rental rebate (Department of Community, Sport and Cultural Affairs – Territory Housing)

The complainant and his wife are both disabled and each requires a carer. The complainant was upset that the Department is including their carers' income when calculating his rental rebate.

I conducted preliminary inquiries into the complaint, which revealed that the complainant is wheelchair bound and his wife suffers from multiple sclerosis and is blind. As a result both the complainant and his wife require live in carers. The complainant's rent is calculated at the rate of 14% of his assessable income (\$49 per week) and his carers at the rate of 20% of their assessable income (\$42 per week each). The complainant is concerned that, as result of the rent assessment, he may lose his carers.

I advised the complainant that the actions of the Department were in line with current departmental policy and in the circumstances their actions have been reasonable. However, I provided the complainant with information regarding how he could request an appeal of the Department's decision and facilitated contact with the appropriate officer within the Department to assist him through that process.



16. A testing time

(Department of Infrastructure, Planning and Environment – Motor Vehicle Registry)

A complainant, a learner driver, approached me to complain about the actions of the Motor Vehicle Registry's (MVR) Licence Test Officer, for allegedly refusing to pass her driving test, which had been conducted in the presence of the driving instructor. The reason given for the fail was that, the Licence Test Officer had noticed the driving instructor "prompting" the learner driver by hand signals, during the driving test. The complainant was upset at being failed on this basis and claimed that no prompting had occurred.

Following inquiries, MVR advised that it had given the complainant every opportunity to put her case to them for review, following the test, through interviews, statements, and a review by management and a number of other personnel, not involved with the testing area. Copies of relevant documentation were provided, which included, statements by all parties, MVR policy and procedural documents, and an internal investigation by the Manager of Licensing. I also noted from records provided that MVR had adopted its own complaints handling mechanism in accordance with Australian Standards, which the public could avail of.

I was satisfied that MVR had given the complainant a fair and reasonable hearing of her grievance, in standing by its earlier decision. However, it was confirmed that the complainant had since undergone a second driving test successfully and had obtained a driving licence. As a gesture of goodwill, MVR waived the fee for the second test.

Another positive outcome resulted in MVR amending its Vehicle On Road Testing Operators Manual and its Customer Information Bulletin to reflect the fact that "prompting" during a driving test is an automatic fail.

17. Why were my grandchildren placed in foster care instead of with me?

(Department of Health and Community Services - Family and Children's Services)

The complainant alleged that the Department placed her 5 grandchildren into foster care without any justification or authority. In addition the complainant felt that the Department had done so to deliberately circumvent placing the children with their father or her. Furthermore the complainant was aggrieved that the Department made no attempt to contact any of the children's extended family, claimed to have no knowledge of the children's father and that the Department was unable to be contacted over a weekend period.

My inquiries indicated that the Department had received a request to provide urgent respite support to the children's mother whilst she received treatment in hospital. The Department was advised that the mother considered that she had no other option other than foster care. Furthermore, that the mother was the legal custodian of the children and that the father had court order supervised access with the



children. When the Department was advised of the scheduled supervised weekend access, they facilitated that access. It was identified that the complainant's daughter and the children's father's lawyer had spoken with the Department prior to the weekend and that the complainant had not attempted to contact the Department's after hours service.

The complainant was advised having regard for all the circumstances the Department actions were appropriate in the circumstances. In so saying I noted that the Department may have been unclear during a telephone conversation with the complainant regarding having no knowledge of the children's father though they had knowledge of the weekend access, however, I did not consider this action alone required further investigation.

18. Dispute over excess water bill

(Department of Community Development, Sport and Cultural Affairs - Territory Housing)

A Territory Housing tenant complained about receiving two large water bills, each in excess of \$2000. The complainant's property is a standard 3 bedroom dwelling, with a full water reticulation system and a spa. According to the Department's policy, a tenant is entitled to use up to a maximum of 500 kilolitres of water per year, free of charge. Any consumption over and above that limit, incurs charges, payable by the tenant. The complainant was adamant that the excess water had not been consumed. I commenced preliminary inquiries with Territory Housing and Power Water.

Territory Housing had conducted an internal investigation into the complaint which included a review of existing records, conducting pressure tests on site, site inspections by administration and technical personnel and liaison with PowerWater. However, despite all reasonable efforts made above to detect if there were any water leakages, no leaks could be established that attributed to the consumption of the excess water in dispute. It appeared that Territory Housing's investigation did not identify any leaks on the property, leaving the only possible conclusion that the water might have been consumed.

PowerWater advised that a new meter had been fitted to the property in 2001, as part of a routine replacement program. The previous old meter, which had been fitted several years ago, was no longer available and thus could not be tested. It is understood that a new meter spins marginally faster than an old meter.

Both Territory Housing and PowerWater's water billing procedures were also reviewed and additional information obtained and reviewed pertaining to the high periods of consumption, including metering and billing records. PowerWater advised that, on checking available records, it appeared that there had been some communication with Territory Housing in regard to notification of the high water reading for the complainant's property at the time. However, no record of that notification being forwarded to Territory Housing could be found. Therefore, it could not conclusively be proven whether or not PowerWater notified Territory Housing. It



seemed that, while there might have been a minor lapse in procedure PowerWater was not responsible for the amount of excess water consumed. An improvement has since been implemented to procedures, to eliminate this type of situation from occurring again.

As a separate issue, I noted that the complainant's excess water accounts were issued to the complainant after a considerable period of time of the meter being read. In my opinion, if these bills had been issued promptly, then any queries or disputes could have been investigated promptly, at the time. Although this issue has no direct bearing on the overall excess water consumption issue, I brought it to the attention of Territory Housing who welcomed my findings on its water billing procedures and advised that it had initiated a complete review of its current policy in relation to its public housing tenants.

In the circumstances, since it could not be conclusively established what had happened to the excess water, I was satisfied that reasonable steps had been taken by Territory Housing in its handling of the matter. The complainant was advised and was happy with the overall outcome.

19. Let me out - I shouldn't be here (Department of Justice - Courts Administration)

The complainant approached me, dissatisfied that the Northern Territory Police had arrested her on a warrant after police responded to a domestic disturbance at her home. The complainant remained in police custody until the following morning, although she had attempted to tell police that the matter had already been dealt with by the Courts. When the complainant attended Court, it was discovered that there were in fact no outstanding charges or warrants and that the complainant had been unlawfully detained.

Inquiries conducted by police verified that the complainant was arrested, as alleged, but this was due to the fact that Courts Administration had failed to recall the warrant. The Solicitor for the Northern Territory advised that discussions had taken place with the complainant's legal representative and a satisfactory settlement was achieved.

Further inquiries were made with Courts Administration in relation to the non-recall of the warrant. The Department advised that, although there were extensive safeguards in place, in this case the recall of the warrant was overlooked and there was no rational explanation about why this occurred.

However, as a result of the complaint, the Integrated Justice Information System (IJIS) was to be enhanced to highlight the need to recall a warrant where the Court has dealt with the matter and made an order. The Department further advised that the relevant reports generated by IJIS will be accessible by each Court Registrar and the Principal Registrar and the Sheriff will ensure that each jurisdiction will manage these reports diligently.



20. Shortcomings in the Administration of a BTEC Type D Loan **(Department of Business, Industry and Resource Development)**

I received a complaint that the decision of the Department to recover a loan provided to the complainant's company as part of the BTEC campaign was contrary to a Northern Territory and Commonwealth agreement, the policies of the BTEC campaign and the terms of loan agreement to company. As a result the complainant wanted the loan to be forgiven.

This complaint raised jurisdictional issues. In particular, section 14(6) of the *Ombudsman (Northern Territory) Act* provides (inter alia) that the Ombudsman shall not undertake an investigation where the person complaining has or had a remedy by way of proceedings in a court of law. Section 14(7) does allow a limited discretion in such matters. Additionally, section 18(1)(e) of the Act provides that the Ombudsman may decline a complaint where the substance arose more than 12 months previously, and no proper explanation has been given for the delay.

Preliminary inquiries into the matter included review of documentation provided by the complainant and the department, and discussion with relevant staff from the department. Following extensive preliminary inquiries I concluded that I could find nothing, either in the BTEC Agreement or the BTEC Northern Australian Planning Sub-Group Report, which required the agency to automatically forgive the loan. I could find no specific criteria in either the BTEC Agreement or the Report, which could be applied in determining whether a loan should be written off. In my view the Authority was to consider such on a case by case basis in accordance with their particular circumstance.

The decision on whether to forgive the loan was an administrative decision and was therefore not precluded by section 14(6). In my opinion it was reasonable for the agency to seek information, from the complainants in order for them to consider their circumstances so as to determine whether the loan could or should be written off.

As a result of the conclusions reached and my inquiries, the Department agreed to undertake a thorough review of the overall management of the loans and this review was finalised on 30 August 2002.

21. Delayed action – but is responsible **(Police, Fire and Emergency Services)**

The complainant was involved in a collision with a fire truck. The Fire Service admitted liability in the matter and after having the damage evaluated, offered a payment of \$5000 as the car was a write-off.

The complainant approached me, aggrieved that payment had been delayed without an adequate explanation. In the meantime she had been without a vehicle and needed the money to buy another one. She wanted the process speeded up.



Preliminary inquiries were undertaken and I ascertained that the officer handling the matter was away, but release papers were on the way to the complainant, and in fact were hand delivered to the complainant by the Station Commander the following day.

My inquiries also ascertained that a dispute as to the appropriate agreed value of the vehicle contributed in part to the delay.

22. Care of my daughter

(Department of Health and Community Services - Family and Children's Services)

The complainant approached me aggrieved with administrative actions taken by the Family and Children's Services regarding her daughter. The complainant advised that she considered that her 14-year-old daughter was only in need of care because of the continuous obstruction by the Department in relation to her attempts to re-unite her daughter with her family. The complainant further stated that she had been offered no involvement or collaboration in the decision making process regarding her daughter's care. Furthermore, the complainant advised that the Department had conducted an investigation into her daughter's care, compiled and distributed the report without interviewing her or any other family member.

Preliminary inquiries undertaken by me indicated that the Department had made every effort to involve the complainant and her family in the investigation. However, the complainant or another family member cancelled every interview that the Department had scheduled in an effort to complete the investigation. Furthermore, the Department offered the complainant every opportunity to be involved in the decision making process regarding her daughter's care but she or another family member cancelled appointments or refused to be involved in that process.

The complainant was advised that no aspects of her complaint could be substantiated and that, in the circumstances, I considered that the actions of the Department had been reasonable.

23. Hey, I won the race – I got the prize – you can't change your mind now!

(Department of Community Development, Sport and Cultural Affairs – Hidden Valley Promotions)

The complainant, was a competitor in a novelty race event at the V8 Supercars. He was initially awarded first prize. A short time later he received a letter advising that he had been incorrectly awarded the prize money and trophy. He was requested to return the prize cheque.

The complainant wrote to Hidden Valley Promotions on a number of occasions arguing that he did win the race. In the Hidden Valley Promotion's initial response they failed to advise the complainant that the race results were under the control of the Confederation of Motor Sports (CAMS) and that this was the body to appeal to. In addition, minor administrative errors identified were incorrect letterhead used for correspondence and a letter was undated.



I consider that whilst Hidden Valley Promotions were timely in their correspondence to the complainant, they did fail to advise the complainant of the correct avenue for appeal in the first instance and as a result the other minor administrative errors were identified.

24. Disconnection of electricity for non-payment of water and sewerage (Power and Water Corporation)

The complainant approached me advising that PowerWater threatened to disconnect his electricity for non-payment of an amount that related to water and sewerage services. The complainant queried PowerWater's legal right to disconnect a service for which the account had already been paid.

Following an approach from my Office, PowerWater sought a legal opinion. The opinion indicated that PowerWater might not have the right to disconnect a service in such circumstances. PowerWater advised that they would take action to clarify the practice by stipulating in their new Customer Contract that they have the right to disconnect electricity supply for failure to pay water and sewerage accounts. In the interim, an instruction was issued that the practice of "cross disconnection" would be discontinued.

The complainant was advised that I would undertake additional inquiries to ensure that proper procedures were in place. However, I considered that Power Water in this circumstance took reasonable action to deal with the situation when it was brought to their notice.

As a result of this complaint I approached other States/Territories Ombudsman's Offices and utility providers in relation to their practices and views on "cross disconnection". Their views were similar to mine that the practice is inappropriate, that the disconnection of a utility for non-payment of an account should only be considered in relation to the utility with the outstanding amount.

I have since been advised by PowerWater that the practice of "cross disconnection" will cease, in addition, PowerWater advised that they intended to review all its disconnection procedures.

25. Refusal to release information (Department of Infrastructure, Planning and Environment)

A bushfire occurred on a rural property sometime in July 2001, causing extensive damage to land and property. A property owner affected by the fire wished to determine the cause of the fire. The complainant had found out that the Department had compiled a report on the fire and as such, requested a copy of the report. However, the department refused to release the report. The reasons given to the complainant by the Department were that the report had been prepared in anticipation of litigation, was considered privileged, and as such, would not be



released without a deed being signed, (at the complainant's expense), indemnifying the department from any liability.

Given that at the time of this complaint, there was no freedom of information legislation in the Northern Territory that might have provided the complainant with a means to obtain the report, it seemed that the complainant's only avenue was through the process of discovery. Dissatisfied, the complainant contacted my office for assistance.

Following inquiries with the Department, it confirmed that its decision not to release the report was based on legal advice. However, in recognising the situation, the department advised that it had taken remedial action by instituting a new procedure and a new reporting form, containing only factual information, to enable members of the public and/or their insurers to gain easier access to such information.

The new system, which commenced operation at the beginning of 2002, requires members of the public to write to the Chief Fire Control Officer, who, upon examination of the completed form to ensure that no contentious information has been included, may then release a copy of the fire report, on a without prejudice basis, thus eliminating the need for a deed to be signed. However, as the fire on the complainant's property occurred in 2001, this system was not in place at the time to accommodate the complainant's request for the report.

After considering the Department's response, I wrote to the Department indicating that the stance adopted by the agency might be seen as unreasonable, and questioned why the agency had resorted to seeking legal advice for what seemed to be such a straightforward issue. The CEO responded by again reaffirming his view that, due to the sensitivity of the information contained in the report, it would still continue to prepare such documents with legal proceedings in mind.

On the face of it, while the actions of the agency may not be considered unreasonable overall, and while it was clear that steps had been taken to improve the situation, I was still disappointed with the stance that the department was adopting in this matter.

In my opinion, what appears to have occurred was that a fire had broken out and damaged the complainant's property. Pursuant to statutory obligations, the Fire Service prepared a report relating to the circumstances surrounding that fire. Concerned that the fire may have been started by an act of negligence, the complainant had suffered loss as a result of the fire and wanted to examine whether or not this may be the case, but had no substantial information upon which to base the suspicion on.

The department, which has a statutory responsibility for addressing the cause of that loss, declined to give any information relating to the matter, virtually stating that the only option available is to commence litigation, in order to ascertain through the discovery process, whether the complainant's suspicion had any substance.



In my view, the reliance upon the fact that the report into the fire was prepared in anticipation of litigation struck me as tenuous at best, if not obstructive at worst. If the complainant had proceeded to litigation, then litigation would commence and a discovery process would be undertaken to obtain the very document being sought. It is my belief that the document would probably be discovered, as I could see no real privilege being attached to it. This was even acknowledged in legal advice given to the agency. It seemed to me that a person seeking such information is thus being asked to instigate expensive and time-consuming litigation as the only option to obtain the information. The document may or may not alleviate any concerns the complainant might have about what caused the fire, however, in my opinion, that is not the issue.

In my view, I contended that the agency should, as a matter of good administrative practice and accountability, make the document available, regardless of any legal protection it has claimed or on suspicion of litigation. I could not see that any harm would apply to the department if it made the report available to the complainant. It seems incongruous that a fire report, which was specifically designed to document the cause of a fire, should not then be made available to a party that has suffered loss as a result of that fire.

The fire report would enable a party that has suffered loss to determine a possible cause of that loss and to make a determination about possible action in relation to that loss. I am of the opinion that litigation should be taken up to address a wrong, not to discover whether or not a wrong has possibly occurred in the first place.

I also noted the proposed introduction of Freedom of Information Legislation that was at the time of the complaint, under consideration in the Northern Territory. The Bill for the *Information Act 2002* clearly states that the intention of the legislation is to create *“a general right of access to information held by public sector organisations, limited only in those circumstances where the disclosure of particular information would be contrary to the public interest because its disclosure would have a prejudicial effect on essential public interest or on the private and business interest of persons in respect of whom information is held by public sector organisations.”*

In my view, the fire report relating to the complainant’s property would not be exempt under the new legislation and, therefore, it seemed unreasonable for the department to withhold the information. I again wrote to the department and conveyed my opinions about the situation, strongly recommending that the agency reconsider its position in relation to the provision of the fire report and provide the report to the complainant, unconditionally and free of charge.

I was pleased to receive advice from the department indicating that, although it was still not legally required to release the report, it agreed with my recommendation to release the report to the complainant. The department indicated that it would contact the complainant to make the necessary arrangements. In the circumstances, I advised the complainant of the outcome and declined to take any further action in the matter.



26. Defective tender process (Department of Corporate and Information Services)

The complainant was unhappy with the tender process undertaken by the Department. The complainant had several issues with the 'defective' process, which included the complaint that the grounds for the complainant's exclusion from the tender process were unsatisfactory and did not constitute valid reasons under the NT Procurement code. The complainant also felt that when the tender request was amended that there was little time to respond to the tender and no specification to respond to. Lastly the complainant felt that there was a clear bias towards its opponent's tender given that the complainant's tender was a lot less than the successful tender.

I determined that preliminary inquiries were appropriate and they included a review of files relating to the tenders, review of telephone conversations between relevant parties to the complaint and a review of the Procurement Review Board Guidelines.

I found that the original specification for the tender was defective and, in remedying this defect, the request for tender should have been withdrawn and re-advertised. My inquiries also revealed that the original specification gave the clear impression that NT Correctional Services had a preference for the opponent's product. It was recommended that the relevant officers in the Department be counselled with respect to the contents of the original specification to the tender and the failure to extend the time for the lodgement of tenders.

It was also recommended that the Department of Justice amend relevant provisions in its Accounting and Property Manual to ensure strict adherence to both the actual procurement requirements, and the spirit and intent of those requirements.

27. If at first you don't succeed.... (Department of Employment, Education and Training & Real Estates Licensing Board)

The complainant lodged a complaint about the Northern Territory Employment and Training Authority (NTETA) and the Real Estate Agents Licensing Board. The issues regarding NTETA was that, upon completing the Certificate IV in Real Estate through the Real Estate Institute of the NT (REINT), the complainant discovered that his qualification was not recognised in Queensland or Victoria. The complainant was upset as the Certificate has been assigned a National Course number and has the Australian National Training Authority stamp on it. The complaint regarding the Real Estate Agents Licensing Board related to the refusal of the Board to issue the complainant with a Real Estate and Business Agent's Licence, despite a number of applications being lodged to obtain one.

I conducted preliminary inquiries into the complaint, consisting of reviewing the Northern Territory Employment and Training Authority Act and contacting the Authority directly. In relation to the Real Estate Board the Agents Licensing Act was reviewed and the Board was contacted directly.



With regards to the first complaint involving NTETA, it was found that the administrative actions of NTETA were not unreasonable. In the absence of any nationally accepted standard, each jurisdiction in Australia would be entitled to deal with training as it saw fit.

In relation to the Real Estate Agents Licensing Board, it was found that most of the issues raised by the complainant were matters that should be raised with the Board in the first instance. The issue of the refusal of the licence was examined and it was found that the complainant actually had an avenue of appeal under the Agents Licensing Act. It was recommended that the complainant use this avenue if his current application was refused.

**28. When is a vehicle registration a ‘renewal’ or a ‘grant’
(Department of Infrastructure, Planning and Environment – Motor Vehicle Registry)**

Late in 2001, the government introduced a “temporary budget improvement levy” of \$90 per annum on motor vehicle registrations. In summary, the legislation provided that all new registrations (grants) after 28 November 2001, and renewals that occurred on or after 4 January 2002, were subject to the levy.

The complainant’s registration expired in December. He attended at the Motor Vehicle Registry (MVR) to renew the registration on the day following expiry, at which time he was told that, as the registration expired at midnight on the previous day, the registration would be treated as a grant and that the levy would be imposed. Following submissions to the Registrar the complainant remained dissatisfied and lodged a complaint with me.



NT CORRECTIONAL SERVICES

1. It's not mine, I'm clean

The complainant, a prisoner at the Darwin Correctional Centre, contacted this Office via the prison telephone service. The complainant had recently undergone a random urinalysis test to detect the use of narcotics. The complainant's test had come back positive even though he strenuously denies using any form of drugs. As is his option, the complainant requested that the second sample of his urine undergo testing at his expense. The complainant requested through the Superintendent, that prior to the sample being sent away for analysis, that he be able to sight the signature on the vial to verify that it was indeed his sample as he has concerns that the samples have been mixed up or swapped. This request was denied.

A number of inquiries were made with the Professional Standards Division (PSD) of Corrections who initially agreed that the request to verify the signature did not appear unreasonable. PSD advised that they would discuss with the Superintendent to organise. Unfortunately, however, the sample had already left the prison and this could not occur. An examination of the Commissioner's Directives pertaining to the taking of urinalysis samples was undertaken with the view formed that this instruction was detailed and totally sufficient in regard to this issue.

Further discussions with PSD resulted in an agreement that the prisoner's first and second sample would be ignored and a new test would be arranged for the prisoner. In addition the prisoner would not be charged for the second test. However, in the intervening period, the second test results had come back with a negative result, thus clearing the prisoner from having disciplinary charges laid for the use of drugs within the prison environment. The complainant was satisfied with the outcome of his complaint.

2. Appeal against Transfer

A Prisoner contacted my Office to complain about his impending transfer to the Alice Springs Correctional Facility. The Prisoner had lodged an appeal against his transfer with the Commissioner. This written appeal was placed in the Darwin Correctional Facilities mail service late on the Friday. The Prisoner had been advised that his appeal would not reach the Commissioner of Corrections until the Wednesday and that he would be transferred in the meantime.

Preliminary enquiries were conducted with Corrections. Through the course of these enquiries, it was agreed that instead of transferring the Prisoner to Alice Springs and then bringing him back, if the appeal was upheld by the Commissioner. It would make more sense 'administratively' to have the Prisoner remain in Darwin until the appeal could be assessed by the Commissioner.

This complaint was resolved expeditiously with the result being that the Prisoner remained in the Darwin Correctional Facility until the Commissioner had assessed his appeal.



3. Clothing Conundrum

A prisoner contacted my Office and complained that Corrections did not supply enough sets of clean clothes to prisoners at Alice Springs Correctional Centre. This resulted in prisoners having to wear dirty clothes one day a week.

Preliminary enquiries were undertaken and as a result of this complaint, procedures were put in place at the centre to resolve the situation. Corrections displayed a notice to all prisoners informing them of the process they can go through to get an additional set of clothing. There was also a procedure put in place for prisoners who are reclassified and have moved to the Management Zone to have the option of up to four sets of clothing. The complainant was then informed of these new procedures.

4. Objection to Transfer due to lack of family contact

A prisoner complained about being refused a transfer from one Correctional Centre to another, stating he would be disadvantaged because relatives would not be able to visit. I commenced inquiries to obtain relevant information and determine what other facilities were available for the prisoner to use to remain in contact with his family.

In relation to the transfer, I advised the complainant that, if it was considered that personal circumstances had changed significantly that warranted a review of the prisoner's situation, then to lodge a request for a transfer with the Superintendent, in the first instance.

In relation to the issue of lack of family visits, my research indicated that there are a number of video-conferencing services available in the private and public sector for the prisoner and/or family members to use, but for which there are significant costs involved.

The Correctional Centres also provides a free video-conferencing service that the prisoner can avail him/herself of. The prisoner needed only to put in a written request to the Superintendent and it would be considered.

By comparison, the Department of Business Industry and Development in Darwin provides a video conferencing service, which is available to the public at a cost of \$200 per hour. The service is located at Territory Perspective, Development House on the Esplanade. In addition, Projection Plus, a private Darwin based company also provides this service and charges \$200 for the first hour, and \$150 per hour thereafter. Contact details of the above services were provided to the prisoner.

In the circumstances, as I could not be of any further assistance, other than providing the prisoner with the above information and I declined to pursue the matter any further.



5. Medicinal Mix-up

The complainant was upset due to confusion over medication that he receives in Darwin Correctional Centre. He claimed that the medication that he was taking prior to going to prison was substituted whilst he was in prison and then it was stopped completely. The complainant alleged that he was not provided with an explanation as to why his treatment was ceased.

Preliminary enquiries were conducted through the Medical Officer at Darwin Correctional Centre and a copy of the medical report made by him in relation to the complainant was reviewed.

It was determined that the dosage of the complainant's medication had simply been reduced, not discontinued, and that a review of the complainant's medical condition would be conducted soon. This review would determine whether the complainant needed future treatment with his current medication or whether there was an alternative method of treatment available to him. I notified the complainant of these details and assured him that his medical condition would be reviewed.

6. Failure to comply with medical advice

A prisoner complained that prison authorities had not complied with his Visiting Medical Officer's (VMO) request to provide him with an additional meal, pending receipt of certain medical tests.

The Agency advised that the extra meal had been stopped due to some confusion in communication between the VMO and kitchen staff.

The agency advised that the VMO had first issued instructions to kitchen staff to give the prisoner an extra meal, which was to continue pending receipt of medical tests. When the test results were received a few weeks later and found to be clear, the VMO notified the kitchen officer of this. Consequently, the extra meal was stopped. However, later that day, the VMO issued a further request that the extra meal continue for a further three months, pending a review of the prisoner's medical condition.

It seemed that the initial stoppage of the extra meal by kitchen staff and the second request made by the VMO to continue the extra meal, both occurring on the same day, apparently resulted in the request being denied and the meal being stopped.

The agency advised that on clarifying the situation, the extra meal would be provided to the prisoner until further notice from the VMO. In the circumstances, as the matter was resolved, I declined to take any further action in the matter.



7. Prisoner's Missing Property

A prisoner complained that a set of headphones and a remote control unit belonging to his portable Panasonic CD Player had gone missing or was stolen, during transfer from Alice Springs to Darwin Correctional Centre

Following inquiries, the department advised that it conducted an investigation into the matter but was unable to determine whether or not the items had been transferred from Alice Springs with the rest of the prisoner's property. That being the case, the department agreed to replace the property.

The department further advised that agency reception staff checked with the store where the unit was purchased and confirmed that the items came as a package and included the remote control and headphones. The agency advises that this type of package is not a standard purchase for prisoners and staff were unaware that the accessories were included. Consequently, the prisoner's property sheet had identified a recording of the Discman only and not the remote control and headphones.

The department advised that, due to difficulties in replacing the exact type of items lost, the prisoner agreed to accept compensation of \$100 in settlement of the issue. In addition, the department advised that it would address the issue of accurate recording of all items on a prisoner's property sheet, through staff training.

In the circumstances, given the positive outcome achieved for the prisoner and the agency's proposed remedial action, I declined to pursue the matter any further.

8. Assault reported to police

Another prisoner at the Alice Springs Correctional Centre allegedly assaulted the complainant. He approached my office because he was of the belief that the assault had not been reported to police. As a result of the incident with the other prisoner, the complainant's security classification had changed and he had been moved from the 'cottages' to the main zone of the prison. The complainant felt that he was being punished for something that he did not do, while the other prisoner had been released.

Preliminary inquiries were conducted, which included writing to the Commissioner for NT Correctional Services (Corrections). In his response, the Commissioner advised that the assault had been reported to police on the day that the incident occurred. The Director of Public Prosecutions (DPP) had subsequently advised police that there was insufficient evidence to proceed with a prosecution, as they were unable to determine who had struck the first blow. The Deputy Superintendent at the Correctional Centre had apparently advised the complainant of this. He also advised the complainant that he might wish to pursue the matter further with Legal Aid.

The *Ombudsman (Northern Territory) Act* prohibits me from inquiring into the actions of the DPP (other than an action amounting to inordinate delay) in relation to the



prosecution of offences. Therefore, in relation to this aspect of the complaint, I did not make any further inquiries.

In regard to the actions of NT Correctional Services, I was satisfied that the agency acted appropriately in reporting the alleged assault to police on the day that the incident occurred and, therefore, did not propose to investigate the matter further.

In regard to the loss of privileges resulting from the complainant's transfer from the cottages to the main zone, I was advised that the complainant had since been returned to the cottages and, therefore, did not propose to undertake any further inquiries into this aspect of the complaint.

9. Release of Telephone Information

A prisoner from Alice Springs contacted my office alleging that NT Corrections had breached the prisoners privacy and endangered his girlfriend by giving out information to his girlfriend's husband, who is a friend of his. The husband contacted Corrections to see why his friend had not been calling him and was advised, "He is not calling you, he's calling your wife" and since this time, he has not been able to reach his, "girlfriend". (both are apparently on his call list)

While I was undertaking preliminary Inquires with the agency it was ascertained that the prisoner had also contacted the Commissioner of NT Corrections in correspondence tendering his complaint. It was decided that I would allow the agency to respond direct to the complainant and assess the agencies response.

In the letter from the Commissioner of NT Corrections to the prisoner it was ascertained that: (1) the Intelligence Officer admitted that he did give the husband the information that his wife, had been in contact with the prisoner, (2) the wife's number had been disconnected from the prisoners call list, without going through the appropriate notifications; (3) the intelligence Officer in question had been made aware of his responsibilities; (4) the complaint resulted in a change to NT Correction's procedures, to ensure that this does not occur again; and (5) the Commissioner apologised to the prisoner for the intelligence Officer's actions.

On the basis that it was determined the agency had dealt with the complaint reasonably and the fact it had resulted in a change of policy in how these matters would be dealt with in the future, I considered that this matter was resolved.



LOCAL GOVERNMENT COUNCILS

1. Rate Relief Procedures (Tennant Creek Town Council)

Section 86(1) of the *Local Government Act* allows ratepayers to apply for relief in times of financial difficulty, and section 86(2) empowers Councils to grant such relief.

A Tennant Creek resident complained that rates applied by the Council were unfair, and that Council had rejected his application for relief (based on a claim of low income), without explanation. The complainant had purchased at low cost a commercial property and set up residence on the property. As a consequence his rates liability was calculated at the rate struck for commercial properties and also attracted a special dump access fee well in excess of the garbage fee applied to residential zoned properties. In applying for relief the complainant advised the Council that his income was very low. Later my Senior Investigation Officer wrote to the Council and provided more details of the complainant's circumstances including copies of some financial statements. Council again advised that it was unable to grant relief.

The Council's rejection caused me some concern as it had rejected the application without explanation. The lack of information made it difficult for me to understand the basis for rejection. I sought specific advice from Council, namely what criteria were applied under section 86(2) of the Act to evaluate applications from ratepayers seeking relief on the grounds of hardship, and the legal basis for applying the dump access fee.

The response provided me with some useful information including advice that the financial documents submitted were out of date. I was able to determine that the dump fee had been imposed uniformly over all commercial properties, and whilst on one view it might be thought the fee was excessive, the complainant had opted to own a commercial property. I decided the Council decision to apply the fee was not unreasonable in the circumstances and that I would take no further action in relation to this part of the complaint.

I advised Council that in my view the administrative process had been deficient for a number of reasons. Proper reasons for Council's decisions were not given to the complainant. Responses did not provide the legislative basis on which the decisions were based, nor if there were any avenues of appeal. If an application were to be rejected on the grounds of non-current information being provided, the applicant should be so advised, and given the opportunity to amend the application. I noted the complainant's parlous financial position and the apparent lack of compassion on the part of the Council. I was forced to comment that it would seem that Council was reluctant to grant relief in any circumstances, and if this was truly the case it would not be a proper exercise of discretion allowed under section 86(2) of the Act.

I then entered into a dialogue with Council via its CEO and a satisfactory outcome was achieved. It was agreed that in future applicants would be made aware of the reasons for Council's decisions, and this should have happened with the complainant. Advice was received that if the complainant cared to re-submit an



application for relief supported by certified and current financial documents it would be given further consideration. The CEO confirmed that all administrative procedures within Council were to be the subject of a review. The possibility of the CEO being delegated to handle applications pursuant to section 86 of the Act with the Council holding a right of review would be examined in line with a recommendation that I had made. I saw this as a risk management strategy, as our offices had expended more time and money on this matter than the value of the complainant's rates bill.

At the time of writing, the complainant who had been advised the outcome of my inquiries was in the process of submitting a new application. There was some doubt however as to whether income statements were supported by certification from a taxation agent, or financial adviser acceptable to the Council. I decided to take no action. I would deal with any extra problems when and if they arose.

2. Adequate Notice of Road Closure (Alice Springs Town Council)

The complainant advised that she was dissatisfied with a local government council rejecting her claim for compensation for loss of business as a result of council roadworks outside her premises. She also expressed her displeasure at Council's failure to adequately advise her and other businesses of its intention to close the road.

Preliminary enquiries were undertaken which consisted of comments being sought from the Council, examination of appropriate legislation, in particular, the provisions of Part 6 of *Local Govt (Road Opening & Closing) Regulations* and the *Control of Roads Act*. Copies of advertisements, correspondence and Council minutes were also viewed.

As a result of these inquiries, I determined that Council had failed to adequately advise or consult with the complainant about the closure. Specifically I wrote to Council and commented that:

- 10 days was not considered as fair and adequate notice given that the complainant's business had not been individually advised and the notice only appeared in the local newspaper. In addition, the fact that the complainant was not personally advised or consulted about Council's intention to close the road until 3 days before construction took place was not a reasonable process, and certainly not within the spirit of the law.
- When it became clear to Council that the road would be closed for a much longer period than initially intended (nearly 4 months), a notice stating the details and estimated length of time for such an extension of should have been placed in the newspaper.
- Although I found the actions of Council to be unreasonable, I was unable to determine that there has been deficient administration to such an extent that I would consider a recommendation for consideration of compensation.



3. Refusal To Waive Garbage Rates (Katherine Town Council)

The complainant advised that the Katherine Town Council had in previous years, on request, waived her garbage collection charge. This year the Council had refused to do so.

The complainant resides on a rural property previously owned by her father. To her knowledge her father did not use the regular garbage collection service and did not pay the subsequent charge. Since the complainant has owned the property she has not used the service and her requests to Council to have the charge waived have been approved. This year when she requested the Council waive her garbage collection charge they refused. The Council advised that because they provide the service ratepayers are expected to pay for it whether they use it or not. The complainant offered to pay the new garbage dump charge to use the dump, the same arrangement offered to her neighbour who resides 5 kilometres away and to whom the Council does not provide the regular garbage service. The Council again refused.

I advised the complainant that my inquiries revealed that it was evident that the Council had, in 2002, tightened up the application of council rates and charges regarding garbage collection services. In addition, the Council had also applied new charges in relation to the use of the garbage dump. I advised the complainant that the actions of the Council were within the legislative framework and in the circumstances their actions had been reasonable, however, I provided the complainant with the criteria on which she could apply to Council for a waiver of her regular garbage collection service charge.

4. Disclosure Of Information (Litchfield Shire Council)

The complainant was contacted by a man who enquired about buying her property. The complainant was concerned as she had never advertised her property for sale. When she asked him where he got her name and phone number he told her that the Council gave it to him. The complainant felt that this was a breach of privacy.

Preliminary enquiries were made with the Council who stated that rate payers names and addresses were available in the 'Rate Book' that the public have full access to. They denied giving the complainant's phone number to the man and say these details are not available in the Rate book. The *Local Government Act* was also checked and it was confirmed that the Council's actions were lawful and reasonable.

The complainant was informed of this legislation and although it could not be confirmed whether the Council did disclose her phone number to the man, it was noted that the information available in the 'Rate Book' was enough for anyone to find her phone number in the phone book.



5. Permit to Protest (Darwin City Council)

I received eight separate complaints all dealing with the same issue; that issue being the refusal of Darwin City Council to grant a permit to an organisation for the use of Raintree Park. The complainants felt that the Council's decision to refuse a permit for that site was denying them the right to voice their opinions in an open forum and was discriminatory.

Preliminary enquiries were made with Darwin City Council and I obtained copies of the correspondence sent to the complainants by the Council, by-laws, policies and the Raintree Park permit policy.

From my inquiries, I determined that the actions of the council were reasonable for several reasons. When the organisation was granted a permit to use the Raintree Park area on previous occasions, the council received complaints from members of the public in relation to the level of noise created by the event and the litter left behind by the participants. In the conditions on the permit issued it stated that these are two things that must be adhered to or future permit applications could be refused on that basis. I noted that the council suggested that an application for the use of Civic Park be submitted as the council would consider this as an alternative site. It was also understood that the council had offered to meet with the members of the organisation to discuss how they might interact in the coming year. I determined that these actions were reasonable and the complaint was unsubstantiated.

6. Claim for Compensation Denied (Alice Springs Town Council)

The complainant, a long time resident of Alice Springs, advised that she had not received a reply from the Alice Springs Town Council regarding a claim she had made in relation to an excess water bill. It was the complainant's contention that Council workers had damaged a pipeline to her property. The pipeline in question ran under a causeway on the Charles River and into her property. The Council has the responsibility to maintain the causeway. The water meter was lodged outside the complainant's property so any loss of water from the line was at her expense. It was claimed that as Council had caused the damage, it should take responsibility for excess water charges applied by the Power & Water Corporation.

The Council CEO advised me that the complainant's letter appeared to have been mislaid, as my approach was the first inclination that there was a problem. Nevertheless immediate inquiries were made with the result that Council denied liability for a number of reasons:

- The pipeline was not to appropriate standards being a polythene pipe that had been in use for about 15 years.
- Given that the pipeline was buried to a depth of a metre Council questioned whether its machinery had inflicted any damage.
- Council had in the past carried out repairs to the pipeline as a goodwill gesture, and had noticed a number of leaks appeared to have been caused by rocks and building rubble.



In the circumstances Council argued that as the line was substandard it could not accept liability. I agreed with the Council argument and advised the complainant that unless she could provide more evidence to support her claim, I could not sustain the complaint. I also suggested that the long-term answer would be to install a steel water main.



NT POLICE

1. Ahoy there matey!!

The complainant alleged that while he was walking home from a fancy dress party dressed as a pirate and carrying a toy plastic silver sword tucked into his shorts, he noticed a car following which he thought was his friend. He wished to avoid him so he hid. The complainant believed his friend was "*just playing around*" and was not aware that the car he saw was a police car, nor did he hear police identify themselves. Police, had at this time merely wound the vehicles window down slightly due to the fact it was raining heavily.

Approximately four or five houses from his home he grabbed the plastic sword and as he approached his home he threw it over his fence. As he was standing on the footpath, looking for his keys, two persons, who were in fact police officers, jumped out of the car, screamed "*get down*" and had their guns pointing at him. He was pushed to the ground where he was handcuffed. Contemporaneously he was telling police "*this is my house*"; they would not listen. Police grabbed his wallet and accessed his driver's license.

One of the officers retrieved the sword and other officers arrived. He was informed that he would be uncuffed. An officer told him "*you were close to being shot*". He stated that at no time during the incident did an officer ask him if he lived in the house he was attempting to enter, or who he was.

The complainant alleged:

- Unjustified drawing of a firearm
- Excessive force when applying the handcuffs
- Verbal abuse by officers

The police version of events stated that two plain-clothes officers driving an unmarked police vehicle, observed the complainant standing still under a tree. They both noticed a silver sword approximately two feet in length. They stated he acted in a threatening, menacing manner and that they identified themselves saying "*Mate, we're the police, what are you doing with the sword?*" The complainant then turned on the car, advancing with the sword raised above his head. It was accepted that the police officers initial attempts to identify themselves took place in less than ideal circumstances and the complainant may not have heard the officers.

The Communications record indicates that from the onset, police could see a sword and they were concerned that the complainant would attempt to enter someone's yard. It also suggests that police saw the complainant attempting to "jump" the fence and reported it immediately.

The officer concerned pointed out that his decision to draw his pistol was based upon his belief that: the sword was real, the complainant was acting aggressively and could have hurt someone. He had holstered his weapon as soon as the complainant



complied with his direction to get down on the ground. He said that he had been taught to face an edged weapon with a firearm.

An opinion was sought from OSTT instructors as to the appropriateness of drawing a firearm under the circumstances. They pointed out that:

- there is no instruction to cover every possible circumstance, but rather police must exercise a judgement on the merits of each situation.
- considered the decision was justified in the circumstances.
- the officers' decision not to attempt to verbally further identify themselves to the complainant again was reasonable.

The JRC noted that the complainant denied exhibiting any directly threatening/aggressive behaviour toward the officers and denied attempting to scale his fence. However, on the basis of the available evidence it was apparent that police interpreted the complainant's reaction to their vehicle as threatening. The JRC accepted that police believed the complainant was attempting to scale the fence to his front yard, although he denied intending to do so. The JRC also accepted, notwithstanding, that the evidence given by the complainant, the police and other witnesses had been honest and frank.

In my view the decision to draw the firearm in the particular circumstances, as against some lesser kind of response, imposed on the officer a very onerous responsibility to ensure he had exhausted all other options. I considered that the drawing of the firearm in the absence of effective identification or any attempt to further communicate with the complainant was pre-emptive and the complaint was therefore sustained.

The police view on the other hand was that the officers considered the complainant a potentially serious threat to their safety and the safety of others and avoided taking any action that could escalate the situation until the complainant actually attempted to gain entry to his residence. They saw this as requiring immediate and urgent action to stop the complainant entering the premises. Whilst this involved the drawing of a firearm, they felt they had no time for any other option than to confront the complainant in a manner which gave the best hope of causing him to desist immediately.

The two OSTT officers consulted indicated their support for the approach taken in the context of the training the officers had received. In the circumstances, the Commissioner for Police was unable to conclude that the action of drawing the firearm was in any way a deliberate or reckless departure from the standards expected. The complainant's actions and behaviour unwittingly contributed significantly to the officers' perception that the complainant represented a danger to them and others. Accordingly, police were not prepared to censure either officer over the drawing of the firearm.

It was my view that the use of handcuffs is an application of force and therefore the use must be justifiable and reasonable. Any use of force should ordinarily be preceded by communication with a suspect. This did not occur. Police action to



forcefully restrain and handcuff the complainant was the natural consequence of their earlier failure to effectively identify themselves. For the same reasons, it is my opinion that, in the circumstances, the application of the handcuffs was also premature.

It was the police view that the officers, having formed the view that the complainant represented a threat to them and others, felt it was necessary to restrain him until they could establish whether he was armed with any other “weapons” or otherwise represented any further threat. Police see the handcuffing as a natural extension of the drawing of the firearm and therefore view it in the same context.

During the handcuffing phase of the incident police told the complainant to “shut the fuck up”. The JRC recognised that this incident was extremely stressful for the complainant and police. The use of such language is not condoned, but in this case the JRC did not consider it was intended to be abusive given the context in which it was said.

Notwithstanding my view that the drawing of the firearm was premature, the JRC did not consider the action of the officer concerned was in any way a deliberate or reckless departure from the standards expected. Both police and I agreed that the particular events of the night in question contributed to an extraordinary set of circumstances.

In my view the drawing of a firearm by one of the police officers was premature. The Police Force does not share this view and contended that the action of the member fell within the parameters of operational, safety and tactical guidelines. However notwithstanding this the Commissioner has agreed with a recommendation from me that guidelines relative to the drawing of firearms by police be reviewed. The Commissioner also indicated willingness to convey to the complainant either in writing or by means of a meeting with his Deputy, his apology for what occurred.

2. Police treatment following fatal shooting

There were several issues of complaint lodged by X and Z families in relation to certain aspects of their treatment by police after police fatally shot Mr X. In essence the complaints against police were:

- Being insensitive and ill considered in their treatment of the deceased family’s members following their arrival, shortly after the shooting.
- Failing to offer counselling to any members of the said families despite it being requested.
- Submitting an allegedly false statutory declaration to the Coroner.

The investigation of the complaint was conducted by the Professional Responsibility Division (PRD) under the supervision of the Joint Review Committee (JRC). An investigation report was prepared which took into account interviews with police officers, informal interviews, review of the Coronial file and PROMIS Case and liaison with a Welfare Officer. Interviews with the complainants had not been undertaken at that time.



The JRC report apprised the complainants of all the evidence obtained to date and conclusions derived from the evidence.

The JRC report concluded that there were some difficulties in communicating with the family at the station. This resulted from the understandable extreme emotional distress being experienced by the family and the fact that some members of the family spoke poor English. It was acknowledged that these factors might have contributed to the confusion regarding the provision of grief counsellors.

Since this investigation, the "Deaths in Custody" General Order has been amended, formalising the responsibility for the Commissioned Officer in charge of the investigation of a "Death in Custody", to ensure that immediate welfare assistance be offered to "witnesses".

It was found through the JRC that the decision to preclude family members from attending the residence was clearly made in order to preserve the integrity of the crime scene in accordance with standard police procedures. In the view of the JRC, this was, on its face, a correct decision under the circumstances, albeit difficult in the extreme for the family to understand and accept at the time.

In conclusion it was agreed by the complainants through their legal representative, that the interviewing of family members would not be necessary and the JRC report was accepted.

3. Protective Custody that offers no protection

An Aboriginal complainant was apprehended for protective custody by two Aboriginal Community Police Officers (ACPOs) and transported back to the police watchhouse. The complainant alleged that police then assaulted him, in that one of the ACPOs punched him in the face which, resulted in the complainant receiving a cut to his lip.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) under the supervision of the Joint Review Committee (JRC). The JRC found that on the afternoon in question, the complainant was apprehended for protective custody by police and transported to the police watchhouse. Video evidence indicated that a conversation then occurred between one of the ACPOs and the complainant before they walked to the watchhouse. As the complainant goes to the watchhouse, he is held in an escort hold by the ACPO. The complainant walks forward and appears to be heading towards the cell area before the ACPO grabs his arm. The complainant's processing is commenced during which the ACPO swears at the complainant a number of times.

The complainant alleged that the ACPO then challenged him to a fight. When questioned, the ACPO stated that it was the complainant who issued the 'challenge to fight'. The audio and video evidence pertaining to this aspect is unclear. Whilst the JRC was unable to clearly determine who issued the 'challenge to fight', the JRC was of the view that a challenge was issued and accepted and as a result the ACPO



walked outside the watchhouse and the complainant stood in the doorway, removing his jacket. The complainant is then seen to leave the watchhouse on his own and the video recording then picks up the complainant following the ACPO outside around the front of the watchhouse until he and the ACPO disappear from view. The second ACPO is seen to follow the complainant and also disappears from view. The evidence indicated that the complainant and the two ACPOs moved to a grass area out of the view of the video camera. Video evidence also indicates that another police officer appears to watch the ensuing events from a distance, however, all inquiries to ascertain the identity of this officer have proven unsuccessful.

The evidence again differs as to what occurred next. The complainant stated that the ACPO *'punched me in the face and the stomach and I fell down and kept holding myself'*. When questioned further the complainant states that the punch to his face hit him on the lip, which caused it to bleed. The complainant stated that he tried to throw punches at the ACPO but he was too drunk. The complainant stated that the second ACPO watched this happen with his hands behind his back and did not stop the fight. The complainant stated that when he had recovered from having the wind knocked out of him, he got up and walked back into the cell and had a sleep.

The ACPO stated that *'there was no fight nothing untoward. I was just defending myself from him cause he was striking, striking at me'*. The ACPO stated that the complainant *'shaped up'* and began striking him and as a result the ACPO pushed the complainant away with his open hand on the chest and face resulting in the complainant falling down to his knees. The ACPO stated that the complainant received a cut to his lip as a result of the ACPO pushing him in the face with an open hand in order to stop the complainant from hitting him.

The video evidence indicates that after about a minute from the time the complainant disappears from view, he comes back to the watchhouse, held by both ACPOs. Another police officer, who is the senior member on duty on the evening in question is seen to pop his head around the watchhouse door and observes both ACPOs walking along holding the complainant as they come through the security gate at the front of the cells. This police officer stated that the ACPO told him that the complainant had tried to do a *'runner'*. The senior member is then seen in the watchhouse accepting the complainant who is bleeding from an injury and blood can be seen on the floor of the reception area. The complainant is then searched and placed in the cells. One ACPO is then seen to come back to the reception area and cleans the floor area of blood with a mop. The senior officer is heard to ask the ACPO what happened and is informed that there had been an incident. He made no inquiry or record of this.

Having regard to the evidence above, the JRC formed the view that there was sufficient evidence to sustain the complainant's allegation on the balance of probabilities. The matter was referred to the Office of the Director of Public Prosecutions to seek an opinion as to whether a criminal prosecution should be initiated against the two ACPOs for the unlawful assault of the complainant. One ACPO was also been charged with a disciplinary offence (engaging in disgraceful and improper conduct) within the provisions of the *Police Administration Act* whilst



disciplinary action was not been initiated against the other ACPO as he has now been discharged from the Northern Territory Police.

Whilst the JRC was of the view that disciplinary action should be commenced against the senior police officer for his lack of action, as the senior member on duty on the evening in question, regrettably the statutory time limit for the laying of disciplinary charges against police expired before the receipt of the complete PRD Investigation Report and the issue cannot now be tested. However, the JRC recommended that this officer be formally counselled for his involvement in this matter.

4. Not for Drugs nor money

The complainant was taken into custody following a raid for suspected drugs. Through her legal representative the complainant lodged the following grievances with my office:

- Police took no notice of a “confession” made by XX at the scene of the raid in relation to the ownership of prohibited drugs found on the above premises.
- Whilst police were searching the premises they left used syringes on the floor of the grand daughters bedroom, potentially exposing her to injury.
- When the complainant’s handbag was being searched one of the police officers “jokingly” placed a bag of cannabis into the handbag and “jokingly” removed it saying; “Look what I found”.
- police removed numerous personal items from the complainant’s house. No receipt or list of what was taken was provided.
- A considerable amount of cash was found and taken from the house. The money was never counted in front of any member of the house and no receipt was ever issued. This money belonged to persons not residing at the premises and residents of the premises that had legitimate reasons for having the money in their possession.
- Complainant alleges that attending police officers lied in the statements provided by them to the Professional Responsibility Division of the NT Police (PRD).
- At the time of the raid attending police had two hand held tape recorders which were turned off and on at various times during the raid.

The investigation was conducted under the supervision of the Joint Review Committee (JRC) and included interviews with police officers and civilian persons who were on or attended the premises at the time of the raid. Various documentation, photographs, several taped interviews and transcripts were reviewed as were search warrant booklets, police photographs and other police records.

The JRC found that the allegation that police failed to take notice of the confession made by XX at the scene was unsubstantiated. The JRC came to this conclusion because the complainant’s version of the relevant events cannot be reconciled with that of attending police. There was no satisfactory corroboration or independent evidence to prove the allegation and no independent witnesses were identified who may have been in a position to shed any light on this matter.



The JRC was also of the view that police should have rendered the situation safe by placing the “sharps” in a container and that the relevant officer be counselled. The JRC agreed that the issue relating to a police officer placing cannabis into the complainant’s handbag would be best dealt with as part of the court hearing.

The JRC found that police acted reasonably in seizing and retaining the moneys located by them in the execution of the search warrant to the premises and that the seizure of the moneys was authorised by S.120B of the *Police Administration Act*.

5. Failure to Investigate

This complaint related to a failure by police to investigate the cause of a motor vehicle fire at the complainant’s residence. In particular, the complainant alleged that a Detective Senior Constable failed to contact him in relation to an investigation into the cause of the fire. The complainant also alleged that he made attempts to follow the matter up by attending twice at Palmerston Local Police Office and once at the Peter McAulay Centre, but received no response from the Detective or any other police officer. The complainant made a further serious allegation that police had been responsible for ‘blowing up’ his car, but later retracted the allegation.

The Professional Responsibility Division (PRD) carried out an investigation under the oversight of the Joint Review Committee (JRC). The investigation revealed that a motor vehicle fire at the complainant’s residence was reported to police during the night. The attending police officers, in consultation with the Senior Fire Officer, made an assessment that the cause of the fire could not be determined because of a lack of evidence. The vehicle was extensively fire damaged and the deluge used to extinguish the fire affected any evidence that might have been available. The Senior Fire Officer who completed the report into the fire was of the view that it would be difficult to determine the cause of the fire because the vehicle had been burning for so long and had been so badly burnt.

The attending police officers were interviewed and both officers stated that they advised the complainant at the time of the incident that no further investigation would be carried out due to a lack of evidence. A Detective Senior Constable was also interviewed and stated that he did speak to the complainant after the fire and told him that he ‘might’ be able to have a look at the matter, but did not give any firm undertaking to contact the complainant again.

The JRC noted that when the report of the vehicle fire was initially received that the caller named a possible suspect, but later retracted the allegation. Also, a child at the residence thought that she had heard voices just before the fire, but neither of these people was formally questioned. The JRC also noted that the attending police and Fire Officers had to quickly depart the scene of the fire after they learned of a serious accident. It was the view of the JRC that this could have contributed to the confusion about whether the vehicle fire was to be further investigated.

Notwithstanding the above, the JRC took the view that the fire warranted further investigation. While the cause of the fire may, ultimately, not have been established,



the JRC believed that police should have contacted the complainant again and revisited the property in daylight hours to assess the extent of the evidence. The JRC also believed that police should have made further inquiries with the residents of the property and canvassed neighbours. The JRC took the view that, as the attending Police Officers had departed the scene of the fire quickly, they should have been even more aware that the complainant might have been unsure about whether the fire was going to be further investigated.

The JRC recommended that the attending police officers and the relevant Shift Supervisor be counselled. The JRC also recommended that the matter be brought to the attention of the Detective, as he should not have told the complainant that he would investigate the matter when the investigation was not allocated to him. Further, the JRC recommended that police generally should be instructed to record all contact with complainants and record it on the police computer system, PROMIS.

6. Mistaken Identity

Police received a report of an attempted abduction and possible murder of an English tourist. It was believed that the missing tourist had been shot and was possibly still in the custody of the alleged offender. The report came from the missing tourist's companion who escaped from the alleged offender in a state of anxiety and distress and provided the police with a description of the alleged offender and his vehicle.

In response to this report the police were in a high state of alert. All available personnel were mobilised. Road blocks were set up and all available bullet proof vests were utilised by the police at the roadblocks where it was perceived that the main danger lay. The alleged offender was believed to be armed and, in light of the report of having already shot a person, he was considered to be highly dangerous.

The following day the apprehending officers were tasked with checking out a vehicle that fitted the description of the vehicle reported as being involved in the alleged attempted abduction and possible murder. The complainant's vehicle fitted that description and as the police passed it they observed that the driver also fitted the description of the alleged offender. The police turned around to follow the vehicle with the intention of ascertaining if this was a vehicle that could assist them in their enquiries. The police activated the flashing lights and their siren as they drove behind the vehicle. They followed in this manner for about 17 kms, during that time they moved their vehicle to the opposite side of the road and operated the loud speaker to try to attract the attention of the driver in the suspect vehicle. The fact that the vehicle failed to respond over such a distance increased the suspicions of the police. When the complainant finally pulled off the road they were 89 km north of Tennant Creek. Due to the isolation of the location, the heightened fears of the potential danger in apprehending what could have been an armed and dangerous offender, and the fact that the officers concerned were without bullet proof vests, it was decided to conduct what is termed a Hostile Apprehension.

The description of the apprehension given by the apprehending police, the complainant and the other occupants of his vehicle is consistent with the



recommended procedure to be adopted in a Hostile Apprehension. The police took up defensive positions with firearms ready. The complainant was given commands to alight from his vehicle and was subjected to a cursory search for weapons. At that stage police were not aware of the complainant's family in the vehicle. They were not able to observe them as they pursued the vehicle as the rear canopy obscured their view. The driver was the only occupant glimpsed as the vehicle was passed and he was later seen through the driver's side mirror.

As soon as police were aware that the complainant was unarmed and accompanied by his family they were able to allay any concerns they may have had that the complainant was a suspect in the alleged attempted abduction and possible murder. At that stage they assessed the situation as safe and explained the situation to the complainant and his family and apologised for any distress that they may have experienced. The JRC considered the apprehension was appropriate in the circumstances.

A review of this matter was requested. I conducted the review and the decision of the JRC was upheld.

7. Unlawful search and detention

The complainant was cleaning at her employer's residence when armed Territory Response Group (TRG) police officers entered the house during the execution of a search warrant. The complainant was frightened by the 'army style' police officers and alleged that a gun had been pointed at her. The complainant was of the view that police should have conducted surveillance prior to the raid and prevented her from entering the property. During the execution of the warrant, the complainant was strip searched by a female police officer and detained at the scene. The complainant was of the view that she should have been offered counselling after the incident because she was an 'innocent party'. A senior police officer spoke to the complainant in an attempt to explain the incident to her and, as a result, the complainant made a further complaint about the senior officer's conduct.

The investigation was oversights by the Joint Review Committee (JRC) and involved interviews with the police members involved with the execution of the search warrant and other written documentation.

The JRC found that the use of armed Territory Response Group Officers was justified because of the seriousness of the offences for which the warrant was obtained and the information known to police about the resident of the property. The TRG Officers were dressed in standard overalls, boots, and ballistic vests, which the JRC considered was appropriate in the circumstances and there was insufficient evidence to suggest that any police officer had pointed a gun at the complainant. The JRC determined that it was not possible, nor necessarily appropriate, for police to conduct surveillance on the property or to prevent the complainant's entry on to the property. In some cases, to do so, would alert the residents of the property that a search warrant was about to be executed and likely cause the loss or destruction of evidence.



The complainant did not initially receive any counselling after the incident. But, after receiving her complaint, a senior police officer was tasked to explain the incident to the complainant. The JRC determined that, during the course of his discussion with the complainant, the senior officer asked inappropriate questions about the complainant's alleged associates and made inappropriate remarks about her employment. The JRC recommended that the member be counselled in relation to his conduct. Police also paid for the complainant to receive professional counselling.

The JRC further determined that the strip search of the complainant and her detention at the scene were unlawful and recommended that the female police officer be counselled.

The JRC noted that police are reviewing current policy relating to search warrants and were to issue clear instructions for dealing with innocent parties caught up in the execution of warrants and alerting police to the need to offer counselling where appropriate.

8. Complaint while member off duty

The Professional Responsibility Division (PRD) carried out an investigation under the oversight of the Joint Review Committee (JRC) into the following complaint. The complainant had been drinking with friends when they decided to ride their bicycles to another friend's house. The three allege that, while enroute, they were confronted in the street by a male person, who later identified himself as a police officer. The complainant alleged the police officer was aggressive in his approach and pushed his female friend to the ground, causing injury to her. He further alleged that the police officer struck him across the jaw with a torch and ripped a medallion from his neck. The complainant alleged that he and his friends were frightened by the incident and did not believe that the officer should have acted in this manner.

In contrast, the police officer alleged that he heard dogs barking in the street and went out to investigate. He saw three people riding their bikes down the street and alleged that they were swearing and stirring up the dogs. When the officer asked the three what they were doing, he alleges that he met with a torrent of abuse. The officer's wife said that she saw the three people pushing, shoving, swearing, and carrying on at her husband. The officer alleged that the female was extremely aggressive and was spitting on him as she spoke. He said that he asked her to move away and, when she did not, he pushed her and she tripped over her bike and fell to the ground. The officer denied hitting anybody with a torch.

The incident was reported to on duty police when the police officer's wife phoned 000 at her husband's request. By the time police arrived, the complainant and his friends had ridden off on their bikes. Police spoke to them and advised them to go home, get some sleep, and report the matter the following morning. The complainant and his friends made a complaint the following morning and the allegations were thoroughly investigated by police.



Police spoke to all neighbours within the immediate vicinity and obtained statements from three neighbours who actually witnessed the events. They also obtained evidence from the police officer's wife and conducted a record of interview with the police officer. A prosecution file was prepared and forwarded to the Director of Public Prosecutions (DPP). The DPP determined that there was insufficient evidence to prove beyond a reasonable doubt that the police officer had committed any offence. The DPP's decision was based on the fact that two versions of events were given by the complainant and his friends and the other witnesses. The complainant's version of events was consistent with his friends, but the other four witnesses corroborated the police officer's version.

It was clear to JRC that the complainant and his friends had an altercation with an off duty police officer outside the officer's home. It was also clear that the complainant and his friends had sustained some injuries because of the incident. However, the weight of the evidence also suggested that the complainant and his friends were affected by alcohol and were loud, abusive, and used offensive language. In contrast, the evidence suggested that the police officer and the other witnesses were not affected by alcohol. The JRC noted that, in hindsight, it might have been prudent for the police officer to remain inside his house when he heard the dogs barking and should not have confronted the complainant and his friends, nor pushed the female. However, given all the circumstances, the JRC was not prepared to make an adverse finding against the officer. In relation to the complainant's allegation that he was struck across the jaw with a torch, the JRC determined that, given the differing versions of events, it was unable to conclude the matter.

9. Agree to Disagree

The complainant was pulled over by a member of police and charged with disobeying a red light and driving without due care. The complainant and his passengers were adamant that he had not gone through a red light. The complainant entered a plea of not guilty when the matter came before the Court and a hearing date was set. Shortly before the scheduled hearing the prosecutor dropped all charges and the complainant lodged a complaint with this office that the member of police involved had been unnecessarily rude, had wrongly charged the complainant and had sworn a false statutory declaration. The complainant also wanted to know why the charges were dropped.

The complaint was assessed as being suitable for conciliation under the Minor Complaints Resolution Process (MCRP). During the conciliation the member unreservedly apologised for being rude and explained the incident from his perspective. He also explained that the charges were dropped as he had been interstate on a course on the day of the hearing and thus could not give the prosecution evidence. The conciliator suggested that the parties "agree to disagree" about whether or not the complainant had run the red light as each party was adamant that their version of events was correct.

The complainant would not accept this outcome so the matter was forwarded to the Joint Review Committee (JRC) for assessment. The JRC, after considering all of the



available evidence, found the complaint unsubstantiated and noted that it was unfortunate that the charges had been dropped thus denying the complainant of the satisfaction of having his “day in Court”. The complainant sought a review of the JRC report by myself.

I thoroughly reviewed the matter and found that although the JRC could have required further investigation of the matter, such further investigation would have been unlikely to change the outcome. The complaint was found to be unsubstantiated on the grounds that it was not possible to resolve the ‘red light’ issue one way or the other. There was insufficient evidence to suggest that the member had fabricated the charge.

10. Arrest of Juvenile

The complainant in this matter made a complaint on behalf of her 15 year old son, who was arrested at his residence on a warrant. The complainant alleged that her son was dressed in boxer shorts when police arrived to apprehend him and her son asked police if he could go and change into a pair of shorts. The complainant advised that police had denied the request, but a friend of her son’s had managed to pass him a pair of shorts as he was leaving with the police. The complainant considered that the actions of the police were unreasonable in that they did not afford her son dignity by allowing him to dress properly.

The Professional Responsibility Division (PRD) conducted preliminary inquiries and the police officers in question were asked to provide an account of the circumstances surrounding the arrest of the juvenile. The officers advised that the juvenile told the police to “get lost” when they first approached him. The juvenile had prior convictions for the offences of assaulting a member of the police force and resisting police in the execution of their duty. The juvenile had also previously attempted to flee from police who were trying to arrest him and, on a previous occasion, had been found in possession of a controlled weapon. Only one of the attending police officers was adequately trained in Operational Safety Training and Tactics (OSTT) and the officers considered that the juvenile was at risk of attempting to flee police and/or resisting or assaulting police (based on his prior convictions). The juvenile was wearing a t-shirt with his boxer shorts, was not held in any public view for an excessive period of time, and was allowed to receive a change of clothing from his friend shortly after his arrest and prior to leaving his residence.

The report from PRD concluded that the reasons for denying the juvenile an opportunity to go inside the house and change into other clothing were based on sound operational procedures, taking into account a number of factors (as described above). I was of the view that the actions of police in the matter were reasonable and no further investigation of the matter was warranted.



11. Jewellery Taken During Search not Returned

I received a complaint against Police arising from an incident that occurred during the execution of a warrant on a property in the outer Darwin area. The specific issues of complaint were that the Northern Territory Police Force:

- improperly and unlawfully seized jewellery;
- improperly advised the public that the seized jewellery was stolen property;
- failed to communicate with the complainant in regards to the jewellery and failed to provide access to inspect or to comment on; and
- failed to return the jewellery to the complainant (its proper owner).

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The investigation concluded that:

- the complaint that NT Police improperly and unlawfully seized jewellery was not sustained;
- the complaint NT Police improperly advised the public that the jewellery was stolen was sustained;
- the complaint NT Police failed to communicate with the complainant in regards to the jewellery was sustained. However the JRC could not sustain the complaint that police failed to provide access to the jewellery to inspect or comment on; and
- the complaint NT Police failed to return the jewellery was sustained.

The JRC was also critical of the standard of investigation undertaken by police into the seized jewellery and would have recommended that disciplinary action be taken against the detectives involved. However, as the time for the laying of disciplinary proceedings, under the Police Administration Act, had expired, the JRC recommended that their conduct in relation to the standard of the investigation be brought to the Commissioner of Police's attention and they be formally counselled.

In relation to the final conclusion, the JRC acknowledged to the complainant that she may have considered the inability to institute formal disciplinary proceedings against the officers to be inadequate, however it was a restriction currently established by the *Police Administration Act*. This is an issue I have previously expressed concern about in my previous Annual Reports to the Legislative Assembly and one that is being considered within the context of a review of the *Police Administration Act*.

12. Lack of investigation into loss of eye

The complainant lodged a complaint against police regarding the alleged inadequacy of an investigation into an incident where he lost the sight in one eye. In particular, the complainant was unhappy with delays in the investigation, the lack of information that was passed on to the complainant regarding the investigation and the fact that the charge laid was 'very weak' considering his injuries. He was also unhappy that the matter took seventeen months to be brought before the court and that the charge was withdrawn.



The investigation was carried out by the Professional Responsibility Division (PRD) and overseen by the Joint Review Committee (JRC). The investigation included taped interviews with twelve police officers, a review of the original prosecution file and the reconstructed file and police records of the alleged assault.

The JRC was of the opinion that the investigation into the assault of the complainant was inadequate in part due to the investigating police officer's failure to follow police procedures. The JRC also found that the police were unaware of the extent of injury to the complainant and should have laid more substantial charges in the circumstances. The issue that the charges were dropped, despite the seriousness of the injury, was viewed by the JRC as the only realistic option for the officers due to the lack of information available to them. It was pointed out that human failure, rather than inadequate police administrative systems and processes, was the cause of the deficient investigation. The JRC also noted that, since the complainant's incident, police have introduced a new computer system, which should help to stop similar problems occurring in the future. It was recommended that the police officer involved be counselled over his role in the investigation, the supervising police officers be counselled over their lack of guidance to the investigating officer and the Commissioner of Police formally apologise to the complainant.

13.I shouldn't have been arrested – Unlawful Arrest

After having visited a housing complex where an offence was committed the previous evening, the complainant was arrested by police and transported to the watch-house. The complainant underwent a record of interview and was held in the watch-house for a period of 6-7 hours. Whilst in the cells, the complainant thinks that he consented to having his DNA taken. The issues complained of are that (1) the complainant was arrested then released from custody without an apology; (2) police have retained the complainant's DNA despite the fact that he was not the offender.

The Professional Responsibility Division investigated the complaint under the oversight of the Joint Review Committee (JRC). The investigation revealed that the complainant was incarcerated as a suspected person in accordance with *the Police Administration Act*. The initial police investigation shortly after the alleged incident revealed that at the time of the offence being committed - the complainant had been drinking and had visited a flat in close proximity to the flat occupied by the victim. The JRC formed the view that in the circumstances there was enough evidence to point towards a reasonable assertion that the complainant was the offender responsible for the offences being investigated by police. Whilst there was some evidence in respect of clothing worn by the offender, there were other strong indicators such as identification, proximity, physical description and location of the flat where the suspect was visiting.

The JRC formed the view that on the evidence available it was clear that the arresting officers tried to contact the complainant after the investigation had concluded. The officers never got the opportunity to explain to the complainant what had happened as all attempts to carry out an explanatory/apology process were



unsuccessful. With respect to the retention of the complainant's DNA sample, the JRC formed the view that the provisions of the *Police Administration Act* allow the Commissioner of Police to hold DNA samples as long as is deemed necessary.

14. Investigation not a matter for Police

The main issue of complaint in this matter was the alleged failure of police to investigate the cause of damage to a perimeter fence at the complainant's property in the rural area. The complainant alleged that two police officers had attended his property, but refused to look at the fence because it was located some distance away. The complainant told police that he knew the phone number of the person who caused the damage, although he did not know the person's name. The complainant further alleged that he did not hear anything further from police and wanted to know why police would not inspect the fence and investigate who damaged it.

This complaint was initially dealt with by way of the Minor Complaints Resolution Process (MCRP), but was unable to be conciliated because the complainant indicated that he did not wish to speak directly with police. The complaint was then referred to the Joint Review Committee (JRC) for assessment.

The JRC established that the Bushfires Council issued a *Firebreak Warning* notice to the complainant in May 2002. The notice advised the complainant that, if he did not make representation to the Chief Fire Control Officer within 72 hours of service of the notice, he would be served with a further notice called a *Firebreak Notice*. The complainant was subsequently served with a *Firebreak Notice* at the end of May 2002. The notice required the complainant to establish a firebreak as set out in the notice. In June 2002, a delegate of the Director of Parks and Wildlife determined that the complainant had not complied with either of the above notices. He therefore made an order authorising a person to enter onto the complainant's land to do such things as were necessary to ensure that a firebreak was cleared. It is the understanding of the JRC that a person, authorised by the Bushfires Council, attended at the complainant's property in July and cleared a firebreak in accordance with the order made by the Director of Parks and Wildlife.

In response to the complaint against police, a Sergeant from the Palmerston Local Police Office visited the complainant's property and then wrote to the complainant. He advised the complainant that it was the view of police that any damage to the perimeter fence on the complainant's property was caused by the Bushfires Council when they cleared the firebreak in July.

The Sergeant also told the complainant that the Bushfires Council used powers under section 50 of the *Bushfires Act* to enter his property and clear the firebreak. In this respect, the complainant was provided with incorrect information. The clearing of the firebreak at the complainant's property was carried out pursuant to section 47 of the *Bushfires Act*, which authorises the Bushfires Council to issue a notice requiring a person to establish firebreaks or remove flammable material within a specified time. Where a person fails to comply with that notice, a person authorised in writing by the



Director of Parks and Wildlife may enter upon the land and carry out work and the owner of the land is liable to pay for the cost of the work.

The Sergeant was correct when he advised the complainant that section 53 of the *Bushfires Act* provides an exemption from liability to a person who causes damage in the course of exercising a power conferred on him by the Act. Therefore, providing the Bushfires Council complies with the relevant provisions of the *Bushfires Act*, any damage caused to the complainant's property was not unlawful damage and, as such, was not a matter for the police.

15. Drug related defamation

This complaint involved behaviour of a police officer towards the complainant at his place of work. The complainant alleged that an officer was harassing and 'defaming' him by speaking to his employer in relation to accusations of drug dealing and use on behalf of the complainant. The complainant was insistent that he was neither a drug dealer nor user and that the officer's behaviour was seriously damaging his reputation and finally resulted in his being asked to leave his employment. The complainant also alleged that the officer seized personal information about him and that the officer made threats of violence towards him.

The investigation was made under the Joint Review Committee (JRC) and involved interviews with four people involved, videotape seized from the complainant's place of work and other written documentation.

With respect to the first issue of derogatory comments being made about the complainant who then lost his job as a result of these comments, the JRC found that the complaint could be sustained. It therefore recommended that the allegation be forwarded to the Director of Public Prosecutions for action and that the Commissioner of Police should take any action he may think appropriate. The JRC also recommended that Police should extend a formal apology to the complainant.

The JRC found that, in relation to the second issue of the officer seizing personal information about the complainant, it was inappropriate and a serious breach of police protocol that the officer accessed the internal Information Reporting system to report an alleged assault by the complainant. It found that the officer should have provided a memorandum to his supervisor to review. The JRC recommended that a comprehensive review be conducted into the present quality control procedures for the use of the internal Information Reports. It also recommended that the conduct of the police officer be brought to the attention of the Commissioner of Police for him to take whatever action he felt necessary.

With regards to the final issue of the threat of violence from the officer, the JRC found that the complaint was sustained and that the officer's conduct was inappropriate. In this instance, as with above, the JRC recommended the incident be referred to the Commissioner of Police to take any action he may think appropriate. In all instances, the time period in this investigation for laying disciplinary proceedings had expired. I have previously expressed my concern in the Annual Report about this restricting



time limit imposed by the *Police Administration Act* for the institution of disciplinary proceedings of police officers, following investigation of a complaint.

16. False allegations of drug knowledge

The complainant was upset with police 'harassment' of him. He alleged that:

- an officer advised security officers that he was a known drug supplier
- an officer told his business partner not to associate with him because of the complainant's involvement with the Hell's Angels
- an officer approached his girlfriend's brother and offered him money to provide information about the complainant
- he had heard that police think he is a financier to the Hell's Angels
- an officer approached his neighbour and asked if they could conduct surveillance on the complainant from his premises
- police told the Australian Customs Service that he is a drug dealer, meaning he will be thoroughly searched every time he re-enters the country.

The investigation, which was conducted under the supervision of the Joint Review Committee (JRC), reviewed a taped interview with the complainant, the security guards, the business partner, the neighbour and the police officers involved.

The JRC found, in relation to the first complaint, that the police enquiries of the security guards were legitimate activities in a police investigation of a drug overdose. Neither security guard recalled any specific comment by police, therefore, the complaint could not be sustained. The complainant's business partner rebutted the second allegation meaning the second issue could not be sustained. The third issue relating to the complainant's girlfriend's brother, could not be progressed as the brother was unwilling to assist with the investigation. The fourth allegation regarding the complainant's links with the Hell's Angels, was considered by the JRC to be a general rumour which would not be resolved through any meaningful inquiries. The JRC found that the issue involving the complainant's neighbour was unable to be resolved as the neighbour was unaware of the specific police (in particular whether they identified themselves as NT Police or Commonwealth Police) who visited him but did recall that the officers did not accuse the complainant of any drug involvement. The last allegation was found to be out of my jurisdiction as the NT Police stated they had not been involved, so could not be taken further by me.

17. Lack of investigation into animal abuse

The complainant contacted my office to make a complaint against a police officer. The complainant alleged that there was a lack of investigation into a report of animal neglect. The animals involved were in fact the complainant's dogs that were left in the care of someone else while the complainant was away for seven weeks.

An attempt to conciliate the complaint was attempted but this proved unsuccessful so the complaint was referred to the Joint Review Committee (JRC) and it was decided to have the complaint formally investigated. An examination into the police case management system revealed that a police officer had in fact conducted enquiries



with the complainant's neighbours regarding the feeding of her dogs. Interviews were also conducted although attempts to interview the complainant were unsuccessful.

It was found that the complaint of inaction on the part of the police officer could not be sustained and that there was insufficient evidence to justify prosecution of the person who was caring for the dogs.

18. Try not to harm people that want to harm themselves

The complainant was concerned about injuries that were sustained as a result of police officers restraining her as she was attempting to climb over a balcony. The complainant had allegedly attempted suicide by taking an overdose of tablets and was attended to by a paramedic and three police officers. During the paramedic's examination the complainant attempted to climb over the balcony and the officers, believing that she would try to jump, held her back.

This complaint was initially investigated by the Professional Responsibility Division (PRD), however, the complainant was dissatisfied with the result of that investigation and requested that I conduct a review into the PRD investigation. I found that the investigating officer interviewed the three officers that were in attendance, a security officer that was present at the time and the paramedic was contacted by email as he had moved interstate.

The review found a few minor inadequacies with the investigation including the lack of effort taken to interview the complainant's son who was present and the fact that no attempt was made to acquire medical records from the doctor who the complainant consulted with immediately following the incident. Regardless of these minor failings, the investigation was found to be reasonable and that conducting further enquiries was not warranted or justified.

19. Are you stoned?

The complainant was stopped and searched by a police officer who suspected that he was in possession of a dangerous drug. Though no drugs were found, the complainant was arrested in relation to an outstanding warrant.

The complainant asserted that the search conducted by the officer was unlawful because no search warrant was shown to him and further, that it amounted to an unlawful assault upon him. The investigation revealed that before the complainant was searched, the officer had told him that he "looked stoned". This suggested that the purpose of the search in question was known to the complainant.

The available evidence indicated that the complainant was in a public place and that the officer did have reasonable grounds to suspect that the complainant had in his possession a dangerous drug. As a result, the JRC was of the view that the Officer lawfully exercised his power under section 120C(c) of the *Police Administration Act*, which provides:



“A member of the Police Force may stop and search, and detain for the purposes of that search...a person in a public place if the member has reasonable grounds to suspect that the person has in his possession, or is any way conveying, a dangerous drug.”

In light of this, the JRC was of the belief that the officer was not required to show the complainant a search warrant and that the search did not constitute an assault.

20. Stop, or I'll shoot

Police approached a residence looking for a man who they thought resided there. The complainant alleges that police officers were standing outside on the footpath in front of a high fence and gate and that he could not hear what they were saying over the noise of 2 dogs inside the yard. Not being able to hear properly the complainant opened up the gate to come out and speak to the officers. On opening the gate, one of the dogs (a female pit bull terrier) barged out and bit the male officer on the leg. The female officer who was with the male officer then drew her weapon on the dog and said she was going to shoot it.

The complainant alleged that he grabbed the dog and brought it back inside the premises to restrain it. As he did this, the male officer grabbed him from inside the fence, dragged him out and proceeded to punch and kick him to the ground. Three other police officers then attended the scene and they were allowed to check the residence for the person they were looking for. Upon not finding him, all the police officers left. As a result of the assault, the complainant alleges that he was bleeding from the nose and had to attend Hospital.

The main issues of complaint were:

- A police officer drew her revolver on the dog and said she was going to shoot it;
- A police officer grabbed the complainant from inside the fence and proceeded to punch and kick him to the ground; and
- The assault took place in front of the complainant's children and the children's mother.

There was no dispute with any of the evidence gathered that one of the police officers drew her revolver on the dog and said she was going to shoot it. The JRC concluded however, because there was a serious threat of further injury to a person from the dog, the police officer had the legal power to draw her firearm and threaten to kill the dog. The JRC therefore recommended that no formal action be taken against the police officer as the action taken was both lawful and in accord with operating procedures.

In relation to your allegation that one of the police officers grabbed the complainant from inside the fence and proceeded to punch and kick him to the ground, the JRC notes that there were differing versions about what happened and as a result they were unable to resolve the matter.



The JRC also concluded that the physical altercation took place in front of the complainant's children and their mother. They were satisfied however that the children and their mother were in no danger and that no disciplinary action was justified against the police officers.



Appendix 7

FREEDOM OF INFORMATION

INTRODUCTION

The object of the *Information Act* (the Act) is to extend, as far as possible, the right for a person to access government and personal information held by government, and to have personal information corrected if inaccurate. Some information is exempt from this process.

The Office of the Ombudsman is a 'public sector organisation' for the purposes of the Act and the information held by it may be the subject of an application under the Act. The Act requires an agency to make a decision on application within 30 days, but this may be extended if consultations are required. An applicant may have to pay processing charges. Internal review of decisions is available to applicants whose applications are refused. External review, through the Information Commissioner, will be available as of 1 July 2004.

Under Section 11 of the Act, a public sector organisation must publish a statement about its structure and functions, kinds of government information usually held, a description of the organisation's procedures for providing access and a description of the organisation's procedures for correcting information.

Information concerning the organisation and functions of the Commission can be found as follows:

- organisation (refer folio 21 of this Annual Report)
- functions (refer folio 20 of this Annual Report)

INFORMATION HELD BY THE OFFICE OF THE OMBUDSMAN

Broadly speaking, the Ombudsman holds information in the following categories:

- (a) information related to inquiries and investigations into complaints against any Northern Territory Government Agency, Local Government Council or the actions of a member of the NT Police Force. This information includes: complaints; correspondence and consultations with complainants and agencies; and other information sources such as, background material, records of conversation, analysis and advice and reports;
- (b) information related to the Ombudsman's role as the chief executive of a NT agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation; and



(c) information related to the Ombudsman's management of his office, including personnel, contracting and financial records and information about asset management.

The following are specific types of information held by the Ombudsman:

1. Administrative and policy files

The Ombudsman keeps files of correspondence and other documents, indexed by subject matter, on issues concerning office administration and management.

These files are usually housed in Darwin, although Alice Springs has some administrative files relating to its own operations. There are also files of documents on a wide range of policy and general questions concerning the Ombudsman's functions and powers, the operation of the office and the approach taken by the Ombudsman to particular classes of complaints.

Such files may relate to the Ombudsman's jurisdiction over a particular body or over particular classes of actions, or they may represent the recording and consolidation of information on subjects or issues that have arisen in the course of investigations.

Access to information held on these files may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

2. Complaint files

The Ombudsman keeps files of documents relating to each written complaint made under the *Ombudsman (Northern Territory) Act*. The files are indexed in several ways, including the complainant's name, the agency complained about and the subject of the complaint.

The Ombudsman maintains a computer-based register of all complaints. The Office also keeps records on special forms for some oral complaints received. A paper based file is also maintained.

Paper records have previously been stored in the office where the complaint was received, although there are occasions when files created in one office are located in another office. On completion of inquiries, complaint files or documents are stored in the Darwin office.

Access to the information on these files is generally restricted depending on who is seeking the information. Some information may be accessible under the *Information Act* and complainants will generally have a greater right of access to their own file than a third party (see 'Procedures for Providing Access to Information' below).



3. FOI request files

The office keeps files relating to requests under the *Information Act* for access to documents in the possession of the Ombudsman. A register of such requests will also be kept by the Ombudsman.

Some information on these files may be accessible (see 'Procedures for Providing Access to Information' below).

4. Legal opinions

The Ombudsman maintains a copy of legal opinions it has been provided with. These opinions cover issues arising during the investigation of complaints and issues involving the Ombudsman's functions and powers.

Access to information contained in legal opinions files may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

5. Annual reports

Copies of the current Annual Report and some previous Annual Reports are available on the Ombudsman's website at www.omb-hcsc.nt.gov.au. Some printed copies of the current Annual Report are available free of charge soon after publication (subject to availability).

6. Brochures

The Ombudsman has a range of brochure material available to the public. The material details the functions of the Ombudsman and provides a guide to using the services of the office. Some printed copies of these brochures are available free of charge from the Ombudsman's Offices in Darwin and Alice Springs and some are available on the Ombudsman's website at www.omb-hcsc.nt.gov.au.

7. Manuals and guidelines

The Ombudsman has the following manuals:

- **FOI Manual:** The Manual provides Ombudsman staff with guidance on dealing with FOI requests.
- **Procedures Manual:** This sets out general information about the role and functions of the Ombudsman and the policies and procedures applicable to officers dealing with complaints.

Access to information contained in these manuals may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).



8. Service Standards

The Ombudsman's Service Standards set out the standards of service you can expect. A copy of the Service standards is available on the Ombudsman's website at www.omb-hcsc.nt.gov.au . Charges may apply where a hard copy is requested (see access arrangements below)

DISCLOSURE OF INFORMATION

The information the Ombudsman holds may be disclosed:

- (a) As required by law (although the relevant legislation provides substantial protection for investigation information);
- (b) On request, for example in relation to information sought by a complainant about the investigation of his or her own complaint, where the documents are routine, an ongoing investigation will not be prejudiced and there is no other interest likely to be adversely affected by disclosure; or
- (c) As required under the *Information Act*. The Act creates a general right of access to documents held by government sector organisations, subject to exemptions which recognise the need to protect sensitive personal and commercial information and some government records. Where a person makes a request under the Act, an agency must respond within specified times and the applicant is able to seek internal and external review of any adverse decision.

PROCEDURES FOR PROVIDING ACCESS TO INFORMATION

1. Documents available

The following documents are available for inspection or purchase on request:

- **Brochures:** No charge
- **Annual Report:** \$20.00 for the purchase of a hard copy of the report
- **Service Standards:** No charge
- **Procedures Manual:** \$75.00 for the purchase of a hard copy
- **FOI Manual:** \$50.00 for the purchase of a hard copy.

2. Administrative Arrangements for Access to Information

General inquiries and requests for access to documents may be made in person, by telephone or in writing at either the Darwin Office or the Alice Springs Office. Alternatively, current or past complainants or respondents may choose to approach the relevant Case Officer directly. Each office is open between 8.00am and 4.30pm on weekdays. Access via these arrangements are free.



3. Access Under the Information Act

A person may apply for access to information under the provisions of the *Information Act*. A processing charge may apply. Inquiries about this process should be directed to the FOI Coordinator on 8999 1974. An application form can be obtained by phoning 8999 1818.

PROCEDURES FOR CORRECTING INFORMATION

Inquiries about correcting personal information should be directed to the relevant Case Officer or the FOI Coordinator on 8999 1974



Appendix 8

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Appendix 9

THE ROLE OF THE OMBUDSMAN IN OVERSIGHTING POLICE SERVICES

INTRODUCTION

In his Annual Report for the year 2000-2001 the NSW Ombudsman, Mr Bruce Barbour, stated:

'Our work with the NSW Police (Police Service) focuses on:

- *overseeing police investigations into allegations of police misconduct*
- *helping the police service improve the way it investigates complaints*
- *keeping the complaints system under scrutiny*
- *directly investigating complaints where we decide this is necessary*
- *working with the Police Service to improve the way it analyses and uses information contained in complaints to improve performance'.*

(NSW Ombudsman AR 2000-2001:22)

I think this overview of the role comprehensively summarises the thrust of the role of all Ombudsmen in Australia who remain primarily involved in overseeing Police Services. To some extent, however, it must be noted that effectiveness in this regard is dependent on factors such as :

- the specific detail of legislation setting out the powers and functions of the Ombudsman (ie whether or not there is a power to conduct an own initiative investigation or whether there is a power to scrutinise all complaints against police (regardless of whether or not they arise from actions taken as a result of, or incidental to, the exercise or performance of their powers, duties or functions as a police officer) whether by a member of the public, another police officer or 'internally' .
- the level of resources made available
- the political will to support the role of the Ombudsman as a truly effective accountability mechanism
- finding the balance between an oversighting role which ranges from
 - auditing actions taken by police in regard to minor or less serious complaints
 - supervising and reviewing the investigation by police of more serious complaints (those likely to give rise to disciplinary charges, criminal charges or likely to give rise to systemic issues



- conducting independent investigations in regard to serious complaints or where significant systemic issues arise.

This will not be an academic paper but rather, hopefully, a practical and somewhat pragmatic look at the role of Ombudsmen in overseeing Police Services.

THE CURRENT POSITION

I do not intend to expand in depth on the separate oversight mechanisms that exist in Australia. They are however varied and most have particular characteristics unique to their jurisdiction. I would observe that, except for the Australian Capital Territory (ACT), each State and Territory in Australia, has its own separate police service. Each functioning largely independently of each other. The ACT does not have its own police service and utilises the Australian Federal Police for its policing function. The Australian Federal Police is a separate independent police service carrying out the policing functions on behalf of the Commonwealth of Australia, with Australia-wide responsibility for such matters as offences against or by Commonwealth entities and officials, drug importation and international conventions etc.

Each of these police services are separately overseen by bodies set up pursuant to separate and discreet State and Commonwealth legislation and each have some form of Internal Investigation Unit/Branch or Professional Responsibility Unit.

In New South Wales (NSW) the oversight responsibility primarily rests with the NSW Ombudsman and the Police Integrity Commission. In Queensland it is the Crime and Misconduct Commission (formerly the Criminal Justice Commission). In Western Australia it is the Western Australian Ombudsman and the Anti-Corruption Commission. In South Australia it is the Police Complaints Authority. In Victoria, Tasmania and in the Northern Territory of Australia, the oversight function is carried out by the Ombudsman. In the ACT and the Commonwealth of Australia, the Commonwealth Ombudsman is responsible for both.

Interestingly, in all but 2 of the 9 jurisdictions (Queensland and South Australia) the Ombudsman still has a primary role to play in the oversight process. This role also remains in New South Wales and Western Australia where problems with the oversight models led to the establishment of new and additional oversight mechanisms.

In NSW, the Police Integrity Commission, created in 1997 as a result of recommendations by the Royal Commission into the NSW police services, is a specialist agency whose principle role *“is seeking out, investigating and reporting on police corruption and particularly serious or systemic forms of police misconduct”*. The roles are complementary and there is liaison to avoid inappropriate and unnecessary duplication.

Similarly, in Western Australia, the Anti-corruption Commission (ACC), created in 1997 following the Report of the Commission on Government (April 1996), receives



notification from the Commissioner of Police and the Ombudsman, and can investigate any matter which involves, or may involve, corrupt conduct, criminal conduct, criminal involvement or serious improper conduct of police officers.

BRIEF HISTORICAL PERSPECTIVE

Early oversight models of police did not necessarily stem from rational planning. In some cases these models were compromises brought about after negotiations between governments, the police, police associations and relevant political parties.

The early models also reflected the ongoing debate in the 1970's and 1980's as to whether self-regulation or external oversight of police was most effective. Hence in Queensland, prior to the Fitzgerald Royal Commission (1987-89) there was no external oversight body responsible for police complaints.

The early models focused on creating agencies which primarily reviewed investigations carried out by police internal investigation units and monitored or supervised police investigations into the more serious allegations of police misconduct (CJC 1995). To a large extent this satisfied the need for an independent external oversight mechanism wherein the police were not perceived to be the judges in their own cause.

It is not perhaps surprising that, in many instances, the politicians saw the existing Ombudsman model of civilian oversight as the most effective and expedient way of establishing oversight of police.

Indeed, in 1975, in the first report of the Australian Law Reform Commission (ALRC) titled "Complaints Against Police" the Commission observed that *Ombudsmen have secured notable success in investigating complaints against police where they have been able, by legislation or inclination, to add this task to their responsibilities*" (ALRC 1975:16).

Despite this observation, those Ombudsmen who have had jurisdiction over police complaints have not found the task easy. One only has to study the annual reports over the years to glean from them the problems that have been identified, such as the lack of resources, the lack of effective legislative powers, identified weaknesses in the processes, problems encountered with police resistance and lack of police commitment to the oversight role. Issues relating to who controls the complaint process, accessing information, what a complaint is, whether police officers can complain directly to the Ombudsman and the scope of the Ombudsman to consider criminal allegations are just some of the areas where Ombudsmen have been at odds with the police and governments.

As early as 1982, the then New South Wales Ombudsman, George Masterman, QC, protested in a report to Parliament that:



“The existing role of the Ombudsman in relation to police is impractical and ineffective. Worse, without exaggeration, it can be described as a dangerous charade likely to deceive the public into believing that there is a public watchdog or guardian with effective powers when there is not. Given the real possibility of deception and the not inconsequential cost of the present system, it would be better to abolish the present role of the Ombudsman in relation to police than retain the present system in an unamended form”. (Masterman 1988:205)

Whilst there were changes to the Ombudsman’s jurisdiction in New South Wales in the 1980’s and early 1990’s, it is apparent from the outcome of the Wood Royal Commission into the New South Wales Police (1994-1997) that the Ombudsman oversight model had not been successful in addressing the ongoing concerns of serious police corruption and misconduct.

Regrettably, history shows us that it is usually as a result of a crisis that real and meaningful change is brought about.

Self-regulation by police, for instance, suffered its most dramatic exposure as being totally inadequate and unsuccessful in Queensland in the late 1980’s.

The crisis that brought about change in Queensland was the exposure by the media of widespread corruption on the part of police. This led to the establishment of a Commission of Inquiry into possible illegal activities and associated police misconduct, commonly referred to as the Fitzgerald Inquiry.

The inquiry, which ran from 1987 to 1989, uncovered evidence of vertical corruption and widespread mismanagement within the Queensland Police. Interestingly, it was the process of investigative journalism which exposed examples of current police corruption and misconduct which forced the need for the inquiry.

The direct outcome of the inquiry was the establishment of the Criminal Justice Commission (CJC) in 1990, with its initial five organisational units, the Witness Protection Division, the Research and Co-ordination Division, the Intelligence Division, the Corruption Prevention Division and the Official Misconduct Division. The CJC at the time represented best practice in Australia in terms of what powers and functions an oversight body needs in order to provide effective oversight of police.

Similarly, in New South Wales, the Royal Commission into the New South Wales Police Service, known as the Wood Royal Commission (May 1994 - May 1997), came about as a result of concerns raised in the New South Wales Parliament by an Independent Member, Mr J. Hatton, MP. Mr Hatton used a number of case histories to support his motion and called for investigators from outside New South Wales to conduct the necessary investigation. The motion was opposed by the government of the day but, as the government did not at the time command a majority in the Assembly, the motion was passed when the other independent members of the Assembly voted with the opposition (Wood 1997:1).



Significantly, in the case of the Wood Royal Commission, unlike other attempts to deal with the issue, effective progress occurred because the Commission was able to proactively investigate corrupt activities of New South Wales Police. For some years the Independent Commission Against Corruption (ICAC) had attempted to address ongoing concerns with regard to corruption within the New South Wales Police. Several inquiries were conducted which can at best be described as reactive in their attempt to investigate quite notorious allegations of corruption.

ICAC, however, was not particularly successful in exposing the corruption that was reputedly prevalent and which the Wood Royal Commission was so dramatically and publicly able to do. All too often ICAC's inquiries were focused on past events and the testimonies of well known criminals, who were often easily discredited. Corrupt police found it relatively easy to deflect the allegations made against them as there was often little substantive independent evidence to support incidents that had occurred some time in the past and the trail was cold.

In contrast, the Wood Royal Commission, identified possible corrupt police officers and then carried out investigations which resulted in evidence being gathered against those police officers, demonstrating that they were involved in corrupt practices. Once some of these officers had been identified and confronted with the evidence against them, some of them chose to provide evidence to the Royal Commission, which comprehensively demonstrated that there was significant organisational and systemic corruption in the New South Wales Police.

The point here is, that all too often, oversight models established in respect of the police in Australia, were primarily reactive in their focus and had neither the scope nor the resources to successfully identify a body of evidence against potentially corrupt police officers, that would enable them to be brought to account.

Whilst the lessons have been hard, it is clear that there has been a realisation, in recent times, that effective oversight of police involves a comprehensive approach to the issue and requires the involvement and co-operation at all levels, political, police, regulators and public.

THE OMBUDSMAN'S MODEL – IS IT APPROPRIATE?

During the Wood Royal Commission, the system of Ombudsman oversight became the subject of much debate. The NSW Ombudsman made a number of submissions the theme of which was that:

'... there is a fundamental difference between complaint handling and corruption fighting. The complaints system was not designed as a corruption fighting system. The Ombudsman's primary role is to oversee police handling of complaints about the use or misuse of police powers'. (NSW Ombudsman AR 1995:8).



The NSW Ombudsman noted the conflict that arose between complaints about corrupt or criminal activities by police and those relating to the day-to-day policing issues raised by the public. These two separate functions involved, in the New South Wales Ombudsman's view, different procedures, investigation techniques, levels of communication with the public, secrecy requirements and different natural justice requirements.

The Wood Royal Commission resulted in the establishment in New South Wales of the Police Integrity Commission. A distinction was drawn by Commissioner Woods between serious misconduct and corruption from misconduct. The great majority of misconduct matters were, in Commissioner Wood's view, able to be investigated by the Police Service with oversight by the New South Wales Ombudsman. Thus the Wood Royal Commission recommended the New South Wales Ombudsman retain the existing role of monitoring and reviewing police internal investigations, and reporting to Parliament on issues concerning the exercise of police powers. (Wood Royal Commission 1996)

The split function in New South Wales, as between the Ombudsman and the Police Integrity Commission, has to a lesser extent, been duplicated in Western Australia with the establishment of the Anti-Corruption Commission (ACC).

One has to question however the effectiveness of the ACC in light of recent criticism it has received. This however may be due to the fact the ACC evolved out of an existing entity and was, it can be argued, not given an effective legislative framework in which to operate. It is pertinent to note that as we speak a Royal Commission into the West Australian Police Service has commenced hearings. The Commission has only recently been given legislative powers to enable it to carry out covert investigations similar to that carried out by the Woods Royal Commission in NSW, this is despite having been established for some time.

In contrast there is no role in regard to police complaints for the Ombudsman in Queensland. The Crime and Misconduct Commission (CMC), as it is now known, has the complete role in terms of oversighting and investigating police complaints. In reality a large body of police complaints are dealt with by the Queensland Police without any real involvement by the CMC which concentrates primarily on matters relating to serious misconduct or corruption.

In Tasmania, Victoria, the Northern Territory, the Commonwealth and the Australian Capital Territory the Ombudsman is the primary and sole oversight agency.

The difficulty that has arisen for some Ombudsmen such as myself is that events in other jurisdictions such as the Fitzgerald Royal Commission into the Queensland Police Service (1987), and the Woods Royal Commission into the NSW Police Service (1997) have heightened political and public awareness to issues relating to the integrity of our Police Services. As a result, there has been an expectation that the oversight agencies will respond and address any issues arising, particularly in regard to the effectiveness of the Ombudsman model in the light of evolving best practice.



Regrettably, despite a shift in the expectations as to the scope of our role and functions, it has not translated to a significant political focus on promoting real change or providing sufficient resources to carry out a broader brief. The balance between acting as primarily a review mechanism for investigations carried out by police and conducting our own independent investigations remain predominantly on the side of the review function.

The Involvement of Police in the Investigation of Complaints

The task of investigating police is not an easy one and there are clearly strong divergences of opinion as to how that task should be carried out, particularly in terms of the involvement of police in investigating police.

Colleen Lewis, in referring to Kestetter's models of oversight, noted:

'There are competing dilemmas in the civilian oversight of police conduct. On the one hand is the desire of a professional organisation to keep its own house in order (professional autonomy); on the other is the community's right to be involved in keeping the coercive arm of the state publicly accountable for its actions' (Lewis, 1999:60)

May I observe that I am not opposed at all to the involvement of police in the process of investigating complaints against police. To some extent it is, at least in the realm of an Ombudsman, a fact of life as we are simply not resourced to investigate independently to any significant degree. I do not, however, subscribe to the theory that only police are capable of investigating police, being solely possessed of the appropriate skills and expertise in regard to the same. We have moved far beyond the days of accepting that argument. There are many non-police investigators who have the skills and training to carry out such investigations and investigation training courses are now offered up to a tertiary level.

Rather, for me, it is the fact that we should not separate the police from the responsibility for the proper and ethical management of themselves both as an organisation and in regard to their day-to-day dealings with the public (no matter who they are). To prescribe that police should not have an integral role to play in the handling, processing, investigation and, ultimately, resolution of complaints about themselves is to abrogate any accountability on the part of police at an organisational, supervisory and individual level. It would inevitably lead to the concept of 'catch us- if you can', in my view. It is vital police have a degree of ownership of the process in partnership with any external oversight agencies.

There is also no doubt that police investigators are able to quickly identify appropriate police procedure, relevant documentation, official records of video tapes and can offer insight into what is current police practice and procedure in a certain area, the subject of a complaint. Such information can very quickly establish the scope of an investigation.



PROBLEMS WITH INTERNAL INVESTIGATIONS – POLICE INVESTIGATING POLICE

(i) NSW Royal Commission Interim Report on Police – Comments on internal investigations

The Royal Commission into the NSW Police Service Interim Report found that corruption has continued despite the existence of various internal investigation units within the Police Force.

There was a concern that public confidence and credibility in police was not encouraged by the knowledge that police are investigating police.

It also identified that police culture is a stumbling block to internal investigations as the following have been reported:

- Police reputation and morale is protected
- Fear of harassment
- Reluctance to inform on colleagues
- Low trust in system
- Poor co-operation with internal investigators
- Maintaining silence
- Turning a blind eye to corruption and misconduct
- Lying to internal investigators
- Lack of supervisor support for professional reporters
- Counselling individual police officers as to the adverse effect reporting misconduct of fellow police officers may have on their careers. This can be effected through promotion stalling, transfers, having disciplinary complaints lodged against them, being forced to resign, etc.

Other matters affecting the integrity and quality of internal investigations included:

- Inadequate resources
- Shift to regional responsibility resulted in internal investigations being given inadequate resources and low priority
- Discouraging complainants
- Conducting investigations with bias, ie. assumption of police innocence
- Information leaks about internal inquiries so as to evade detection or punishment
- Allowing collaboration between police under investigation to 'get their stories straight'
- Unsatisfactory investigative practices
- Failing to investigate proactively and over a broad base
- Investigator competence and agenda
- Internal complainants lack confidence in internal investigations
- Poor file or record management



(ii) Investigation models

The Interim Report sets out four models of investigation for the police:

1. *Complete self-regulation*
2. *Complete external investigation*
3. *Internal investigation with external oversight*
4. *Combination internal and external investigation*

Model 4, the Combination of Internal and External Investigation was recommended by the Commission as the preferred option. This model encourages continued police involvement in complaint and management matters, whilst ensuring independent oversight of the police services and external responsibility for investigations into serious misconduct and corruption.

LESSONS FROM THE NSW ROYAL COMMISSION – Final Report

The Royal Commission has stated that:

“It is essential that professionalism and integrity become the backbone of the service; and that the theme ‘integrity first’ be regularly reinforced during recruit training and at every subsequent stage of a police officer’s career. This means that it should be included as a specific component in all training, not just as bare rhetoric, but worked into each course in a way relevant to it and delivered by recognised experts in ethics.”

(Wood 1997: Vol II:280-1)

Various procedures promoting integrity have been recommended by the Commission. These include:

- Running background employment checks in recruit selection
- Performance assessments for new officers to determine the presence of appropriate behaviours and attitudes
- Demonstrated integrity and ethical behaviour should be specifically acknowledged by supervisors and considered in transfer/promotion applications
- Integrity assessment in the promotion system
- Encourage further development of Professional Standards Councils
- Integrity testing
- Introduction of regulations which would require all police to produce integrity declarations and financial statements in certain circumstances, and
- The establishment of the Police Integrity Commission.



PROBLEMS WITH POLICE INVESTIGATING POLICE

(i) Police culture, “cone of silence” or “brotherhood”

Police culture powerfully supports silence and the closing of ranks when faced with criticism or internal investigations. In doing this, police who are honest and put duty first are punished and the integrity of the service as a whole is damaged.

Also a lack of support from supervisors, colleagues and the Police Service discouraged the reporting of corruption.

‘On any view the inquiries of the Royal Commission disclosed a very serious state of corruption that was widespread and of long-standing origin. Its existence was acknowledged by the many police who were prepared to be frank when asked for their assessment, and it is difficult to accept the evidence of the remainder who professed never to have seen or suspected any corruption within the Service. While there were many who did not support or lend themselves to corrupt practices, it is clear that they felt powerless to do much about it. The culture was such, and the management and internal investigative systems were so deficient, that the state of corruption found can only be regarded as systemic and entrenched.

.... Although it must be emphasised that the departure of the vast majority of these staff was not related to their personal integrity, the senior staff who have left must collectively accept some of the blame for the poor supervision and inept management which allowed the state of affairs detected to exist. They have been replaced by a new group of officers who it is expected will have the youth, vigour and commitment to force a profound change of culture and to promote professionalism and integrity. Ultimately, the responsibility rests with them. No matter what structural changes or safeguards are introduced, corruption is ultimately a matter of individual choice, which can only be influenced by peer pressure, example and close supervision.’ (Wood 1997:Vol II:161-2)

(ii) Internal investigations

In NSW, the success of internal investigations has been limited by the following factors:

- Police culture (as discussed above)
- Faults in the structure of the complaints system
- Labour intensive complaints system
- Adversarial complaints system which reinforces the notion of “them and us”
- Limited resources of internal investigatory bodies
- Low commitment to the actual job of internal investigations where the position was seen as a promotional stepping stone
- Failure to investigate widely in an attempt to expose serious corruption



- Inadequate communication between central and regional internal investigatory units
- Bias and failure to act impartially in carrying out investigations. Police innocence was often assumed and inquiries were made into matters which would justify the police officer's conduct. This was contradictory to normal criminal investigations
- Inadequate security. Information about investigations was passed onto police subject to investigations. Informants had little faith in internal investigation confidentiality, and hence their safety
- Ineffective investigation techniques which allowed collaboration between police under investigation
- Inadequate investigation methodology which allowed police to deny allegations and return to duty with enhanced reputations
- Serious misconduct cases were closed once a minor disciplinary matter was established
- Imposition of penalties which were not proportionate to the gravity of misconduct. Dishonesty and other misconduct problems were not given adequate attention
- Internal informants were not appropriately supported or protected.

AUSTRALIAN LAW REFORM COMMISSION (ALRC)

In 1995 the Australian Law Reform Commission (ALRC) was asked to report on:

- the *Complaints (Australian Federal Police) Act 1981*
 - the Australian Federal Police discipline and complaints processes
 - the National Crime Authority's complaints process; and
 - the effectiveness, efficiency and accountability of the AFP and NCA.
- (ALRC Issue Paper 16, 1995:11,13)

It issued an issues paper *Under the Spotlight*, which outlined that:

'Australian law is that justice must not only be done but be seen to be done. The system must be transparent. Decision making must be open and discernible including the reasons for a particular finding. This means that the general public should be able to see how complaints are dealt with and whether the outcomes satisfy general community standards and expectations. A failure to ensure public confidence may lead to public mistrust of the police. This mistrust can taint the whole administration of justice. It may deter people from reporting crimes, from seeking the assistance of the police or assisting them, from giving evidence or appearing as witnesses.'

(ALRC. Issues Paper 16,1995:21)

Final Report – *Under the spotlight*

The ALRC found that a main objective of the AFP complaints system is to:



'promote appropriate standards of conduct, ethics and integrity from officers and staff and their agencies. (ALRC. Final Report:13)

The Commission recommended that a new external body, the National Integrity and Investigations Commission (NIIC) replace the Commonwealth Ombudsman in AFP complaint handling.

Criticisms of Internal Investigations Bodies

The ALRC found that problems with police internal investigatory bodies are reported internationally. Common problems noted included:

- Poor work ethic
- Weak in addressing serious misconduct and corruption
- Readily accepting the word of the police officer against whom the complaint was made
- Poor consideration of evidence
- Coercing complainants to withdraw their complaints
- Discouraging complainants
- Discrediting witnesses
- Lack of public confidence
- Lack of control over internal investigations
- Police culture
- Lack of resources

(ALRC Final Report: 242-3)

There are also many difficulties in detecting and dealing with police corruption and misconduct. Police officers have superior skills in giving evidence and investigation techniques while also having superior knowledge of the system and its workings. Rank and credibility in the eyes of judicial officers can also prove difficult to combat. (ALRC Final Report: 249)

A police culture which values loyalty and protection engenders a reluctance to inform of colleague's misconduct or corruption; apathy or hostility towards complainants and victimises whistleblowers. (ALRC Final Report:235)

'... it is the Commission's view based on the evidence from Australia and overseas that the difficulties of police culture are intrinsic to the nature of law enforcement work. While it is necessary and worthwhile to take active measures to 'open up' police cultures ... these measures will not eradicate these difficulties'. (ALRC Final Report: 236)

The Commission stated that:

'While it is acknowledged that public confidence is crucial the evidence strongly suggests the public confidence in most current law enforcement complaints systems, particularly where the agency itself is responsible for the



investigation and control of the system, is lacking at every facet of the process: that is, lodging, recording, investigating and determining the complaint.'
(ALRC Final Report:230-1)

Studies into client satisfaction of complaint handling by AGB McNair into the AFP and Maquire and Corbett in England indicate

- Little confidence or faith in complaints systems
- Low expectation of investigations, ie, that the investigation would be thorough and fair
- Dissatisfaction in conduct of investigation. (ALRC Final Report:231)

Impartiality can become an issue when an Internal Investigator is faced with balancing the interests and stories of a colleague and complainant. There may be a temptation or tendency to discourage complainants from continuing with their complaints. (ALRC Final Report:239)

Accountability and external scrutiny of internal investigation processes are essential to the integrity and credibility of internal investigations within the AFP. (ALRC Final Report: 232-4)

PRE-REQUISITES OF EFFECTIVE OVERSIGHT OF POLICE

In my view, there are 4 critical areas which need to be addressed to ensure that effective oversight is achieved. The following are essential pre-requisites to establishing effective oversight of police. I have, for my purposes, categorised them as:

1. Informed political commitment
2. Real police commitment and professionalism
3. Resourced, independent, and accountable regulators
4. A co-ordinated, co-operative and considered approach.

Informed political commitment

At the highest level, the political level, there needs to be a proper understanding of the issues relating to the oversight of our police. All too often politicians do not understand the purpose and benefits of effective and accountable oversight of police. More often than not, they have sought to play lip service to the concept of effective oversight and establish oversight mechanisms that are poorly resourced, have inadequate legislation and are lacking in balance. In doing so they fail to protect the public interest and responses are more often designed to address political and public pressure by creating a perception of accountability.

Politicians have not, in my experience, kept themselves informed and thus are not good at balancing the needs of the public and the police with regard to oversight. In many cases an uneasy relationship has existed between independent oversight



entities and governments which have established them. The independent watchdog is often seen as the bearer of bad news and there is a tendency for governments to react to bad news by the traditional method of shooting the messenger.

Lewis (1996:8) suggests, in regard to the concept of shooting the messenger, that

'This may be true of reactive bodies but need not be the case if an oversight body has meaningful, pro-active functions which enable it to work with the police to increase community confidence in the service. Governments may wish to consider the advantage that can flow from an oversight body having a dedicated corruption prevention function and the ability to undertake independent research into police related matters rather than concentrating on what may be the possible negative political consequences arising from the exposure of police misconduct.'

Oversight bodies have not been well placed to defend themselves and have suffered, not only from political neglect, but public apathy.

Politicians should not give in to the self interests of the various parties who are affected by the oversight of police. Such groups as the police, and police associations have, at times, sought to influence the structure and functions of oversight mechanisms. The lesson has been learnt the hard way in many cases and the cost has often outweighed any short term political gain. That is not to say these entities do not have a valid role to play in regard to the process but it should not be at the expense of real and effective oversight.

I have heard of an occasion where the oversight role has been the subject of enterprise bargaining negotiations wherein a police association sought to impose conditions on the oversight role in exchange for productivity gains. Or, in another case, a government agreeing to legislative change impacting on the way in which complaints were processed without consultation and solely for the political gain associated with a better relationship with police, and a police association in particular.

We have had the example in Queensland which received considerable publicity relating to an understanding being entered into between a political party and the Queensland Police Association that proposed changes to the way complaints against police were to be dealt with, in exchange for the Police Association supporting the political party at a crucial by-election.

In the case of police oversight bodies in Australia, the most effective ammunition used to shoot the messenger is an inadequate budget. This method of control is more subtle and politically safe than attacking an oversight body's finding (New South Wales Ombudsman 1994), or abolishing the body.

My personal experience of this was during my time as the Head of the South Australian Police Complaints Authority (PCA). Unlike the Ombudsman model of oversight, the Police Complaints Authority is a specialist body reporting directly to



Parliament with the role of reviewing investigations by the police in respect of complaints made against the police. I took up the position in September 1992 when the PCA had been operating for seven years. I discovered a backlog of files, some five years old. The resources available to the Authority were inadequate. Staffing of the Authority was ad hoc and it is fair to say that many of the staff were inadequately trained. Morale was low and no annual report had been presented to Parliament for two years. There was no parliamentary committee established in South Australia to review the operation of the Police Complaints Authority. Not surprisingly, given that the Authority was, for all intents and purposes, defunct, the South Australian Police had little cause to fear it.

I pause to observe that, in my view, a review mechanism such as a parliamentary committee would also be able to counter the inherent imbalance in the political process which enables powerful lobby groups, such as the police, police associations and law and order groups, to prevail over the less powerful and less effective public interest groups. A parliamentary committee is able to ensure there is balance in regard to the debate as to what constitutes effective oversight. It can review the effectiveness of legislation, resourcing and, ultimately, performance.

A good example of this is given by the former Ombudsman of NSW, David Landa (Landa and Dillon 1995), when he describes a campaign being conducted, in 1988, by the NSW Police Service of misinformation against the Ombudsman. The question was the subject of vigorous debate in the parliament and the community. The demand for a reduction in the Ombudsman's powers resulted in the then government putting up an amendment bill which, fortunately, was referred to a Select Committee of the Legislative Council (the 'Bignold Committee'). The Bignold Committee found there was a widespread perception within the police service that the Ombudsman was unfair to police and was concerned with trivia. The Committee found:

"The perception, however, has no basis in reality. It is not based upon a realistic understanding of the police complaints system. Rather, it is based upon rumour, innuendo, mis-information and misunderstanding of the system" (NSW Parliament 1989:17)

The bill was found by the Bignold Committee to be 'contrary to public interest' and, consequently, it was withdrawn (NSW Parliament 1989:28).

The Wood Royal Commission noted that, amongst other external factors that have limited the disclosure of corruption in the past have been:

- *"The successful manipulation of the media by the service, the police associations and by some high-profile police, in times of potential crisis;*
- *The ingrained political concern to contain embarrassment in any area of the public sector;*



- *The undue deference paid by politicians to the perceived power of the service and of the police association to mobilise the electorate in sensitive electorates which has often seen Ministers or parties too readily give way to their demands, and in so doing reinforce the sense of invulnerability and influence possessed by police.” (Wood 1997:203)*

Another possible way to ensure that there is a process for reviewing an oversight body is to provide for, in its enabling legislation, a requirement for regular strategic review of the agency. In this way, reform and change with respect to the legislation and basic procedures and systems utilised by an oversight body is able to occur by way of ongoing development and planning, rather than tied or linked to specific incidences or crises where there is often an over-reaction to the problem and the costs are enormous.

Police commitment and professionalism

It must be recognised that for there to be effective oversight of police, police internal investigation mechanisms and research facilities must be adequately resourced and funded. There should be a legislative requirement for Commissioners of Police to provide adequate resources and funding to the internal investigation process. Internal investigation units are often poorly staffed, such staff that are appointed, are often not well trained or committed to the role of proper internal investigations or accountability and little incentive is offered to persons in the internal investigation area to be effective or to uncover any misconduct or to identify any systemic problems. There has been a perception that police culture tended to value the effectiveness of internal investigators in protecting the police from being subject to criticism and preventing discovery of misconduct in such a way that it becomes public knowledge, or impacts on the integrity of police. I do, however, think that this perception is rapidly changing and the benefits of effective oversight are now better understood and accepted by police services.

Police services are recognising that, first and foremost, they must be prepared to put their own houses in order. If they are not prepared to do this, oversight and harsh accountability controls will be imposed upon them. Accountability is intrusive and expensive and does mean that initially police resources are utilised in a way that detracts from their prime operational focus and objectives, that being to serve and protect the public. However, I submit that the objective of long term effective accountability is cheaper and obviously enhances public confidence in the police.

Effective oversight requires that police are willing to recognise, discuss and manage their own problems and to take active responsibility for the management of behaviour and the management of the service.

The Wood Royal Commission identified the following factors, amongst others, which contributed to the limited success of internal investigations in respect to the New South Wales Police:



- *“The difficulty of police investigating police.*
- *The reactive focus of the complaints system on single instances of misconduct, and their fragmentation within a rigid formula, a system which has not allowed for a classification of complaints in a way reflecting their different levels of seriousness, tended to conceal the discovery of links and patterns indicative of organised corruption, and overlooked the broader management and intelligence considerations and opportunities for early remedial intervention;*
- *The concentration on an adversarial complaint and investigative system in which punitive rather than remedial action has inhibited police from admitting to mistakes, has encouraged a culture of group cover-up and denial, and has led to a philosophy that most complainants were whingeing individuals out to settle a score – a philosophy which only reinforced the ‘them and us’ approach;*
- *The limited resources given to the professional responsibility command, and the downgraded, unpopular status of holding office within that command, in some quarters regarded as a ‘retirement haven’ for those who did not otherwise fit the mould, or, alternatively, as a mere stepping stone to promotion (without commitment to the job);*
- *The use of ineffective investigative techniques, for example, the issue of directive memoranda calling for an explanation in writing which allowed groups of police under investigation to be forewarned of the inquiry, and to manufacture a watertight defence in collaboration;*
- *The use of an investigation methodology which frequently began and ended with the officer’s denial of the allegations, on the basis that faced with such a response the facts could not be determined, an investigative approach which would rarely terminate a conventional criminal inquiry, but which allowed corrupt police to return to duty with their reputations enhanced either as ‘untouchables’ or as effective police who were hurting criminals thereby attracting complaints;*
- *The lack of protection and support for internal informants.”* (Wood 1997:201)

I consider that factors identified by the Wood Royal Commission apply beyond the NSW Police and, in my own experience, are present in most police services.

The conservative nature of police services has inhibited the embracing of external oversight and the resistance of police to change has often contributed to its failure.

Freckelton described the issue in this way:



“Police forces are notorious for their exclusivity, their brotherhood ethic, and their conservatism in face of proposals for reform (Reiner 1985:97). These characteristics merge readily into a self-justifying homeostasis when confronted with the possibility of having weaknesses, inadequacies, and structural deficiencies highlighted to a non-sympathetic audience. Not surprising then that police should adopt a self-protective mechanism to ward off externally arising instruments of change”. (Freckelton 1991:100)

The introduction of oversight mechanisms has seen, in some instances, the abrogation by police services of their responsibility to deal with complaints. The responsibility is often left to under resourced internal investigation units and the external oversight body. Often the sheer volume of complaints creates an administrative burden that swamps the complaint process and diverts resources from focusing on those serious or systemic complaints that need to be actioned in a timely and effective manner.

I have more than once heard police officers remark that complaints are good because it keeps their bosses out of their hair and lets them operate without undue interference.

Conversely, I have spoken to police supervisors and managers who have complained that they had no idea that officers’ under their control had been the subject of complaint. Usually this is because the complaints process diverted any complaints to separate and ‘confidential’ internal complaints mechanisms. Line managers and supervisors may not be expected to handle complaints about officers for whom they are responsible and, consequently, may bear no responsibility for their actions. The abrogation of responsibility has been recognised as system based and it is not surprising that many police line supervisors and managers are more focused on supporting their officers and engendering loyalty than ensuring they operate effectively and accountably.

Police services must show real commitment at all levels to high ethical standards and the concept of accountability, and embrace external oversight as a positive and useful process. There are negatives but these can be balanced by the positives. Complaints should be seen as an opportunity to identify issues that require remedial action, management focus, training and development and a basis for the review and enhancement of existing procedures and practices.

I must say that, in my view, police services have changed quite dramatically in recent times in regard to their approach to oversight. There is clearly an acceptance of its reality and attention is now being given to how oversight can be most effectively embraced and utilised to improve policing. There is still some way to go and, in my view, more effort needs to occur in ensuring there is a positive culture at all levels of police services to the concept and value of oversight. The outcomes of the Fitzgerald Inquiry and the Woods Royal Commission demonstrate that this is a fundamental issue to be addressed by police services if they are going to participate



effectively in the oversight process. Regrettably, to some extent, it has taken extreme measures for police services to recognise this and to act upon it.

It is pleasing to note, however, the Police Commissioners throughout Australia are moving in positive directions in this area. A national approach has been taken to the issues and reform is occurring throughout police services in Australia as a direct result of the Wood Royal Commission.

In recent times police services have focused on developing national competencies for police officers, tertiary level courses on police administration, management and investigation have been set up and include input from outside the traditional bounds of police services.

Resourced independent and accountable regulators

It must be noted that in Australia, despite commonality of laws and a relatively small population, there exists diverse types of oversight systems. There is, however, a lack of a recognised national standard in regard to those oversight mechanisms. There is an inconsistent approach to the issue of oversight and, in my view, there has been a lack of consistent ongoing dialogue in regard to the role of oversight bodies.

There is no co-ordinated national approach to collection and analysis of data to determine if there are common trends. Nor has there been any real focus on developing national standards of competency for external oversight of investigations techniques utilised by police and little research has been given. I suggest some consideration and work needs to be carried out in these areas to add value to oversight agencies. It would also promote a more consistent approach to oversight throughout Australia.

For it to be effective, in my view, an oversight agency should have:

- Effective legislation which establishes the agency's independence and gives it sufficient powers and functions to properly carry out the oversight role. Its mandate must be clear and not subject to unnecessary challenge or restriction.
- An equal focus on both its review and investigative role in regard to complaints and a proactive role of being able to undertake independent research into police related matters and address systemic issues.
- Strong investigative powers and a capacity to undertake direct investigations in certain circumstances. If it has the responsibility to investigate serious misconduct and corruption issues then it must also have the capacity to utilise modern proactive investigative techniques such as listening devices, undercover operatives and surveillance in those serious cases involving possible corrupt or criminal conduct by police officers. This would also involve integrity testing, perhaps in collaboration with the police.



- An educative and advisory capacity in regard to strategies to combat misconduct and corrupt or criminal behaviour.
- Processes that are clear and transparent and, where appropriate, provide natural justice.
- Investigators that are well trained, competent and possess specialised skills. Multi-disciplinary teams are also important and have been successfully used by the CJC, and are a feature of the Police Integrity Commission (NSW) and, I believe, in the Anti-Corruption Commission (WA).
- Strong accountability mechanisms which ensure that the oversight body is open to scrutiny as to the way it conducts itself, utilises its resources and performs. Provision for regular strategic reviews to provide and ensure ongoing reform and refinement is crucial in my view, coupled with oversight by a standing parliamentary committee noted earlier on in this paper.
- Effective databases for the collection of statistical information pertaining to complaints and the analysis of the data so as to consider trends and provide information to address the same.
- Sufficient resources to enable it to carry out its role and functions effectively. This can be supported by the processes of accountability and review alluded to.
- The capacity and ability to enlist and foster public support and create awareness of its role.
- The capacity to work positively and co-operatively with the police to achieve the essential objectives of the oversight and accountability processes and to provide relevant feedback to police.

As demonstrated, self-regulation has failed with respect to police services. Further, despite the fact that effective oversight is dependent on empowering the process, not restricting it, some oversight agencies are not well resourced, they do not have effective legislative powers and functions and they represent apparent political compromises to the concept of accountability and oversight. Ultimately, I suggest where those oversight processes are ineffective, crises will arise which will impact upon the public perception of the integrity of our police. The failure to provide balanced and effective oversight in such cases, will, in my view, simply make the task of police harder and harder in an environment of ever increasing political and public expectations of police.

Sadly, where this is so, it is not surprising that in order to meet the expectations of the politicians and the public, the temptation for police will be to respond in ways that bring them into conflict with those oversight mechanisms that do exist. The question is whether the messenger will be shot or whether the lessons have been learned. I am not so sure.



Co-ordinated, co-operative, considered approach

I do not intend to say much on this area other than to state the obvious. There cannot be a co-ordinated, co-operative and considered approach to the oversight of police unless:

- (a) There is a real and genuine political commitment to effective oversight.
- (b) There is an organisational climate and processes existing within the police services to promote proper conduct and reduce the tolerance of misconduct. This also involves real commitment to and acceptance of the value, importance and purpose of the external oversight role.
- (c) External oversight agencies need to be properly resourced and empowered to carry out their role. They need to be able to *“adopt an integrated multi-faceted approach to police misconduct and related issues, one which targets the cause of police misconduct, mismanagement and associated matters rather than simply the symptomsrather than being considered aggressive adolescents by police, oversight bodies have the opportunity to become respected providers of independent advice and assistance to police. Which path they are allowed to take depends on those who create them”* (Lewis 1996: 13)

Fortunately the tide, I believe, has turned. Whilst in some places reform is slow and tied to economic and political considerations, the key players, our police themselves, are now realising the importance of responding to the concerns and problems identified and moving to be pro-active in addressing them. The challenge is for the police services to be able to include and utilise external assistance and advice and not remain introspective in their responses to those concerns and issues. They share ownership of the process.

In conclusion, I would quote the comments of the Hon. Justice JRT Wood in the final report of the Royal Commission into the New South Wales Police Service:

The caution of Judge Mollen in relation to any new found commitment for reform following an intensive public inquiry such as the present, must not go unheeded:

The challenge we face is to maintain that commitment long after this Commissioner departs and the glare of public scrutiny subsides. We believe that the department cannot maintain the commitment alone. If history proves anything, it is that when the glare of scrutiny shines on the department, it can and will successfully police itself. But history also provides that left to its own devices the department will backslide, and its commitment to integrity will erode.

M.
Mollen, Commissioner, New York, 1994:6 (The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department)



As the experience in NSW and New York graphically demonstrates the cycle of external public inquiries, generated in times of crisis or political clamour, can never be a long-term solution. At best, there will be momentary embarrassment which the past demonstrates can be ridden out with minimal impact on previous practices and procedures. This Royal Commission sees the solution in:

- *A sustained joint effort involving a fundamental change in the approach of the service itself to corruption, and the existence of a permanent independent body, overseeing the service and maintaining, as its specific focus, police corruption; and in*
- *A determined restructure of the service and of its management, in which corruption risks are identified and minimised, and all members from senior command to the most junior constable are empowered and given the confidence to reject corruption. (Wood 1997:82)*

I agree with the comments of Mr Justice Wood wholeheartedly.

Bibliography

- Australian Law Reform Commission (1975) Report No 1, Complaints Against Police (ALRC 1975)
- Australian Law Reform Commission 'Under the Spotlight' Issues Paper 16, November 1995 (ALRC Issues Paper 16, 1995)
- Australian Law Reform Commission 'Under the Spotlight' Final Report (ALRC Final Report)
- Criminal Justice Commission (1995) External Oversight of Complaints Against Police in Australia: A Cross-Jurisdictional Comparison (CJC 1995)
- Freckelton I (1991), 'Complaints Against the Police', edited by Goldsmith, AJ, Clarendon Press Oxford 1991 in Chapter 2 'Shooting the Messenger: the Trial and Execution of the Victorian Police Complaints Authority' (Freckelton 1991)
- Landa David and Dillon H (1995) 'Police Leadership in Australia' The Federation Press, Sydney in Chapter 5 'Public Accountability and External Review of Police Conduct' (Landa and Dillon 1995)
- Lewis, C (1996) 'Independent Oversight of Complaints Against the Police: Problems and Prospects' Research Paper No. 30, January 1996, Griffith University Brisbane (Lewis 1996)
- Lewis, C 'Complaints Against Police – The Politics of Reform' Hawkins Press, Sydney (1999)
- Masterman G (1988) 'External Review: the New South Wales Experience' Landa D and Dillon H in 'Public Accountability and External Review of Police Conduct'. The Federation Press, Sydney, Chapter 5 'Public Accountability and External Review of Police Conduct' (Masterman 1988)
- New South Wales Ombudsman (1994) Annual Report (Sydney: State Government Printing Office) in Lewis C in Research Paper No. 30 January 1996 'Independent



Oversight of Complaints Against Police: Problems and Prospects' (Griffith University)
New South Wales Ombudsman (1995) Annual Report (NSW AR 1995)
New South Wales Ombudsman Annual Report 2000-2001 (NSW Ombudsman AR 2000-2001)
New South Wales Parliament (1989) 'Submission to Joint Parliamentary Committee on the Office Inquiry upon the Role of the Ombudsman in Investigating Complaints Against Police' Sydney (NSW Parliament, 1989): referred to in Landa and Dillon, 1995
Royal Commission into the NSW Police Service, 1996 Interim Report, Sydney (Wood Royal Commission 1996)
Royal Commission into the New South Wales Police Service, Final Report, May 1997 (Wood 1997)

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Sections 4 to 7 of my paper (pages 15-25) has drawn substantially on a paper entitled '*Maintaining the Integrity of the Internal Investigation Process*' by Mr J.R. Taylor, Office of the Commonwealth Ombudsman, presented to a National Investigations Symposium held in Sydney. Mr Taylor's paper very succinctly sets out key aspects arising from the Wood Royal Commission into the NSW Police Force and the Australian Law Reform Commission 'Under the Spotlight', Issues Paper No 16 1995 and the Final Report.