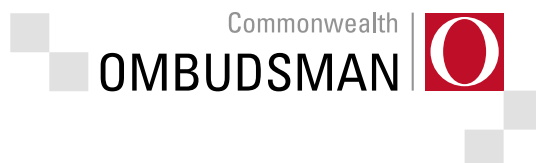


annual report

2003–2004





annual report 2003–2004

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5 October 2004

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

Dear Prime Minister

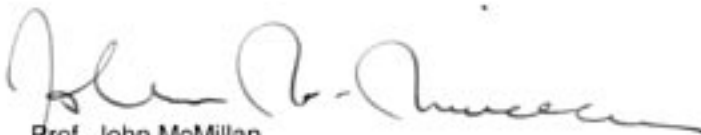
I have pleasure in submitting the twenty-seventh Commonwealth Ombudsman Annual Report for the year ended 30 June 2004, as required by s 19(1) of the *Ombudsman Act 1976*.

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

As required by s 38 of the *Complaints (Australian Federal Police) Act 1981*, the Report also deals with complaints made under that Act during the year ended 30 June 2004.

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

Yours sincerely



Prof. John McMillan
Commonwealth Ombudsman

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Phone: 02 6276 0111
Fax: 02 6249 7829
Website www.ombudsman.gov.au

Online report

The Commonwealth Ombudsman Annual Report 2003–04 is available on our website at www.ombudsman.gov.au. This online report offers more than a simple copy of a printed report. For the first time, our annual report has been adapted as an online publication with improved usability and accessibility in line with government standards.

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foreword

The annual reports of the Commonwealth Ombudsman have been important documents in the history and development of the office. Numbering twenty-seven reports, they chart the history of the office, each year giving a snapshot of complaint investigation in the preceding year, while reflecting on the role and philosophy of the office.

This year's report seeks to capture some of that experience and wisdom of the office. This is chiefly done in chapters of the report that look at how the Ombudsman's office handles thousands of complaints and inquiries each year about Australian Government administration.

A distinguishing feature of the office is that it deals with problems and complaints against government arising across Australia and across all portfolios of government. This offers a unique

perspective on the difficulties that people face in relation to government. At the same time, it poses many challenges for the office.

To be effective, the office must be accessible to all Australians; it must understand law and public administration and how they can apply differently both over time and from one area of government to another; the office must be efficient and effective; it must be balanced and professional in how it relates to government and to the public; and it must contribute something to government, both nationally and in our own region of the world.

The individual chapters of this annual report explain how the office has tried to meet these diverse challenges. One way is to maintain a national operation, spread over eight separate offices (a description of each office was given in last year's annual report). Another is to develop



Painting by Guy Vaughn Gilmour, *July, Friday's Creek Road*, 1991–92, provided by Artbank.

Commonwealth Ombudsman, Prof. John McMillan.

portfolio expertise within the office, through teams that focus on areas such as defence, immigration, law enforcement, social support and taxation. Technology, benchmarking and internal review likewise play a key role in complaint management.

Another strategy of the office is to pinpoint common difficulties that people face in dealing with government. Delay, lost records, incorrect advice, complaint handling and compensation claims are among the recurring themes in Ombudsman investigations that are taken up in this report. Differentiating the systemic problem areas in public administration from temporary malfunctions in program delivery is important in deciding how to address problems and, over time, how to lift the standard of government performance.

These and other issues taken up in this report are designed to show the different facets of the Ombudsman's office. At one level the office discharges the same function each year: receiving individual complaints and inquiries from the public and deciding whether a remedy is required. Yet the office is more than the sum total of the individual cases it handles. It has, in addition to its operational role, a symbolic role as an accountability institution in government. The perpetual oversight role of the office—popularly termed the watchdog function—is another facet. A commitment to improving government administration is also a dimension of the complex relationship the office maintains with government agencies.

Another feature of Ombudsman work reflected in this report is that the role of the office is not static. The way that complaints are received and resolved is different now from how that function was discharged in former years, and it will be different again in the future.

Some of the changes are obvious, such as technological innovation in complaint handling. Other changes are subtler. For example, less importance is given to a theme pervading the Ombudsman Act that each complaint can lead to a separate investigation into whether there was agency defect. Identifying and correcting administrative deficiency is still a strong focus of the office, though it is matched by a similar concern to find an appropriate resolution to the everyday difficulties that people experience in their dealings with government. Finding an outcome can be as important as targeting the incident or misunderstanding that gave rise to a difficulty.

This changing role of the office is taken up in the cover design. The design is reminiscent of movement and growth over time. The patterns in tree rings express varying time periods and conditions that correspond in the organised world to changes in the political, legislative and administrative landscape.

Prof. John McMillan

Commonwealth Ombudsman

year in review

This was the first full year in office for Prof. John McMillan as Commonwealth Ombudsman and Mr Ron Brent as Deputy Ombudsman, both having been appointed in the first half of 2003.

During the year, the Ombudsman and Deputy Ombudsman pursued the objectives set out in the foreword in last year's annual report. Specifically, the objectives were to continue the tradition of the Ombudsman in handling and investigating complaints about government received from members of the public, to distil the wisdom of the office, and to cultivate the established profile of the Ombudsman's office as a key accountability institution in Australian Government.

The essence of the office has not changed. We continue to assess and investigate complaints about the administrative actions of Australian Government departments and agencies and to foster good public administration by recommending remedies and changes to agency decisions, policies and procedures. We also make submissions to government on legislative and policy reform.

'... the Ombudsman has been able to stimulate improvements across the breadth of government administration.'

Building on the experience and insights gained from handling complaints, the Ombudsman has been able to stimulate improvements across the breadth of government administration. Among the areas improved are the quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, and sensitivity to individual needs.

A constant challenge for the office is to maintain a public profile and for the public to know they can turn to the office when problems with government arise. An important step towards meeting this

challenge was the opening of a shopfront in Canberra in June 2004. While complaints and inquiries are received through the Ombudsman's eight offices in capital cities around Australia, the opening of a shopfront in Canberra was considered important, both symbolically and practically.

'... visibility is a key component of our relationship with the public.'

Most complaints, inquiries and approaches to the office come through telephone, mail and increasingly via the Internet; however, the shopfront is an important step in reaffirming that public accessibility is a vital aspect of our work and that visibility is a key component of our relationship with the public. It also signifies the continuing commitment of the office to be active in the community in dealing with problems that people encounter with government.



Photography by Irene Dowdy

Opening of shopfront in Canberra in June 2004—John McMillan (Commonwealth and ACT Ombudsman) and Jon Stanhope MLA (ACT Chief Minister).

COMPLAINT WORKLOAD

During 2003–04, the Ombudsman received a total of 17,496 complaints, a decrease of 12% on the previous year. Decreases in the number of complaints received were experienced in most areas, with significant decreases in complaints about the Department of Immigration and Multicultural and Indigenous Affairs, the Child Support Agency, Centrelink and the Australian Taxation Office. There was an increase in complaints about the Department of Transport and Regional Services and the Department of Employment and Workplace Relations.

The decrease in total complaints received is against the trend over the past few years, during which the number of complaints received has been fairly stable. There has, however, been a steady increase in the number of more complex matters. There was also a fall in the number of other approaches to the office such as out-of-jurisdiction matters and requests for information.

This year, the Ombudsman investigated 30% (5,910) of all complaint issues finalised, compared to 29% last year. For complaint issues investigated, agency error or deficiency was identified in 20% (compared to 29% last year), while there was no error or defect identified in 43% (compared to 42% last year).

PUBLIC ADMINISTRATION

An important role of the Ombudsman is to foster good public administration. A principal way of doing this is to make suggestions and recommendations to agencies, to initiate and conduct own motion investigations so as to foster systemic improvements in public administration and to make submissions to government and parliamentary inquiries.

Through its complaint-handling and investigative work, the Ombudsman's office comes into contact over time with most aspects of Australian Government. As stated in our strategic plan for 2003–04, a distinct role of the Ombudsman is to 'contribute to public discussion on administrative law and public administration' and to 'foster good public administration that is accountable, lawful, fair, transparent and responsive'.

During the year, the Ombudsman released reports on four own motion (or own initiative) investigations related to the Australian Taxation Office, the Department of Employment and Workplace Relations, the Child Support Agency, and the Australian Crime Commission. Under powers conferred by the *Complaints (Australian Federal Police) Act 1981* (Complaints Act), Ombudsman staff worked on four special investigations relating to the Australian Federal Police (AFP). Two of these investigations will be completed in early 2004–05.

'... the Ombudsman released reports on four own motion (or own initiative) investigations ...'

A number of own motion investigations are due to be completed in the coming year. One such investigation is looking at administrative matters relating to the Department of Defence's dealings with people under the age of 18 years. Another is looking at the quality of Freedom of Information processing by Australian Government agencies. To the extent possible, the Ombudsman's reports on own motion investigations are published in full or in an abridged version on our website.

In furthering the objective of fostering good public administration, the Ombudsman made submissions to parliamentary inquiries and commented on a range of administrative practice matters and legislative proposals during the year, including submissions to:

- the Senate Select Committee on Ministerial Discretion in Migration Matters
- the Senate Standing Committee on Foreign Affairs, Defence and Trade, in its Inquiry into the Effectiveness of Australia's Military Justice System
- the Joint Standing Committee on Foreign Affairs and Defence, in its Inquiry into Human Rights and Good Governance Education in the Asia Pacific Region
- the Joint Standing Committee on the National Capital and External Territories, in its Inquiry into Norfolk Island Governance
- the Senate Select Committee on Medicare, in its Inquiry into the Medicare Safety Net

- the Treasury's Discussion Paper on the Review of Aspects of Income Tax Self Assessment
- the review of Division 11A of Part 1D of the *Crimes Act 1914* (Cth).

DEFINING THE OMBUDSMAN'S ROLE IN A CONTEMPORARY SETTING

The Ombudsman's office, though well established, is part of a system of government that is undergoing constant change. Some of those changes impact on the work of the Ombudsman, requiring the office to reflect on its role in government. Several aspects of change arose in 2003–04.

The legislation establishing the office of the Commonwealth Ombudsman was enacted in 1976, and has not been reviewed in any comprehensive fashion. A review is currently being undertaken by the office to improve and modernise the legislative framework, with a view to putting proposals to government for the enactment of a new Ombudsman Act. It is not proposed to change the role of the Ombudsman.

'A review is currently being undertaken by the office to improve and modernise the legislative framework ...'

Work on the legislative framework review progressed substantially during 2003–04, but it will be some months into the coming year before we are ready to submit a final position to the Prime Minister. Some of the issues to be addressed include:

- a single drafting style to avoid apparent inconsistencies
- legislative acceptance of the government's decision that the Ombudsman should have jurisdiction over the actions of certain Australian Government contractors
- bringing the Ombudsman's jurisdiction to investigate AFP complaints under the Ombudsman Act, with features that recognise the special need of police actions for external oversight and accountability.

A major role of the Ombudsman is to handle complaints about the AFP, both at a national level

and in relation to the performance of the AFP's community policing role in the ACT. The legislative basis for the Ombudsman's role is the Complaints Act. Reform of that legislative framework was proposed in a report in 2003 by the Hon. William Fisher AO QC, *A Review of Professional Standards in the Australian Federal Police*. The Ombudsman's office is contributing to a review within government of the Fisher Report and the framework for investigation of complaints against the police.

The Ombudsman's role in relation to policing also arose in a different light during the year. In June 2004 the Australian Government announced that it would establish an agency to investigate corruption in law enforcement agencies, including the AFP. An issue raised in public debate was the role of the Ombudsman in this respect. Our position, in broad terms, is that the Ombudsman should not be the chief agency responsible for investigating corruption allegations. However, there is a thread that links administrative misbehaviour and official corruption, and complaints about law enforcement action are sometimes made in strong and accusatory language. The Ombudsman's office, both in its Commonwealth and ACT guises, is contributing to the discussions within government about the framework for investigation of corruption allegations.

Yet another aspect of the Ombudsman's role under discussion in the past year was the role of Postal Industry Ombudsman (PIO). Drafting was carried out to amend the Commonwealth Ombudsman legislation to incorporate the role of PIO. This role is distinctive, in conferring jurisdiction upon a single ombudsman to investigate complaints about the actions of both public and private sector postal operators. Jurisdiction over the private sector poses a new challenge for the Ombudsman.

The office of the PIO will take over the existing role of the Commonwealth Ombudsman of investigating postal complaints against Australia Post. A costing regime will be developed in accordance with regulations for a self-funding scheme and for the cost of investigations to be charged on a proportionate basis to participants in the scheme. The PIO will have the normal powers of an ombudsman to require information or documents and to publish findings. The PIO will be required to observe procedural fairness in investigations. The scheme is expected to

commence within six months of the PIO legislation being enacted by Parliament.

In December 2003, a Joint Standing Committee report on Norfolk Island Governance proposed that Norfolk Island should establish an office of Ombudsman. It was proposed that the Commonwealth Ombudsman take on the role, under an arrangement similar to that with the ACT Government. To explore the Committee's recommendation the Ombudsman visited Norfolk Island early in 2004 and held discussions with the Legislative Assembly, officers of the Executive Government, and the Administrator. Discussions on the issue are proceeding, and a further visit by a representative of the Commonwealth Ombudsman is planned for late 2004.

Another new function was recently given to the Commonwealth Ombudsman to conduct an annual review of new information-gathering powers conferred on the Building Industry Taskforce. This is a result of a Senate amendment to workplace relations legislation enacted in 2004.

INTERNATIONAL COOPERATION

Over the past three years, there has been a steady increase in the Ombudsman's international program, with study tours by senior-level delegations from China, Indonesia, Japan, Mauritius, Thailand and

the United Kingdom, and representatives from other countries also visiting the office.

We completed the first year of two three-year, AusAID-funded programs in Indonesia and Thailand. These programs aim to facilitate the exchange of specialist advice, training, technical assistance and support to the ombudsman's offices. During the year, two of the three Thai Ombudsman, Mr Piya-Anant and General Meepien, visited our Canberra and Melbourne offices, providing a valuable opportunity to exchange knowledge and ideas.

The Ombudsman believes the office is well placed to play a key supporting role in the development and enhancement of ombudsman offices throughout the Asia-Pacific region. In this regard, we are currently exploring opportunities to provide advice and assistance to ombudsman institutions in the South Pacific.

KEY ACTIVITIES FOR 2003–04

- The Australian Government recognised the role of the Ombudsman, allocating increased funding in the 2004–05 Budget to establish new roles for the office, expand delivery of Ombudsman services in regional and remote areas, and improve oversight of surveillance devices.



Commonwealth Ombudsman and representatives of the Norfolk Island Government during a consultative visit to Norfolk Island by Prof. John McMillan in February 2004. From left to right: Hon. Graeme Donaldson MLA (Minister for Finance), Hon. David Buffett AO, MLA (Minister for Community Services and Tourism), Peter Maywald (Secretary to Norfolk Island Government), Prof. John McMillan (Commonwealth Ombudsman), Luke Johnson (CEO, Norfolk Island Administration), Alma Davidson (Research Assistant, Norfolk Island Government), and Hon. Geoff Gardner MLA (Chief Minister).



Sue Tongue presenting on *Administrative Law Principles and Natural Justice* at the Ombudsman's Advanced Investigations Course, March 2004.

- Four own motion investigation reports were released, with 31 recommendations accepted by agencies and one not accepted; the Ombudsman decided not to take this matter further.
- A comprehensive review of the office's complaints management system and internal work practices was conducted, providing a strong basis for initiating improvements to achieve better integrated and streamlined work practices.
- The office's internal complaint investigation guidelines were reviewed to update and adapt them for online use in the new complaints management system environment.
- Ombudsman staff and representatives from a number of other agencies, State Ombudsman offices and AusAID-sponsored participants attended the office's two investigation courses: a three-day Introductory Investigations Training Course in August 2003 and a five-day Advanced Investigations Training Course in March 2004.
- The office hosted several study tours of senior-level overseas delegations and visits of representatives from other countries.
- A satisfaction survey of a random selection of complainants was conducted.
- A range of policies and guidelines for human resource activities was developed and adopted, including a Conflict of Interest Policy, Occupational Health and Safety Policy and Guidelines, Work Level Standards, a Performance Management Program, and guidelines for study assistance, leave and salary packaging.
- A new two-year Certified Agreement was endorsed by 95% of employees who voted.

At the same time, however:

- We had to replace our complaints management system after a relatively short time, writing off \$195,000 worth of this asset.
- The continued pressure on staff, particularly from the volume of more complex complaint issues, has had to be addressed through improved work practices and more quality control.
- The consequences of the almost simultaneous departure of the Ombudsman and Deputy Ombudsman late in 2002–03 were still being felt, with some key matters delayed.

OUTLOOK FOR 2004–05

In the coming year, the Ombudsman aims to:

- establish the office of the Postal Industry Ombudsman
- develop and implement an enhanced and effective outreach program to rural and regional Australia
- establish improved oversight of surveillance devices
- implement a new complaints management system with integrated work practices and complaint investigation guidelines
- enhance the capability for online complaint lodgement
- explore a benchmarking exercise with State Ombudsmen on performance measurement
- improve the efficiency and effectiveness of complaint handling, especially through implementation of the new complaints management system.

FEATURE

act regional team

The Commonwealth Ombudsman is also the ACT Ombudsman, performing the role under the *Ombudsman Act 1989* (ACT) in accordance with a Memorandum of Understanding between the Ombudsman and the ACT Government. Complaints received in the Ombudsman's Canberra office concern Australian Government as well as ACT Government departments and agencies, and are handled by the ACT Regional Team.

The ACT Regional Team comprises eight staff, headed by a Senior Assistant Ombudsman. The Team is experienced in handling a diversity of complaints, from local planning and road traffic matters to complaints about national social welfare and immigration issues.

The Team is located in a shopfront on the ground floor of the National Office in

Canberra. Since the opening of the shopfront in June 2004 there has been an increase in the number of people attending in person to discuss and lodge their complaints about Australian and ACT Government departments and agencies.

The shopfront has increased public awareness of the existence and role of the office and the service it provides to the community. Team members resolve complaints and provide information on other complaint-handling bodies at the local and national level. The Team also raises awareness of the office through its interaction with community sector organisations and individuals. Outreach activities extend to rural and regional areas of NSW to ensure that people are aware of and have access the Ombudsman's office.



about us

HISTORY AND ESTABLISHMENT

The office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976*, and is administered by the Prime Minister. In 1971, the Commonwealth Administrative Review Committee issued a report recommending that an Ombudsman office be established. The Committee proposed a new and distinctive system of administrative law in Australia. It envisioned that the Ombudsman would play a part, along with courts and administrative tribunals, in examining government administrative action.

The office commenced operation on 1 July 1977. Since then, seven Commonwealth Ombudsmen have been in office. Over time, the responsibilities of the Ombudsman have expanded to cover:

- complaints about Australian Federal Police (AFP)—1981
- complaints about Freedom of Information—1982
- Defence Force Ombudsman role—1983
- responsibility for compliance auditing of AFP and National Crime Authority (now Australian Crime Commission) telecommunication intercept records—1988, with added responsibilities for monitoring controlled operations in 2001
- Australian Capital Territory Ombudsman—1989
- Special Tax Adviser function created—1995
- Postal Industry Ombudsman responsibilities to be added in 2004–05.

ROLE AND FUNCTIONS

The Commonwealth Ombudsman has two major statutory roles; both aim to safeguard the rights of people who deal with Australian Government agencies. These roles are:

- the investigation and review of administrative actions of Australian Government officials and agencies by investigating complaints from individuals, groups or organisations

- ‘own motion’ or ‘own initiative’ investigations by undertaking investigations of Commonwealth administrative actions—that is, on the initiative of the Ombudsman—often arising from the insight gained from handling individual complaints.

In either case, the Ombudsman can recommend that corrective action be taken by an agency. This occurs either specifically in an individual case or generally by a change to relevant legislation, administrative policies or procedures.

‘A key objective of the Ombudsman is to foster good public administration within Australian Government agencies ...’

The guiding principle in an Ombudsman investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or otherwise wrong.

In other words, Ombudsman investigations are based on assessing whether there has been defective administration. A key objective of the Ombudsman is to foster good public administration within Australian Government agencies, ensuring that the principles and practices of public administration are sensitive, responsive and adaptive to the interests of members of the public.

The Ombudsman Act confers two specialist roles on the Ombudsman:

- **Defence Force Ombudsman**—handling grievances lodged by serving and former members of the Australian Defence Force
- **Taxation Ombudsman**—handling complaints about the Australian Taxation Office.

AFP

Under the *Complaints (Australian Federal Police) Act 1981*, the Commonwealth Ombudsman and the AFP are jointly responsible for managing complaints about AFP members. These members may be employed in international, national and ACT community policing duties.

ACT Ombudsman

The Commonwealth Ombudsman also performs the role of ACT Ombudsman under the *Ombudsman Act 1989* (ACT) in accordance with a Memorandum of Understanding between the Ombudsman and the ACT Government. The Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the ACT Ombudsman function.

Values

The key values of the Commonwealth Ombudsman are:

- independence
- impartiality
- integrity
- accessibility
- professionalism
- teamwork.

ORGANISATION AND STRUCTURE

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

The Ombudsman and Deputy Ombudsman are statutory officers appointed under the *Ombudsman Act 1976*. Staff are employed under the *Public Service Act 1999*.

The office comprises a range of functional elements:

- Central office functions and responsibilities (including human resources, information technology, financial services, records management and public relations) and the principal specialist teams are based in the National Office in Canberra.
- Offices throughout Australia handle complaints and undertake some specialist work. Complaint handling relating to the ACT Ombudsman function is performed in Canberra. A Senior Assistant Ombudsman, located in Melbourne, supervises the Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney offices, as well as other corporate functions.



Executive team (from left): Helen Fleming, John Taylor, Prof. John McMillan (Commonwealth Ombudsman), Ron Brent (Deputy Ombudsman), Mary Durkin and Philip Moss.

Three Senior Assistant Ombudsman manage the specialist teams located in the National Office:

- **ACT Regional Team**—dual role in complaint handling relating to Australian Government and ACT Government departments and agencies.
- **Defence Team**—specialised advice and complaint handling relating to the Australian Defence Force and Department of Veterans' Affairs, also specialising in Customs, Comcare and Comsuper complaints.
- **Immigration Team**—specialised advice and complaint handling relating to the Department of Immigration and Multicultural and Indigenous Affairs.
- **Law Enforcement Team**—complaint handling, monitoring and investigation of law enforcement activities relating to Australian Government law enforcement agencies.
- **Social Support Team**—specialised advice and complaint handling relating to the Department of Family and Community Services, Centrelink, and the Child Support Agency.
- **Taxation Team**—specialised advice and complaint handling relating to the Australian Taxation Office, under the supervision of the Ombudsman's Special Tax Adviser.

Chart 1 illustrates the organisational structure of the Ombudsman's office. This annual report contains feature pages of the specialist teams.

OUTCOME AND OUTPUT STRUCTURE

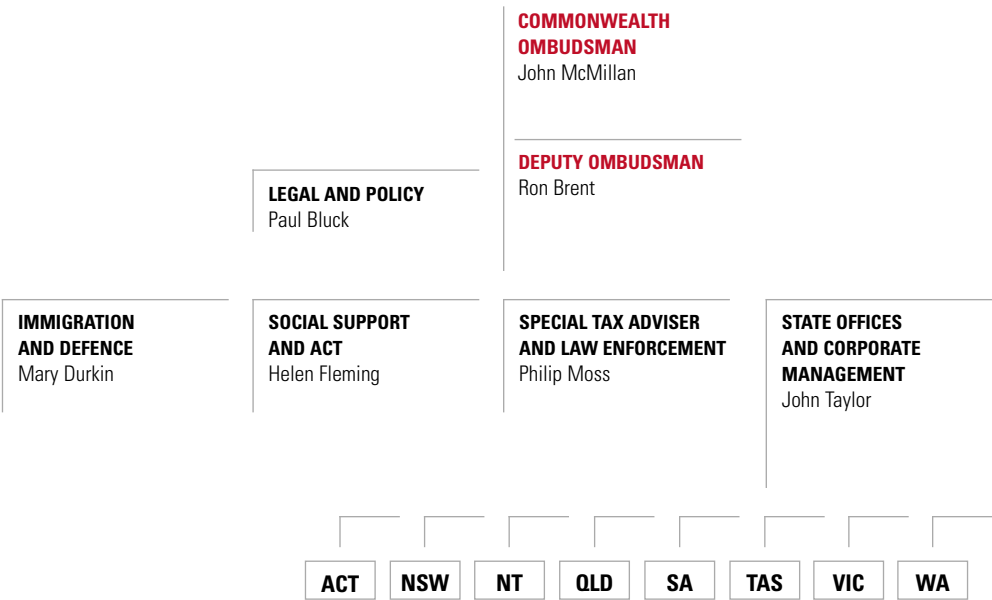
Our 2003–04 strategic plan provides broad direction for our work, and the 2003–04 Portfolio Budget Statements define one central outcome for the office, supported by two outputs.

The central outcome is to achieve equitable resolution of complaints from the public and foster improved and fair administration by Australian Government agencies. The supporting outputs are the:

- provision of a complaint management service for government
- provision of advice to government to improve public administration.

Details of the Commonwealth Ombudsman's achievement of the outcome and outputs are in the Performance Report chapter.

CHART 1 Commonwealth Ombudsman organisational structure, 2003–04



Strategic plan

The major objectives outlined in the office's 2003–04 strategic plan are to:

- investigate complaints against Australian Government agencies and make recommendations for resolving complaints
- foster good complaint handling in Australian Government agencies
- encourage and assist people to resolve problems directly with government agencies
- highlight problems in public administration through complaint handling, own motion investigations and reporting
- focus attention on the adverse impact government administration can have on individuals
- promote open government

- inspect the accuracy and comprehensiveness of law enforcement records, including telephone interceptions and controlled operations
- provide assistance to Ombudsman offices in the Asia–Pacific region.

Business plans

Each specialist team and office throughout Australia has developed a detailed business plan outlining strategies and activities to support the strategic plan. The plans are customised to reflect current challenges and relevant issues facing individual teams. These business plans are, in turn, used to develop individual work plans for staff members.

The strategic plan for the office is being reviewed, and business plans are being developed for 2004–05.

FEATURE

defence team

The Commonwealth Ombudsman is also the Defence Force Ombudsman (DFO), a function conferred in 1983. The role of the DFO is to investigate complaints from serving and former members of the Australian Army, Navy and Air Force. This is different from the standard role of the Commonwealth Ombudsman, which does not include investigation of complaints arising from employment-related matters in the Australian Public Service.

The DFO's responsibility includes investigation of complaints arising from decisions in relation to postings, payment of allowances and discharge action and extends to the provision of compensation, pensions and support services. The principal agencies within the DFO's jurisdiction are the Department of Defence, the Defence Housing Authority and the Department of Veterans' Affairs (DVA).

The Defence Team is located in Canberra and comprises three investigation staff. The Team investigates the more complex complaints received by the DFO. Ombudsman staff in offices throughout Australia investigate straightforward complaints received in their geographical location.

Team members meet regularly with representatives from the Department of Defence's Complaint Resolution Agency to discuss current issues arising from complaints and to develop and implement strategies to improve the effectiveness of complaint investigation by both agencies.



Regular liaison with key contacts in DVA, the Department of Defence and the armed forces also helps the Defence Team to maintain up-to-date knowledge of legislation and procedures that may result in complaints. The Defence Team is better placed as a result to provide advice and backup to other Ombudsman staff throughout Australia.

We are currently working closely with the Complaint Resolution Agency and the Inspector-General of the Australian Defence Force, to look at the nature of complaints coming through to our office and more effective means of resolving complaints. This should result in faster responses and better service to complainants, and hopefully less bureaucracy in the handling of complaints.

Further information in Chapter 5 (pp. 46–48).

performance report

This chapter of the report details performance relating to the resources appropriated to the Ombudsman by the Australian Government and agreed outcome and outputs.

The performance framework summarised in the summary table of outcome and output achievements does not cover all of the office's diverse range of activities. A summary of achievements follows the performance table to provide a context for the office's formal reporting requirements.

The role of the Commonwealth Ombudsman is principally performed under the following legislation.

Ombudsman Act 1976 (Cth)

The Commonwealth Ombudsman can consider complaints about almost all Commonwealth agencies and some contractors delivering government services to the community. Under this Act, the Commonwealth Ombudsman is also the Defence Force Ombudsman and is empowered to deal with complaints by serving or former members of the Australian Defence Force, and is the Taxation Ombudsman in relation to complaints about the Australian Taxation Office (ATO).

Complaints (Australian Federal Police) Act 1981 (Cth)

The Ombudsman has a role in the handling and investigation of complaints against the Australian Federal Police (AFP), in their national and ACT policing roles.

Ombudsman Act 1989 (ACT)

The Commonwealth Ombudsman is the ACT Ombudsman in accordance with a Memorandum of Understanding between the Ombudsman and the ACT Government.

Complaints received and finalised about ACT Government departments and agencies are included in the Ombudsman's overall complaint-handling

numbers. The Ombudsman has provided more detail on the performance of the ACT Ombudsman function in the ACT Ombudsman 2003–04 Annual Report to the ACT Legislative Assembly. The annual report is available at www.ombudsman.act.gov.au.

PERFORMANCE AT A GLANCE

Summary table of outcome and output achievements

Outcome *Achieve equitable outcomes for complaints from the public and foster improved and fair administration by Australian Government agencies.*

Budgeted price of outputs	\$10.295m
Actual price of outputs	\$10.520m
Budgeted Departmental appropriations	\$9.376m
Actual Departmental appropriations	\$9.462m
Budgeted revenue from other sources	\$0.919m
Actual revenue from other sources	\$1.058m



Kay Templeton presenting on *Case Management* at the Ombudsman's Advanced Investigations Course, March 2004.

OUTPUT 1 Provision of a complaint management service for government

Performance indicators	Achievements
Quality Feedback from clients and stakeholders on satisfaction with service delivery, timeliness and outcomes	Achievement A client satisfaction survey conducted in 2004 found overall 65% of complainants were satisfied with service delivery, 73% were satisfied with timeliness in complaint handling, and 56% were satisfied with outcomes
Quantity Number of complaints received in accordance with long-term trends is expected to be around 20,000; the number of other approaches from the public expected to be around 15,000	Achievement We received 17,496 complaints nationally and 9,036 other approaches (down from the previous year)
Quantity Number of complaint issues finalised approximately 22,000	Achievement We finalised 19,639 complaint issues
Quantity Number of complaint issues investigated and finalised around 6,500	Achievement We investigated and finalised 5,910 complaint issues

OUTPUT 2 Provision of advice to government to improve public administration

Performance indicators	Achievements
Quality Assessment of improvement to government administration, including feedback from departments and agencies on the value of advice received from the Ombudsman and the extent to which Ombudsman recommendations have been implemented	Achievement A very high proportion of recommendations were adopted during the year
Quantity The number of formal recommendations made to departments and agencies aimed at improving administration and service delivery which arise from reports of own motion and systemic investigations	Achievement Reports on four own motion investigations were released, with 31 recommendations accepted by agencies and one not accepted
Quality Feedback from relevant Ministers and the Commonwealth Parliament on the relevance and utility of Ombudsman reports on auditing and monitoring activities related to law enforcement	Achievement Reports on auditing and monitoring activities relating to law enforcement were provided to the Attorney-General and the Presiding Officers of Parliament
Quantity Completion of at least two audits of telecommunications intercept records each year and provision of a timely and complete report to the Minister	Achievement A total of four inspections of telecommunications intercept records were conducted during the year: two inspections at the AFP and two inspections at the ACC. A report was provided to the Attorney-General
Quantity Quarterly inspection of law enforcement agency controlled operations records and provision of timely and comprehensive report to the Parliament	Achievement A total of four inspections of controlled operations records were conducted during the year: two inspections at the AFP and two inspections at the ACC. The 2002–03 monitoring controlled operations report was tabled in Parliament

Full details of the total price of agency outputs of the Ombudsman's office are detailed in Note 20 of the Financial Statements.

OUTPUT 1 PROVISION OF A COMPLAINT MANAGEMENT SERVICE FOR GOVERNMENT

Output 1.1 Feedback

Performance indicator *Feedback from clients and stakeholders on satisfaction with service delivery, timeliness and outcomes*

Satisfaction

In May 2004 we commissioned a market research company to conduct a Client Satisfaction Survey of 2,000 complainants across all jurisdictions of the Ombudsman's office. The survey found that the majority of complainants were satisfied with the service they received from the Ombudsman's office. Where the office investigated complaints, some 65% of complainants were satisfied that staff had done as much as they should have to help. Of complainants referred by staff to the relevant agency in the first instance, 74% said they would consider using the Ombudsman's office for future complaints. A large majority (87%) of complainants who were advised to take up their complaint directly with the agency followed our advice.

These satisfaction rates reflect the fact that people using our services are, by definition, already dissatisfied before approaching our office. Other factors can also affect satisfaction levels. For example, some people with an easily resolved complaint are advised that they should first contact the agency. Any misapprehension about the Ombudsman's role has an impact on evaluation of the office.

While the overall results were pleasing, the survey highlighted a number of areas where we can make improvements to our services and training programs to address areas of weakness and to improve consistency. In the coming year we will expand our training programs to include mediation and alternative dispute resolution,

dealing with difficult people, and management skills. In addition, we aim to provide more information to people about agencies' internal complaint-handling areas via our website and publications. This will enable complainants to deal with agencies directly in the first instance, leaving Ombudsman staff to deal with the more complex complaints.

Timeliness in complaint handling

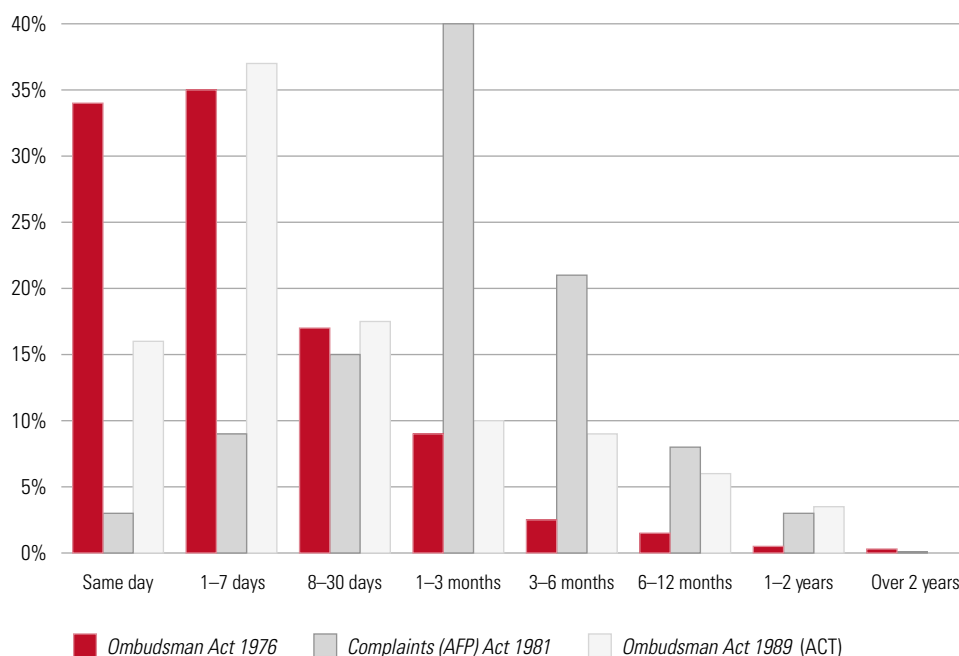
In 2003–04, 83% of all complaints were finalised within one month of receipt—consistent with previous years and marginally below the target of 85% for the year.

The proportion of investigated complaints finalised within one month was 69%, slightly better than last year (65%).

Data from our complaints management system is used to monitor response times and to identify delays. With many of the complaints we investigate, we need to factor in the time it takes for agencies to provide us with information. Quality assurance reviews are conducted for 75% of complaints. Monthly statistical reports enable senior management to monitor current issues and trends.

Timeliness in the handling of complaints about the AFP has remained satisfactory this year. The different complaint-handling procedure established by the Complaints Act means that the majority of investigations and conciliations of complaints are first conducted by AFP Professional Standards, followed with a review by the Ombudsman's office. This is necessarily a longer process than for the handling of general complaints, but it is pleasing to note that this year the office finalised over 89% of all AFP complaints within six months of receipt.

The Ombudsman has reported in detail about timeliness in the handling of complaints about ACT agencies in a separate report as ACT Ombudsman. This report is available at www.ombudsman.act.gov.au. Figure 3.1 shows the time taken to finalise complaints under the three Acts in 2003–04.

FIGURE 3.1 Time to finalise complaints, by Act, 2003–04**TABLE 3.1** Remedies provided by Act, 2003–04

Remedy	<i>Ombudsman Act 1976</i>	<i>Complaints (AFP) Act 1981</i>	<i>Ombudsman Act 1989 (ACT)</i>	Total
Reduced payment	70			70
Refund given	148		4	152
Penalty waived	20		3	23
Compensation	39	1		40
Settlement	1			1
Act of Grace payment	7		3	10
Other financial	327	1	4	332
Action expedited	1,466	3	38	1,507
Decision changed	447	1	10	458
Apology/error	801	18	19	838
Explanation	3,239	24	94	3,357
Other non-financial	390		6	396
Disciplinary	68	11	5	84
Policy law change	119	8	4	131
Other system change	133	4	7	144
Total	7,275	71	197	7,543

Remedies

In 2003–04, as in previous years, the most common remedy for complaints was the provision of a detailed explanation by an agency of its decision or action. This was particularly the case in complaints about police, and reflected the ongoing commitment of the AFP to conciliation of less serious matters. A remedy was provided in 26% of complaints finalised. A breakdown of remedies by Act is provided in Table 3.1.

Service quality

We use both positive and negative feedback from complainants to improve our services and identify areas needing improvement. We also apply the same principles to our own operations that we espouse for other Commonwealth agencies: specifically, there should be a clear-cut procedure by which a person who is not satisfied with the way in which an investigation has been handled can seek an internal review of the matter.

The internal review process offered to complainants is set out in the Commonwealth Ombudsman’s Client Service Charter. A more senior officer who was not directly involved in handling the original complaint always carries out internal reviews.

In 2003–04, the office received 107 requests for review, a 23% decrease on the number of similar requests received last year. The total figure is less than 1% of total complaints finalised. Table 3.2 sets out the reasons expressed by complainants who sought review during the year.

Of the 107 review requests received, 95% related to decisions or actions of the office on complaint investigations. The main reasons expressed by complainants for seeking a review were wrong decision/action or advice, failure to address issue or biased decision.

During the year, 102 reviews were finalised, including 23 review requests received before 30 June 2004. Of those reviews finalised, the original outcome was affirmed in 88 reviews (or almost 86% of reviews). The office agreed to conduct additional investigation in eight reviews. Of the six reviews remaining, one complaint was found to be substantiated and corrective action taken, two were found to be unsubstantiated, and in three reviews the office agreed to change its decision on the original complaint. These review outcomes are summarised in Table 3.3.

TABLE 3.2 Requests for internal review of Ombudsman action, 2003–04

Complainant’s reason for seeking review		Ombudsman Act 1976	Complaints (AFP) Act 1981	Ombudsman Act 1989 (ACT)	Total
Decision/action	Biased	5			5
	Failed to address issue	12	1	1	14
	Misunderstood issue	2		1	3
	Other	1			1
	Wrong	71	4	4	79
Advice	Wrong	1			1
Behaviour	Rudeness	1			1
Practice and procedures	Inadequate	2			2
	Unfair			1	1
Total		95	5	7	107

TABLE 3.3 Decisions by Ombudsman's office on internal review, 2003–04

Review decision	<i>Ombudsman Act 1976</i>	<i>Complaints (AFP) Act 1981</i>	<i>Ombudsman Act 1989 (ACT)</i>	Total
Outcome affirmed	78	8	2	88
Outcome varied	3			3
Further investigation	6	1	1	8
Unsubstantiated	1		1	2
Substantiated	1			1
Total	89	9	4	102

Note: Of the 102 reviews finalised in 2003–04, 23 requests were from the previous year.

Output 1.2 Complaints received

Performance indicator *number of complaints received in accordance with long-term trends is expected to be around 20,000; the number of other approaches from the public expected to be around 15,000.*

During 2003–04, we received a total of 17,496 complaints, a decrease of 12% on the previous year. This decrease in total complaints received is against the trend over the past few years, in which the number of complaints received has been fairly stable. There has, however, been a steady increase in the number of more complex matters and in complaints raising systemic issues, as detailed in the agency-specific chapters of this report.

'Other approaches' refers to contact by members of the public with the Ombudsman's office that is not recorded as a complaint, such as out-of-jurisdiction matters and requests for information. There was a fall of 19% to 9,036 in 'other approaches' to the office in 2003–04 compared with the previous year and a fall of 40% against the estimated performance indicator of 15,000. This decrease is in line with that for complaints received.

The decrease in total complaints received in 2003–04 was experienced in most areas. There were significant decreases in complaints received about the Department of Immigration and Multicultural and Indigenous Affairs (down 23%),

the Child Support Agency (down 20%), Centrelink (down 16%) and the ATO (down 10%), and a slight decrease in complaints received about the AFP (3%).

This decrease was offset by an increase in complaints about the Department of Transport and Regional Services (up 112%) and the Department of Employment and Workplace Relations (up 20%).

The decrease in the total number of complaints received during 2003–04 may reflect the effort some of the larger departments and agencies have put into improving internal complaint-handling processes. This may also explain the increasing average complexity of complaints being handled by the Ombudsman's office and the length of time required to investigate and finalise complaints (as more of the simple complaints are handled by the agencies).

There was an increase of 19% in the number of complaints lodged electronically, with 1,020 complaints being received by this method, and a fall of 19% in the number of complaints lodged in person. Opportunities for better collection of electronic complaints will be evaluated in 2004–05 when the office's website is redeveloped.

Tables 3.4 and 3.5 detail complaints and approaches received in 2003–04 by Acts and office receiving and complaints received by method received.

TABLE 3.4 Complaints and approaches received, 2003–04

Legislation	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
<i>Ombudsman Act 1976</i>	1,397	4,427	246	3,354	1,406	494	3,254	1,754	16,332
<i>Complaints (AFP) Act 1981</i>	677	13	3	4	1	1	8	5	712
<i>Ombudsman Act 1989 (ACT)</i>	445	3		1		1	2		452
Total complaints	2,519	4,443	249	3,359	1,407	496	3,264	1,759	17,496
Other approaches	847	2,401	108	2,950	539	40	1,485	666	9,036
Overall total	3,366	6,844	357	6,309	1,946	536	4,749	2,425	26,532

TABLE 3.5 Method of receipt, 2003–04

Office	Telephone	Written	In person	Electronic	AFP	Total
ACT	1,184	599	96	230	410	2,519
NSW	3,687	444	60	252		4,443
NT	181	23	29	16		249
QLD	2,820	312	49	178		3,359
SA	1,181	145	43	38		1,407
TAS	448	27	14	7		496
VIC	2,620	403	59	182		3,264
WA	1,346	258	38	117		1,759
Total	13,467	2,211	388	1,020	410	17,496

National complaints line

During the year, the office received a total of 27,160 telephone calls to its 1300 national complaints number. This equates to an average of 109 calls per day. On average, 58% of calls were from regional areas of Australia, 38% from inside the metropolitan zones and the remaining 4% from mobile phones. Table 3.6 provides detail.

Complaints by agency

In 2003–04, complaints about Centrelink, the ATO and the Child Support Agency accounted for 67% (11,746 complaints) of the total number of complaints received, down 3% from last year.

There was a decrease of 10% in complaints received about the ATO, as mentioned. This is the fourth consecutive year that complaint numbers

TABLE 3.6 Calls received through national complaints line, 2003–04

Office	Metropolitan	Non-metropolitan	Mobiles	Total
ACT	903	641	53	1,597
NSW	2,768	6,566	363	9,697
NT	242	374	26	642
QLD	1,909	4,466	298	6,673
SA	946	828	61	1,835
TAS	131	119	10	260
VIC	2,280	2,531	165	4,976
WA	1,197	230	53	1,480
Total	10,376	15,755	1,029	27,160

about the ATO have fallen, reflecting the ‘bedding down’ of the new tax system and also the settlement opportunity for mass-marketed scheme investors. These factors are discussed in more detail in Chapter 5 of this report.

The total number of complaints about the Department of Immigration and Multicultural and Indigenous Affairs fell by 23% compared to the previous year.

The number of complaints received about Australia Post was in line with the previous year: 1,079 in 2003–04 compared to 1,082 in 2002–03.

Charts comparing complaint trends over the past five years for those agencies against which the most complaints to the Ombudsman are made are included in Chapter 5.

Output 1.3 Complaints finalised

Performance indicator *Number of complaint issues finalised approximately 22,000.*

This year, the Ombudsman’s office finalised 17,418 complaints nationally, compared to 19,964 in 2002–03 (a 13% decrease).

Complaints made to the Ombudsman often include more than one issue. For example, a complainant may allege that a decision was not only wrong substantively, but also that the agency failed to

provide accurate advice, was unreasonably slow, or that client service staff of the agency displayed an inappropriate attitude. Similarly, different issues within the same complaint may result in different actions by the Ombudsman’s office. In the example above, the office may suggest that the complainant pursue internal review mechanisms with respect to the agency’s substantive decision, but may investigate the issues around delay and service delivery. It is for this reason that the Ombudsman’s office reports also on complainant issues finalised by the office.

In 2003–04, 19,639 issues were finalised, arising from the 17,418 complaints finalised. Of these 19,639 issues, the Ombudsman’s office investigated 30%, compared to 29% of complaint issues investigated in the previous year. The remaining 70% of complaint issues were usually finalised by the complainant being advised to raise the issue with the agency, or by a finding that investigation of the complaint was not warranted.

Output 1.4 Complaints investigated

Performance indicator *Number of complaint issues investigated and finalised around 6,500.*

Of the complaint issues investigated and finalised, some agency error or deficiency was identified in 20% of complaints (compared to 29% in 2002–03). No error or deficiency was identified in 43% of

instances (compared to 42% last year). In the remaining 37% of issues investigated, complaints were resolved without the need to determine whether or not the cause of the problem had been defective administration, and no determination about the agency's performance was made. Further details of investigation outcomes may be found in the 'Statistics' chapter at the end of this report.

Causes of complaint

Following an established trend, the majority of the complaint issues finalised this year by the Ombudsman's office under the *Ombudsman Act 1976* related to the correctness or propriety of a decision or action of an agency. The remainder of the complaint issues finalised were about procedural matters, such as timeliness of agency action, or the accuracy or completeness of advice given by agencies. This is similar to the trend over the past three years.

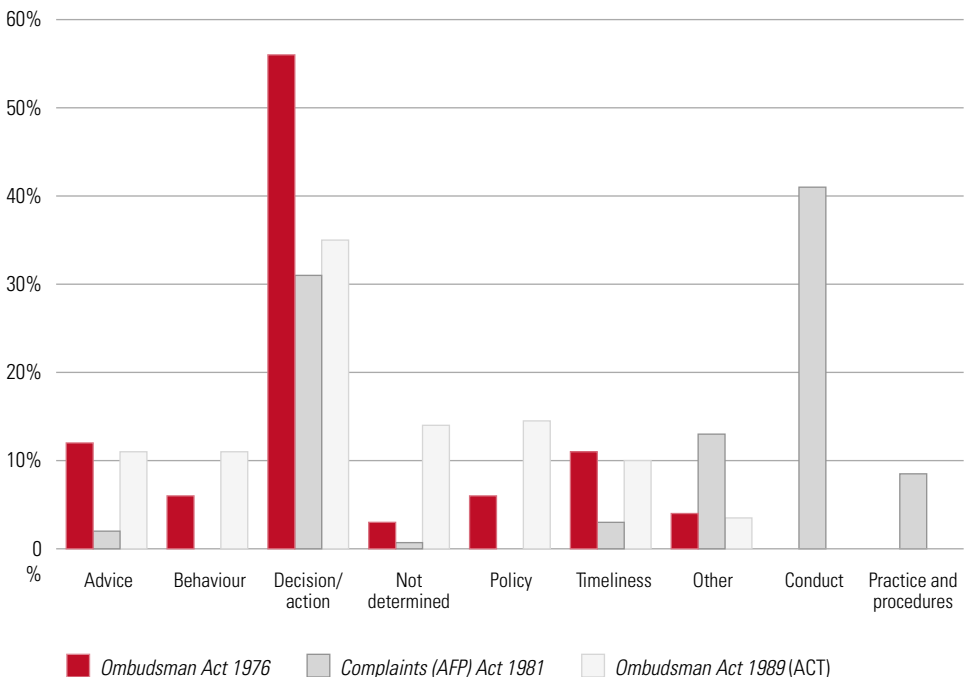
There is a different pattern in the complaints about the AFP (see Figure 3.2). Of the complaint issues finalised this year, 41% arose from the conduct of AFP members, including complaints about attitude, assault and incivility. A further 31% arose from police decisions or actions.

Decisions not to investigate

In order to understand the outcomes of complaints, it is necessary to outline the discretionary powers available to the Ombudsman.

The legislation administered by the Ombudsman confers upon the office a range of discretionary powers to decline to investigate matters in particular circumstances. For example, the Ombudsman can decline to investigate if a matter is more than 12 months old; if the complainant does not have a sufficient interest in the subject matter of the complaint; if a complainant has not

FIGURE 3.2 Cause of complaint (including FOI) by Act, 2003–04



Note: *Complaints (AFP) Act 1981*—'Other' includes actions of the AFP concerning disclosure of information, property, and use of vehicles and weapons.

first raised the complaint with the agency; or if there is a more appropriate alternative avenue of review available to the complainant.

In a practical sense, the most important of these powers is the discretion to decide not to investigate until a complainant has first raised the complaint with the agency. The rationale for deciding not to investigate is that matters in dispute should first be raised and clarified at the source of the problem. In 2003–04, 43% of issues raised in complaints to the Ombudsman were dealt with in this way.

Complaints carried forward

The total number of complaints carried forward was 1,207 at 30 June 2004, compared to 1,085 at the end of the reporting period in the previous year, an increase of 11%. This increased backlog can generally be attributed to the complexity of the complaints and the correspondingly longer period of time required to investigate those complaints.

OUTPUT 2 PROVISION OF ADVICE TO GOVERNMENT TO IMPROVE PUBLIC ADMINISTRATION

Output 2.1 Improvements to government administration and recommendations implemented

Performance indicator *Assessment of improvement to government administration, including feedback from departments and agencies on the value of advice received from the Ombudsman and the extent to which Ombudsman recommendations have been implemented.*

The Ombudsman has discretionary power to decline to investigate a complaint, unless it has first been raised with the agency concerned. This has sometimes been perceived as defining the Ombudsman as ‘the office of last resort’, but that is not an accurate description. Even where a person contacts the Ombudsman as a first point of complaint, the policy of the office is to provide guidance and some assistance to the person on how and where best to pursue the complaint in the first instance. Sample studies have been undertaken in the past to gauge the effectiveness of this referral activity, and more targeted work of

this kind will be conducted in 2004–05. A Client Satisfaction Survey conducted in May 2004 showed that the large majority (87%) of complainants who were advised to take up their complaint directly with the agency followed our advice.

The Ombudsman’s office recognises that if a complainant is to be referred back to an agency, it is vital that the agency has an effective internal complaint-handling mechanism in place. Each year the office gives a high priority to monitoring agency complaint handling and to working closely with agencies to assist them to improve their internal complaint-handling procedures. This year we conducted reviews into the complaint-handling mechanisms employed by the Department of Employment and Workplace Relations (relating to the Job Network) and the Department of Transport and Regional Services (DOTARS). The review of DOTARS’ complaint-handling mechanisms will be finalised in 2004–05.

The notion that complaint handling should first be addressed by the agency concerned is also recognised in other formal ways in the legislation establishing the Commonwealth Ombudsman. Examples are complaints about the AFP, which are ordinarily investigated in the first instance by AFP Professional Standards; and complaints in the Defence jurisdiction, which must first be pursued through the formal redress of grievance processes under the *Defence Act 1903*, other than in exceptional circumstances.

In summary, most of the investigation work of the Ombudsman’s office occurs in three areas:

- where there is no alternative avenue of resolution available to a person, because of either their circumstances or those of the particular complaint
- where there is an indication of a systemic problem in government administration, likely to affect a number of people
- where a complainant remains dissatisfied with the outcome of their treatment, despite a review having already been undertaken by an agency.

Output 2.2 Formal recommendations arising from investigations

Performance indicator *The number of formal recommendations made to departments and agencies aimed at improving administration and service delivery, which arise from reports of own motion and systemic investigations.*

During the year, the Ombudsman released reports on four own motion investigations; two of the investigations were completed and provided to the agency in 2002–03, and were reported in last year's annual report. These reports are available at www.ombudsman.gov.au. Several own motion investigations are currently being conducted and are due to be completed in early 2004–05.

Of the two own motion investigations conducted and finalised in 2003–04, all of the 15 recommendations in the investigation reports were accepted by agencies.

The Ombudsman's own motion investigation reports released in 2003–04 comprised:

- **July 2003**—Australian Taxation Office complaint handling
- **August 2003**—Department of Employment and Workplace Relations, complaints handling in the Job Network
- **May 2004**—Child Support Agency change of assessment decisions made on the basis of parents' income, earning capacity, property and financial resources
- **June 2004**—Australian Crime Commission investigation into a review of the operational and corporate implications for the Australian Crime Commission arising from alleged criminal activity by two former secondees.

The high incidence of departments and agencies accepting Ombudsman recommendations for systemic and administrative improvements suggests a highly satisfactory level of performance in identifying opportunities for improvement in administrative practices and procedures during 2003–04.

Under powers conferred by the Complaints Act, Ombudsman staff worked on four special investigations relating to the AFP. Three of these investigations focused on conduct rather than

administrative or service delivery issues. The other related to an investigation of certain aspects of the AFP's administration of the National Witness Protection Program that had come under criticism in a matter before a court. Two of these investigations will be completed in 2004–05.

Output 2.3 Feedback on auditing and monitoring activities

Performance indicator *Feedback from relevant Ministers and the Commonwealth Parliament on the relevance and utility of Ombudsman reports on auditing and monitoring activities related to law enforcement.*

Throughout the year, the Ombudsman provided reports to the Attorney-General under the *Telecommunications (Interception) Act 1979* (the TI Act) and to the Minister for Justice and Customs in relation to inspections undertaken in accordance with the *Crimes Act 1914*. A report of our activities in inspecting controlled operations was tabled in Parliament. Feedback from the Attorney-General has indicated his satisfaction with the performance of the office.

The AFP and ACC regularly consult and liaise with Ombudsman staff on issues such as training and development, current and emerging issues, and our expectations of their staff concerning the administration of telecommunications interception warrants. This demonstrates the growing maturity of our relationship with these agencies.

Ombudsman staff also met with representatives from the Security Law Branch of the Attorney-General's Department during the year to discuss matters relating to the interpretation of the TI Act and to provide comments on proposed policy changes to the Act.

Output 2.4 Audits of telecommunications intercept records

Performance indicator *Completion of at least two audits of telecommunications intercept records each year and provision of a timely and complete report to the Minister.*

In 2003–04, a total of four inspections of telecommunications intercept records were conducted. Two inspections were conducted at the AFP and two inspections at the ACC. A report

was made to the Attorney-General on the results of those inspections. The reports concluded that the agencies are generally complying with the requirements of the TI Act.

These inspections continue to form a core element of the work of the Ombudsman's Law Enforcement Team. The inspection methodology used and resource levels required are regularly reviewed to ensure that the accountability role of the office continues to be met.

Output 2.5: Inspection of controlled operations records

Performance indicator *Quarterly inspection of law enforcement agency controlled operations records and provision of timely and comprehensive report to the Parliament.*

During the year, a total of four inspections of controlled operations records were conducted.

Two inspections were conducted at the AFP and two inspections at the ACC. These inspections resulted in reports to both agencies and the Minister for Customs and Justice, a briefing to the Parliamentary Joint Committee on the ACC, and the presentation of a report to the Speaker of the House of Representatives and the President of the Senate in January 2004. The reports concluded that the agencies are generally complying with the requirements of the Crimes Act and generally providing comprehensive and accurate information in formal reports.

Following the Ombudsman's briefing to the Parliamentary Joint Committee on the ACC in October 2003, an own motion investigation was commenced under the *Ombudsman Act 1976* into controlled operations carried out by the ACC under State and/or Territory legislation. The investigation is due to be completed in 2004–05.

FEATURE

immigration team

The Immigration Team is located in the National Office in Canberra. The Team is supervised by a Senior Assistant Ombudsman and comprises three senior staff who are experienced in dealing with a range of complex cases and major investigations.

Complaints come in to all eight offices of the Commonwealth Ombudsman and are generally dealt with by the office in which the complaint is received. Highly complex complaints are referred to the Immigration Team. The role of the Team is to provide advice to other investigation officers on immigration matters, to monitor complaint trends and to identify systemic issues arising out of complaints about the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

As well as dealing with complaints in relation to DIMIA, the Immigration Team deals with complaints relating to the Migration Agents Registration Authority, the Migration Review Tribunal and the Refugee Review Tribunal. The majority of the work of the Team relates to DIMIA. The most common areas of concern are decisions made on permanent visa applications for overseas family members or spouses and on temporary visa applications for students and tourists. Complaints from detainees in immigration detention facilities most commonly relate to access to medical services, property



that was allegedly lost or stolen and incidents of assault, both by detention facility staff and by other detainees.

A key responsibility of the Team is liaison with DIMIA officers on a regular basis with the aim of improving communication and cooperation between the two agencies. This approach has been effective, with the Team regularly being asked by DIMIA to provide input into draft procedures and policies, particularly in relation to detention facilities. During the past year, the Team worked with DIMIA on a major investigation of an incident at the Port Hedland facility. An issue being taken up by the Team in liaison with DIMIA is more effective internal complaint handling in DIMIA, with a view to reducing the number of complaints about DIMIA and ensuring more efficient handling of complaints.

Further information in Chapter 5 (pp. 49–53).

a national operation

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

To strengthen our role as a national complaint-handling institution, the Commonwealth Ombudsman maintains eight offices in capital cities throughout Australia. Not all complaint-handling or oversight bodies in Australia have followed that path. Alternatives include maintaining an office in only one or two capital cities or establishing a national call centre. We have not taken those steps, even though we receive most complaints by telephone, mail or email.

This chapter describes our national operation and explains the benefits of maintaining a national presence through our eight offices. An implicit theme is that our structure has been shaped and refined over time. In effect, the experience and wisdom of the office is captured not only in the philosophy and principles of complaint handling that it has developed and follows, but in the office structure and relationships that provide a framework for the complaint-handling function.

This account of our national operation, while explanatory for the most part, touches on a related issue to do with the preferred model for establishing new complaint-handling and oversight mechanisms. Proposals have been made from time to time in public debate for creating specialist ombudsman offices, to handle complaints about matters such as aviation, education, science, children's affairs or freedom of information. Many issues need to be considered in creating a new complaint-handling function, but a threshold issue is whether to house that function in a new and

independent office, or instead to confer it upon an existing body (as the Government chose to do in conferring the proposed role of Postal Industry Ombudsman upon the Commonwealth Ombudsman). This chapter aims to contribute to this debate by outlining some of the benefits that a national structure and complaint-handling operation can offer.

THE ORGANISATION AND OPERATION OF A NATIONAL OFFICE

The eight Commonwealth Ombudsman offices range in size from one officer in the Darwin and Hobart offices to 50 officers in the National Office in Canberra.

In 2003–04, the Ombudsman received 17,496 complaints and 9,036 inquiries from around Australia. Nearly 90% were received in the State and Territory offices. As described elsewhere in this report, each of the offices handles a common complaint load, focused mainly on a few Australian Government agencies—Centrelink, the Child Support Agency (CSA), the Australian Taxation Office (ATO), Australia Post, and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

In addition, some of our offices also discharge the role of being the specialist for specific agencies. A profile of each office was given in the 2002–03 annual report. A summary of the composition and workload of each of the eight offices in 2003–04 follows.

- **Adelaide** a staff of three; received 1,407 complaints and 539 other approaches; agency specialist for the Department of Agriculture, Fisheries and Forestry.
- **Brisbane** a staff of seven; received 3,359 complaints and 2,950 other approaches; agency specialist for the departments of Environment and Heritage, Transport and Regional Services, and Education, Science and Training.

- **Canberra** a staff of 33 investigation officers; received 2,519 complaints and 847 other approaches; agency specialist for areas such as Freedom of Information, Australian Customs Service, ATO, Comcare, Department of Defence, Centrelink, CSA, Department of Family and Community Services, law enforcement agencies, DIMIA, and ACT Government agencies.
- **Darwin** a staff of one; received 249 complaints and 108 other approaches; agency specialist for the Aboriginal and Torres Strait Islander Commission and Aboriginal and Torres Strait Islander Services.
- **Hobart** a staff of one; received 496 complaints and 40 other approaches; agency specialist for AusAID.
- **Melbourne** a staff of ten; received 3,264 complaints and 1,485 other approaches; agency specialist for the Attorney-General's portfolio and the departments of Treasury, Communications, Information Technology and the Arts, Foreign Affairs and Trade, Finance and Administration, and the Australian Broadcasting Authority.
- **Perth** a staff of three; received 1,759 complaints and 666 other approaches; agency specialist for the Department of Industry, Tourism and Resources.
- **Sydney** a staff of 11; received 4,443 complaints and 2,401 other approaches; agency specialist for the Department of Health and Ageing, the Health Insurance Commission and the Department of Employment and Workplace Relations.

In various ways the eight different offices function as part of a unified national office. Quarterly meetings of the Regional Managers of each office are held in Canberra to discuss complaint issues, office policy, and training and staff development.

'The eight Commonwealth Ombudsman offices function as part of a unified national office.'

Some of the office committees—such as the Workplace Relations Committee—include a cross-section of staff from different offices. Committees with a national membership played a leading role

in some of the projects described elsewhere in this report, such as the development of a strategic plan and a new complaints management system. All staff appointed to the office do introductory training in Canberra. Regular telephone conferences are held between all staff to discuss topical issues, to develop a consistent approach in complaint handling, and to foster shared values and strategic direction.

National integration of the work of the office is also achieved through the complaints management system that is used to record, search and retrieve complaint information. The system enables case records to be transferred efficiently within the State offices as well as from one State office to another, or to a specialist team in Canberra.

BENEFITS OF A NATIONAL OPERATION

Cooperation with State and Territory Ombudsman offices

There is an Ombudsman established in each government jurisdiction in Australia—in effect, there are nine public sector Ombudsmen. Cooperation between the offices is essential, in part to promote a common cause, but also in terms of efficient complaint handling. Many people with a complaint about government are unaware whether the complaint should be directed to the Commonwealth or a State or Territory Ombudsman. Cooperation and a close working relationship between the Commonwealth and other Ombudsmen are easier to maintain because of the national structure.

In five jurisdictions—Northern Territory, Queensland, South Australia, Tasmania and Western Australia—the Commonwealth and State Ombudsman offices are co-located and share a common reception desk. The Commonwealth Ombudsman discharges the role of ACT Ombudsman. In the other two states—New South Wales and Victoria—there is a close cooperative relationship between the State and Commonwealth Ombudsman offices.

Cooperation with State Ombudsman offices is also achieved through training. For example, during the year our Sydney office staff attended the NSW Ombudsman's training program on dealing with difficult people. Our office also continued its participation in the Joint Initiatives Group, which comprises representatives of agencies that handle

complaints or disputes and meets regularly to discuss issues of common interest. The Group conducts an annual program of seminars, which this year looked at alternative dispute resolution.

Generally, our interaction at a regional level with staff from other ombudsman and comparable agencies enables us to learn a great deal about government and complaint handling. This experience is then fed back in to our national operation.

Accessibility to the public

Though only a small proportion of complainants visit our offices, our experience is that many more people have greater confidence in the ability of the office to resolve their complaint if it is handled locally. Local presence can be a symbolic and representational issue, but there is a practical side as well. Sometimes a complaint can be better understood or more easily addressed if there is local knowledge of the government office or activity about which a complaint has been made.

Another aspect of public accessibility is that it can be important for a complaint-handling agency to be in contact with community 'gatekeepers', such as the representatives of community groups, non-government organisations, professional societies and parliamentary offices. This will be a focus of our outreach program being developed in 2004–05, and is something that is more easily handled at the local level.

A further point—indeed, a distinct theme in complaints to the Ombudsman—is that some complainants express dissatisfaction with their experience in contacting a government call centre. By creating a national office structure we have sought to downplay any sense of remoteness.

Consultation with Australian Government agencies

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

cooperation, and to discuss complaint issues and trends. When new programs are being trialled at a State or regional level, we are often briefed in advance in case unforeseen problems arise.

Responsiveness to regional differences in Australian Government administration

Problems people encounter with government are not necessarily the same on a national basis. There can be regional differences: problems experienced in an office in one state are not always the same in another. Some issues have a regional identification too, such as the immigration detention facilities. The familiarity by Ombudsman staff of the local circumstances means we are better able to deal with regional differences through our own regional offices.

Diversity in staff

Staff within the Ombudsman's office have a diversity of qualifications, skills and experience; they come from a cross-section of cultural backgrounds, and government and private sector organisations. This is important, given the variety of complaints the staff handle covering a broad spectrum of departments, agencies and members of the public. As a national organisation, recruiting from a nationwide pool of job applicants provides us with the opportunity to attract a diverse range of people.

The diversity of experience spread over eight offices can be advantageous when the need arises to transfer staff from one office to another on a permanent or temporary basis. For example, when the Assistant Ombudsman of our Adelaide office left after 16 years in mid-2003, we were able to replace him temporarily with an acting Assistant Ombudsman drawn from another office who had a similar depth of experience.



law enforcement team

The Law Enforcement Team consists of seven investigators, with a Senior Assistant Ombudsman overseeing the Team. Located in Canberra, the Law Enforcement Team handles all complaints about the Australian Federal Police (AFP) in its international and national policing roles, and its community policing role for the Australian Capital Territory. The Ombudsman's law enforcement activities also include the Australian Protective Service and the Australian Crime Commission (ACC).

Complaints about the AFP are distinguished from other complaints received by the Ombudsman in one key respect. *Under the Complaints (Australian Federal Police) Act 1981*, the AFP must inform the Ombudsman of all complaints received by the AFP. In this way, the Ombudsman oversees the AFP's handling of complaints. This approach allows the Ombudsman to ensure that complaints are handled properly and to make observations about the AFP's overall complaint handling and investigation process.

The Law Enforcement Team also inspects the records of the AFP and the ACC's

telecommunications interceptions and controlled operations (ie activities that might otherwise be unlawful but which are authorised in order to gather evidence). The results of these inspections are reported direct to the Attorney-General and to the Presiding Officers of Parliament.

The work of the Law Enforcement Team is expanding as the Australian Government extends its role in law enforcement. New legislation concerning the use of surveillance devices that will entail significant inspection work by the Team is being considered by Parliament. It is expected that similar legislation will be developed for other forms of law enforcement activity. The Team is also a contact point for persons detained under new anti-terrorism legislation.

This increased role means that the Law Enforcement Team continues to play an important part in ensuring that the accountability and integrity of law enforcement agencies is maintained.

Further information in Chapter 5 (pp. 54–63).



looking at the agencies

The majority of complaints received by the Ombudsman (78% of those received in 2003–04) concern five Australian Government departments and agencies—Centrelink, the Child Support Agency, the Australian Taxation Office, Australia Post and the Department of Immigration and Multicultural and Indigenous Affairs. This chapter focuses on particular issues that arose during the year in investigating complaints about these agencies. As well, the chapter looks at three other special areas of complaint work: complaints about the Australian Defence Force, handled by the Ombudsman discharging the role of Defence Force Ombudsman; complaints about the Australian Federal Police, handled under the *Complaints (Australian Federal Police) Act 1981*; and complaints about the handling by agencies of Freedom of Information requests.

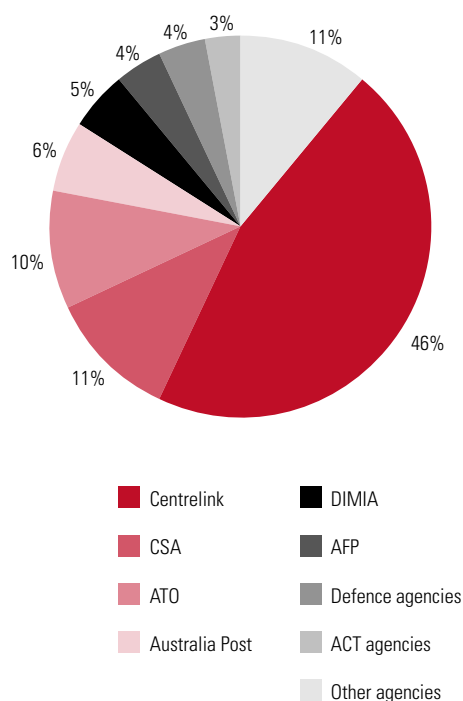
While the discussion and analysis of complaints arising in specific areas of government illustrates the work of the Ombudsman, it does not fully portray the work of the office. The issues raised in complaints to the Ombudsman are mostly about difficulties that arise between people and government generally rather than about specific problem areas. Some of these general themes are taken up in other chapters of this report (such as ‘How the Ombudsman helped people’ and ‘Problem areas in government decision making’). Examples of difficulties that commonly arise are inadequate explanation of adverse decisions, deficient record keeping, delay in decision making, and discourtesy by agency officers.

The focus of this chapter on complaints against specific agencies does not by itself accurately portray the standard of administration in those agencies. Issues have been selected in part to show the aspects of government about which people complain to the Ombudsman. Not surprisingly, those complaints are more likely to target the agencies that deal more

frequently with the public. While complaints to the Ombudsman are only a minor fraction of the decisions and actions taken each year by government agencies, they illustrate the difficulties that people face in dealing with government and to that extent provide valuable insight into the operation of government in Australia.

Figure 5.1 shows the proportion of complaints received by the Ombudsman from particular agencies.

FIGURE 5.1 Complaints received, by agency, 2003–04



australia post

The jurisdiction of the Commonwealth Ombudsman to investigate complaints against Australia Post is poised to undergo an important transformation in 2004–05. Legislation to create a separate office of Postal Industry Ombudsman was due to be introduced into the Parliament in August 2004, with a view to commencement in 2005 if enacted. A key aspect of the government proposal for a Postal Industry Ombudsman is to confer the role upon the Commonwealth Ombudsman. Additional resources for this office to perform the role were allocated in the 2004–05 Budget.

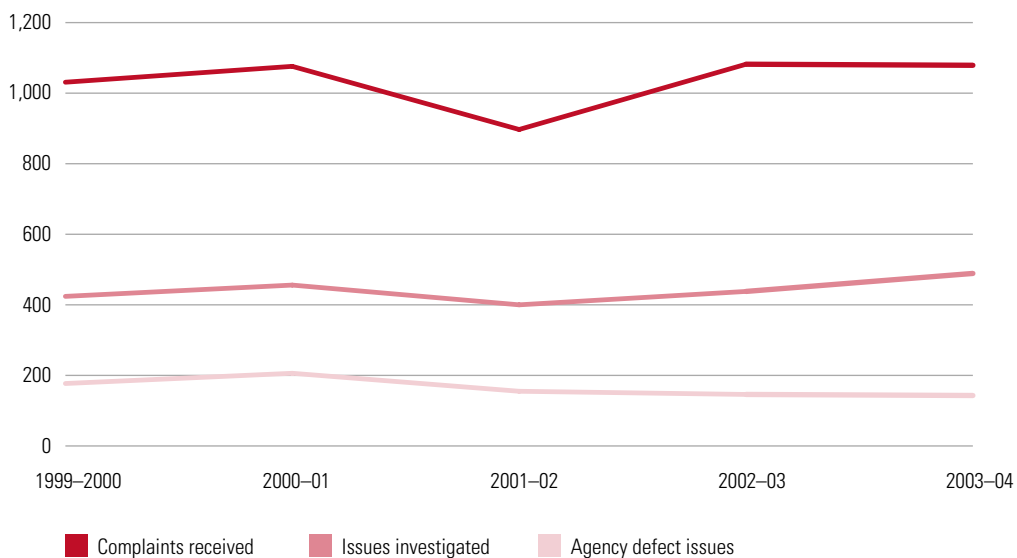
While the Commonwealth Ombudsman's role in relation to Australia Post will continue, in some respects it will become a different role. The proposed jurisdiction of a Postal Industry Ombudsman will extend to private sector postal operators that register to participate in the Postal Industry Ombudsman scheme. This scheme is distinctive in conferring jurisdiction upon a single ombudsman to handle complaints in the public and private sectors. This also reflects the commercial focus in Australia Post operations, which in turn has to be reflected in the approach to complaint handling taken by the Ombudsman.

'The proposed jurisdiction of a Postal Industry Ombudsman will extend to private sector postal operators ...'

A separate office of Postal Industry Ombudsman will be expected to develop its own profile, and to be widely known as such by postal consumers. As an aspect of that challenge, it is envisaged that future reporting on complaints against Australia Post will be dealt with in a separate Postal Industry Ombudsman annual report. It is likely, however, that residual areas of jurisdiction over Australia Post will remain within the office of the Commonwealth Ombudsman. A possible example is Freedom of Information matters.

In 2003–04, the Commonwealth Ombudsman received 1,079 complaints about Australia Post, compared to 1,082 in the previous year. Complaint numbers have been relatively stable over the past five years, apart from 2001–02 when there was a marked decrease (896 complaints). Figure 5.2 shows the complaint trends since 1999–2000.

FIGURE 5.2 Australia Post complaint trends, 1999–2004



The point has been made in earlier reports of the Commonwealth Ombudsman that the number of complaints received each year against Australia Post constitutes only a small percentage of total postal transactions (which reach as many as 50 million per day prior to Christmas). Most of the problems and complaints that arise are dealt with by Customer Complaint Centres established by Australia Post in each State and Territory. Our impression is that Australia Post's complaint handling is well managed, and in some instances the response to individual complaints exceeded what we consider was required under Australia Post's service obligations. However, no system is perfect, and occasions arose on which we formed the view that Australia Post might have handled a complaint differently or better.

In 2003–04, as in previous years, the complaints to the Ombudsman dealt mostly with domestic, international or parcel post mail deliveries: these accounted for roughly three-quarters of complaints.

Mail redirection featured as an ongoing issue, particularly where a customer's instructions on a mail redirection form were not properly followed. Australia Post addressed this issue during the year by introducing further improvements to forms to bring greater certainty and clarity to customers' requirements and expectations.

'... complaints to the Ombudsman dealt mostly with domestic, international or parcel post mail deliveries ...'

Another topic that attracted some complaints during the year was Australia Post's Unaddressed Delivery Service. Australia Post delivers unaddressed advertising items (letters, mail, catalogues etc) to delivery points and letterboxes within a specified geographical area. There is no delivery confirmation for what Australia Post describes as a 'no-frills' service. When there is a dispute, it is generally only Australia Post that can determine whether all the items have been delivered. Given the low cost of the service, Australia Post is not inclined to commit resources to a 'thorough' investigation. In these circumstances, we had discussions with Australia Post about the level and type of investigation its customers might reasonably expect about their complaints.

Several complaints were received about cash-on-delivery items. Australia Post had taken the view that it would breach privacy principles if a customer were permitted to inspect an item before deciding whether to make a payment. We took a different view, and pointed to a section in the postal legislation stating that information clearly visible on the outside cover of an article is not specifically protected. We could not, therefore, see why a postal outlet customer should not have the opportunity to view an item prior to paying. Following our investigation of one such complaint, Australia Post agreed and amended its practices relating to inspection of items before payment is made.

Another complaint that resulted in a substantial response from Australia Post concerned the packaging of compact discs (CDs). The problem is that CD Mailers are on the margin of meeting the 20 mm limit for the large letter rate rather than the small parcel rate. Some packages were charged at the lower price and others at the higher rate, even though CD Mailers were identified in Australia Post literature as below the 20 mm limit. Australia Post responded to these complaints in a number of ways, including a refund in some cases, issuing a national instruction to all retail staff, providing better instructions to suppliers, addressing the issue specifically in training programs, redesigning the CD Mailer product, and tightening the procedures for measuring CD Mailer products. Our expectation is that these changes to products and practices should significantly reduce the potential for inconsistencies in charging.

Discretionary payment of compensation to individuals on a case-by-case basis is another theme in Ombudsman investigations of Australia Post complaints. This issue arises less frequently in relation to other government agencies, where complaints more commonly deal with decisions about entitlements, allowances and payments in accordance with legislation and policy. Australia Post, by contrast, is more likely to provide discretionary compensation as a remedy to a problem or complaint. In turn, this places an onus on Australia Post to be consistent in the exercise of that discretion. During the year, we took up the greater problem of inconsistency where the decision on compensation was made by an area within Australia Post other than the Customer Contact Centres.

australian taxation office

Under section 4(3) of the *Ombudsman Act 1976*, the Commonwealth Ombudsman is also the Taxation Ombudsman when dealing with complaints about the Australian Taxation Office (ATO).

The ATO is primarily responsible for administering Australian Government taxation legislation and collecting Commonwealth revenue. Under the self-assessment system of taxation which we have in Australia—that is, where the taxpayer is responsible for the accuracy of his or her own taxation assessment—the ATO has increasingly taken on the role of providing accurate and timely information to taxpayers (and tax agents) to enable them to comply with the law. The ATO also administers some other non-taxation legislation, such as the *Superannuation Guarantee Charge Act 1992*.

INSPECTOR-GENERAL OF TAXATION

The 2003–04 financial year was the first year of operation for the Inspector-General of Taxation (IGT), whose focus is on tax systems review. The Taxation Ombudsman continues to be the only external complaint-handling agency for taxpayers with complaints about the ATO. We will also continue to identify systemic issues and remedies that flow from individual complaints and to conduct own motion investigations. To avoid any duplication in our work, we will maintain regular liaison with the IGT.

LIAISON WITH ATO

During the year, we continued to benefit from effective working arrangements with the ATO. We met regularly to discuss issues raised by complaints, such as a complaint about the ATO's handling of test and lead case litigation. The ATO accepted that, where arrangements had been reached with third parties concerning litigation involving individual taxpayers, it was important to keep the individual taxpayers informed of significant developments relating to that litigation. In a particular case raised, the ATO acknowledged that this had not been done, and indicated that it

would be open to providing realistic compensation by settling with the individual taxpayer concerned.

'... it was important to keep the individual taxpayers informed of significant developments relating to test and lead case litigation.'

The ATO briefed Ombudsman staff about a range of activities, including the compliance and debt recovery areas, and alerted us to incidents that might generate complaints. In each case brought to our attention, the ATO initiated steps to mitigate the risk of complaints and provided specific high-level briefings to the Special Tax Adviser and Tax Team staff. This provided us with up-to-date information, enabling our staff to respond effectively to these complaints.

We also contributed to the ATO's consideration of integrity issues through the Special Tax Adviser's attendance at the ATO's Integrity Advisory Committee.

We further refined arrangements between the ATO and ourselves to assist in:

- improving response times to ensure that we can shorten the time required to resolve complaints
- referring complainants directly to the appropriate person at the ATO to ensure complaints are dealt with efficiently.

ATO COMPLAINT HANDLING

In our 2002–03 annual report, we advised that the Commissioner of Taxation had accepted all of the recommendations in our own motion investigation report on complaint handling in the ATO. During 2003–04, we worked with the ATO on implementing these recommendations, particularly towards the ATO developing a single ATO-wide complaint-handling and recording system. The new system is to be in place by late November 2004, and should dramatically improve the ATO's ability to track and manage complaints. It should also result in some flow-on effects on the complaints we currently refer to the ATO, as well as on our own investigations.

Complaints overview

In 2003–04, the Ombudsman received 1,711 complaints about the ATO, compared with 1,909 the previous year (see Figure 5.3). There has been a steady reduction in the number of complaints about the ATO since 2000–01, due primarily to the declining number of complaints related to mass-marketed schemes and the bedding down of the new tax system. The office finalised 1,904 individual complaint issues, of which 24% were investigated; error or deficiency by the ATO was found in 17% of the cases investigated.

Complaints were received about a wide range of issues. Some of the more prominent complaint issues are covered below, and include active compliance and debt recovery, ‘competitive edge’ issues, tax relief, the impact of changing demographics, the GST, the TaxPack and mass-marketed schemes.

Active compliance and debt recovery

During the year, there was a decrease in the number of audit and debt recovery complaints coming to the Ombudsman, from 575 in 2002–03 to 457. This decrease was unexpected, given that the ATO increased its focus on compliance, and suggests that the ATO has improved its handling of audit and debt collection matters. Our investigation of cases found no evidence of improper or over-zealous action by tax officers. We were able to

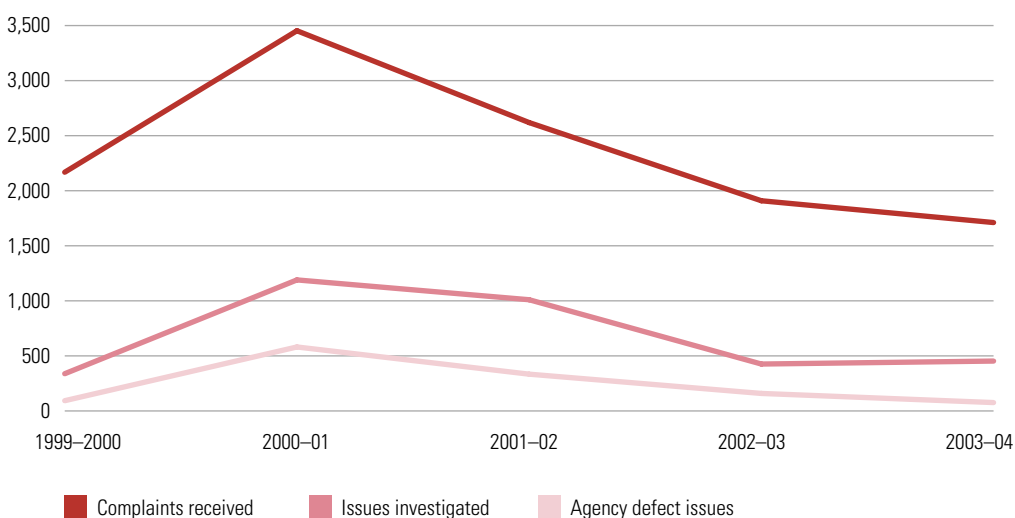
assist taxpayers by expediting completion of audits and advising people on their options about ATO recovery action against a tax debt.

The Commissioner of Taxation advised us that the ATO would continue actively to pursue outstanding tax debts. This may result in an increase in the number of bankruptcies and insolvencies. Although we appreciate the Commissioner’s obligations to the community as a whole to ensure that tax properly due and payable is collected, we are mindful of the human element involved. We can intervene where we consider the effects of ATO recovery action to be unjust or oppressive. The use of legal action, including bankruptcy or insolvency, to recover an outstanding tax debt is not in itself unreasonable, unjust or oppressive. We will continue our important work in this area to provide assurance to taxpayers, the ATO, and the community more generally.

Compliance—‘competitive edge’ issues

ATO compliance activity during the year led to some complaints raising ‘competitive edge’ issues. The concern is that not all taxpayers in the same industry are being targeted by the ATO. For example, we received a complaint from a tax agent concerned about an audit of his clients and subsequent tax adjustments. The audit in question was based on random selection and related to the taxation of incentives that some greeting card

FIGURE 5.3 Australian Taxation Office complaint trends, 1999–2004



suppliers give to newsagencies and other similar businesses. The agent considered that the ATO attention given to his clients was unfair and that failure to enforce against others in the industry put his clients at a competitive disadvantage.

The ATO was able to satisfy us that there was no evidence of a widespread practice of failure to make relevant disclosure in tax returns. As a result of the complaint, the ATO decided to focus specifically on incentives from greeting card suppliers to newsagencies and other similar businesses, including rebates and non-cash benefits relating to quantity purchases.

Following several complaints we received last year about 'competitive edge' issues stemming from GST rulings, we received two complaints from companies that conduct title searches about the application of GST to the information-broking industry. The complainants were concerned that GST did not apply to entities that were performing a search function but were not brokers. They also complained the ATO would not advise them of any steps it might be taking on the compliance front.

On the basis of our inquiries, we were satisfied that the ATO consulted the industry, was seeking to apply the law with proper regard to the particular facts of relevant transactions, and was taking appropriate steps to educate the industry and to ensure compliance. We noted that the ATO is required to comply with stringent secrecy provisions as well as privacy legislation, and concluded that there was no basis for us to be critical of the ATO for declining to provide details to the complainants about specific compliance activities.

'... we were satisfied that the ATO consulted the industry ... and was taking appropriate steps to ensure compliance.'

Tax relief

In September 2003, an important change was made to the way in which taxpayers can seek relief from their tax debts on the grounds of serious hardship. The Taxation Relief Board was abolished and replaced by a system that allows taxpayers to seek relief by submitting a simple application to the ATO. The reforms also created a right to

object to the ATO's decisions on relief, with a flow-on right of review by the Small Taxation Claims Tribunal. These reforms should streamline the process of seeking relief, with gains in both timeliness and accountability.

Impact of changing demographics in Australia

There was much policy debate during the year about the impact of changing demographics in Australia and the 'ageing' of the population. A number of cases we received highlighted an administrative issue that will be an increasing challenge for the ATO in response to this demographic change.

For example, in one case, a complaint from an elderly self-funded retired couple stemmed from their confusion about the reasons for the wife's inclusion in the PAYG instalment system. Despite a number of telephone conversations with ATO staff, the couple apparently did not understand the new system. As a result of our inquiries the ATO wrote to the taxpayer advising how the PAYG instalment system applied in the specific circumstances, explaining in simple terms the criteria for annual PAYG instalments and clarifying which notices had been sent to her. The ATO also invited the taxpayer to telephone a specified contact officer for further clarification.

The growing administrative challenge for the ATO arises from the convergence of a number of factors, including:

- the ageing population and likely increase in age-related illness
- an increasing emphasis on fully or partly self-funded retirement
- the current complexity of the tax system
- the nature of the self-assessment regime.

After we raised the general issue, the ATO advised that it was conscious of the demographic changes, having already identified seniors as a population segment requiring increasing support. It is also moving to adopt a range of products, services and strategies to target and assist that section of the community. The ATO also accepted that more could be done to assist taxpayers affected by complications associated with age and infirmity. The ATO undertook to explore additional steps that

might be taken to better assist these clients, particularly through more immediate case management.

GST issues

In the fourth year of operation of the new tax system, taxpayers generally have a better understanding of the way the GST operates. We received only a few complaints stemming from the GST. One case highlighted the initial uncertainty relating to application of GST in the taxi industry, but also the ATO's preparedness to find a practical solution for a difficult problem. In this case, the complainant, a minibus business operator, was cooperative and anxious to adopt the correct procedure and was dependent on ATO advice, which was delayed because of the complexity of the issues.

'One case highlighted ... the ATO's preparedness to find a practical solution for a difficult problem.'

We also received a complaint from a tax professional concerned that the unrequested cancellation of his client's GST registration might be indicative of a systemic problem. We clarified how the error had occurred and were satisfied that the error did not indicate any widespread problem.

As the ATO focused more on compliance and initiated recovery action, we received several complaints that the ATO was unreasonably interpreting the GST legislation. In such cases we decided not to investigate, because the complainants could challenge the ATO view through the objection and review process.

TaxPack improvements

TaxPack and its supplements provided a comprehensive starting point for most individual taxpayers. We provide feedback each year to the ATO on TaxPack, as well as providing suggestions if and when they arise from the investigation of specific complaints. This year we identified an ambiguity in the TaxPack text, relating to travel claims, that the ATO agreed to address in future editions.

Mass-marketed schemes

We continued to receive complaints arising out of the ATO's handling of mass-marketed schemes (114 in 2003–04 compared to 112 in the previous year).

The largest single category of complaints came from those taxpayers deemed ineligible for the full concessionary settlement opportunity offered for most mass-marketed scheme investors by the Commissioner of Taxation in February 2002. The ATO put in place a review process for these taxpayers and informed them of their right to further review by the Ombudsman's office.

We investigated all of the 'ineligibility' complaints we received. Although we did not find any reason to criticise the ATO's decision in any of these cases, our earlier investigations encouraged the ATO to make improvements in the quality and content of its decision letters.

We were also able to assist some taxpayers who had already settled. For example, one of our investigations disclosed errors in the ATO's statement of account. Our intervention resulted in an ATO apology for the taxpayer and a concession on the starting time for his repayments.

centrelink

Centrelink, established under the *Commonwealth Services Delivery Agency Act 1997*, is responsible for delivering a large range of payments and programs for Australian Government agencies.

These government agencies include the Department of Agriculture, Fisheries and Forestry, the Department of Education, Science and Training and the Department of Veterans' Affairs. However, the majority of complaints that the Ombudsman receives about Centrelink relate to income support payments, family payments and other programs that Centrelink administers on behalf of the Department of Family and Community Services.

Centrelink complaints account for 46% of all complaints received by the Ombudsman. During 2003–04, we received 8,084 complaints about Centrelink compared with 9,642 complaints received in the previous year, a 16% decrease (see Figure 5.4). In approximately 55% of complaints about Centrelink, we initially decided not to investigate, because in most cases the agency had not yet been given the opportunity to address the complainant's concerns before approaching our office.

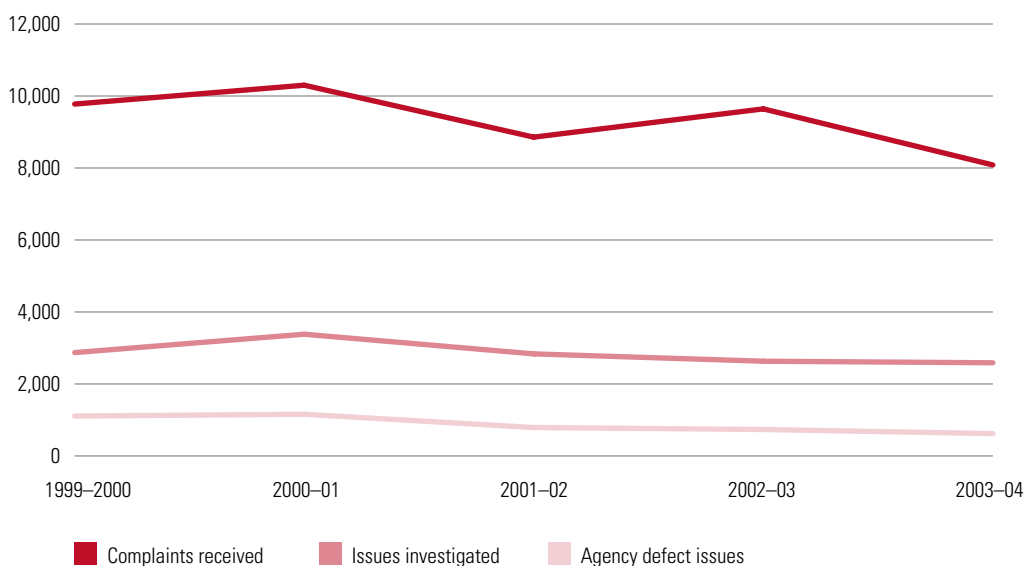
In last year's annual report, we commented about advice given by Centrelink to its customers and the need for Centrelink staff to have better familiarity with the payments and programs that it delivers, including an understanding of the underlying legislative basis for this administrative activity.

Complaints received by the Ombudsman's office during 2003–04 indicate that there is still room for improvement. Further comment on this area is covered under the 'Life events' section in this chapter.

The largest category of complaints received by the Ombudsman in 2003–04 about a single issue related to debt recovery. Another issue addressed in this section relates to a consequence of practices adopted by Centrelink to assist families to minimise their family assistance debts.

'The largest category of complaints received ... about a single issue related to debt recovery.'

FIGURE 5.4 Centrelink complaint trends, 1999–2004



DEBTS

The social security and family assistance laws set out the basis under which a person is entitled to a range of income support and family assistance payments, and the rate of such payments. These same laws also provide for the recovery of debts, specifying what is a debt and what is a permitted method of recovery. To that end, there is no doubt Centrelink has a legitimate basis to undertake debt recovery activity.

The focus of our concern is that debt recovery policies and procedures developed and implemented by Centrelink are not only authorised by those laws, but also have regard to the position or special needs of Centrelink customers and are not heavy handed.

Examples of complaints that we have received about Centrelink's debt recovery practices are set out below. We will continue to monitor these practices in the coming year and may consider further investigation. In doing so, we will take account of the steps that Centrelink itself is undertaking to implement changes in the context of the integration of the Centrelink Service Delivery Network and recommendations from the Australian National Audit Office's Audit Report on Centrelink's Debt Management.

Pressure to pay

A number of complaints highlighted a concern as to whether Centrelink's debt recovery practices have become too outcome driven without regard to the wider social purpose that Centrelink serves.

An example is a complaint from a disability support customer who claimed that a Centrelink debt recovery officer had harassed him and his daughter. The customer had received a lump sum compensation payment due to a traffic accident, while in receipt of an income support payment. As a result of receipt of the compensation payment, Centrelink raised a debt against the customer and sought to recover that debt.

Although refusing to concede that a debt existed, the customer entered into a fortnightly repayment arrangement that reduced the debt over a number of years to approximately \$10,000. Centrelink subsequently determined that the customer may have had an asset that could be used to pay off

the balance of the debt, and increased the rate of withholdings from the customer's disability support pension.

The customer told the Ombudsman that he felt that he had no choice but to take out a bank loan to pay a lump sum off his Centrelink debt and stop the debt recovery officer's harassment. Unfortunately, the customer then found himself in the position of paying off the bank loan (part of which was used to repay the Centrelink debt), at the same time as having to face a reduced disability support pension due to continued withholdings.

We raised the legality and appropriateness of Centrelink's actions in pressuring an individual (especially one who had a nominee) into making a lump sum payment when a withholding arrangement to repay the debt was achieving results. Discussions were continuing with Centrelink at the end of the year.

Letters of demand

Another issue that arose concerned the practice by some Centrelink officers of contacting debtors with partners, suggesting that the couple had the capacity to repay a debt based on the partner's income. For certain payments it is necessary for a recipient to provide Centrelink with details of their partner's income, which is used to assess eligibility. In at least one case the debtor received a letter from a Centrelink debt recovery section rejecting his request for waiver of his debt and suggesting that Centrelink had the power to recover the debt from the partner.

Centrelink has no power to enforce recovery of a customer's debt from their partner. For any recovery from a partner, permission must first be obtained from the partner. Centrelink undertook to examine the matter.

Getting in quick—adding judgment interest without a judgment

We investigated a complaint that involved the addition of a substantial amount of debt interest. Our inquiries revealed that Centrelink had intended to seek a debt interest judgment on the case. Centrelink debt recovery officers anticipated the amount to be awarded and proceeded to apply this amount to the debt without gaining the judgment. The customer was provided with an updated debt

statement, which indicated they owed in excess of \$45,000. Following our request, Centrelink removed the anticipated debt interest and apologised to the customer.

Data-matching—many years down the track

Numerous complaints were received during the year about Centrelink's data-matching activities. Some complaints related to debts raised in relation to overpayments up to six years earlier. Many of the overpayments resulted from under-declaration of earnings. However, others resulted from a genuine misconception by Centrelink customers that information they had provided to one government agency would be automatically shared with other government agencies. Some customers had debts in excess of \$10,000, due to several years of understated income.

We also identified cases where the customer provided correct income information to Centrelink in the applicable year, but Centrelink had not correctly updated earnings records on its computer system. Although, as a consequence, the customers had been paid more than they should have received, Centrelink has since reconsidered the legitimacy of recovering these debts and has applied the administrative error waiver provisions of the social security law in some of these cases. We will continue to assess the impact of these errors in the coming year.

IMPACT OF OVERESTIMATING INCOME FOR FAMILY TAX BENEFIT PURPOSES

Centrelink has implemented a number of practices aimed at reducing the likelihood of families being faced with family tax benefit debts at the end of a financial year. One of these practices includes suggesting to families that they overestimate their family income so that they would get paid less throughout the year. This would effectively result in either no debt at the end of the year or top-up if it turned out the family had overestimated their income.

However, a consequence of this practice was that in overestimating their income, some people did not qualify throughout the year for low-income

health care cards. As a consequence, these people failed to qualify for certain Commonwealth and State Government discounts or concessions that are available only to low-income health care card-holders. Examples include stamp duty exemption, electricity account reductions, motor vehicle registration exemptions and reduced health and pharmaceutical costs.

We argued in one such case for payment of compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme to a customer who complied with Centrelink's instruction to overestimate their family income for family tax benefit purposes. The family had suffered a financial loss when it could not attract certain State government concessions available to new homebuyers who were holders of low-income health care cards. The only reason that the family had not qualified for the card was because of their overestimation of income. Centrelink agreed to pay compensation.

Centrelink is reviewing its information products for customers, and internal reference material for staff, to ensure that customers are not disadvantaged by estimates of their income.

LIFE EVENTS

Under the Life Events Service Delivery Model adopted in the late 1990s, Centrelink undertook to match customers with the most appropriate payments and benefits for each customer's circumstances. This is done through Centrelink reviewing the information obtained from a customer completing a payment claim form, or in a pre-grant interview or other contact with them.

The view taken by the Ombudsman is that the model places an onus on Centrelink to provide accurate and clear advice to customers.

During the year we identified many instances where Centrelink had been provided with the full circumstances of a person. However, the correct payments and entitlements were not suggested or discussed with the person when they applied for a Centrelink payment, often to the person's detriment.

‘... the model places an onus on Centrelink to provide accurate and clear advice to customers.’

Centrelink has implemented and committed itself to the Life Events Model. When this approach does not meet customer needs, or adversely affects the customer, compensation should be, and is, available.

An example of this problem is that some age pension recipients were not provided with information about the Pension Bonus Scheme, either at their pre-grant interview or prior to receiving the age pension. This meant that they were not aware they could access a tax-free lump sum payment of up to \$25,000 by remaining in the workforce past pension age.

We found that Centrelink failed to provide information about the Pension Bonus Scheme to individuals during their contact with staff

about an age pension. When a subsequent customer compensation claim was lodged, it was rejected because the view was taken that there was no onus on Centrelink to invite a claim for entitlements.

We were able to persuade Centrelink to alter its decision on several customer compensation claims about the Pension Bonus Scheme; as a result compensation equivalent to the full bonus entitlement was paid.

Centrelink has since made changes to its age pension claim form, which amalgamated information about age pension and the Pension Bonus Scheme, to ensure that customers claiming assistance have all information available at the time of claim. Other information products for age pensioners now also include information on the Pension Bonus Scheme to ensure that customers are aware of their options in this respect.



child support agency

The Child Support Agency (CSA) administers the Child Support Scheme. The Scheme, set up under the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*, provides for the assessment, collection and disbursement of child support. The CSA's client group includes both payees (those receiving child support payments) and payers (those making child support payments).

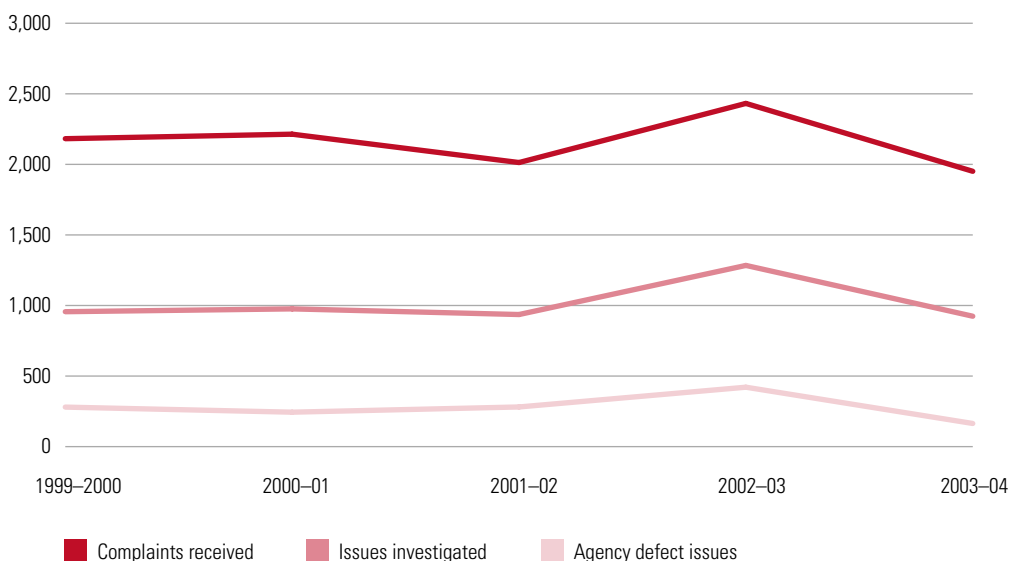
In 2003–04, the Ombudsman received 1,951 complaints about the CSA, compared with 2,432 last year, a decrease of 20%, see Figure 5.5. Of the issues raised, the Ombudsman found agency defect in 7% of cases, showing a downward trend. The reduction in the number of complaints about the CSA is due primarily to the bedding down of the new CSA computer system introduced in 2002 (although this issue continued to generate complaints to the Ombudsman this year). As identified in earlier reports, it also indicates that CSA's internal complaint resolution processes are effectively addressing concerns raised by parents.

A complaint theme that arose prominently in the investigation of complaints about the CSA was that payers could find themselves unexpectedly being told that they had a child support debt. This tended to result from computer system changes or incorrect recording of payer or payee income details by CSA staff. Other recurring themes included complaints about the accuracy of information provided to parents, delays in providing information and breaches of privacy. A brief description of the scope of our investigations into some of these areas follows.

DEBTS

Some complainants approached our office after unexpectedly receiving a notice from the CSA that they had a sizeable child support debt. The investigation of these complaints highlighted two problem areas. First, a debt could arise if there had been a delay by CSA staff in making a manual adjustment to child support liability to take account of updated income information provided by one or other of the parents. Second, a parent could receive

FIGURE 5.5 Child Support Agency complaint trends, 1999–2004



notice of a debt for a past payment period when current information was entered on the CSA computer system, which then automatically recalculated the parent's child support liability for the past assessment period.

The difficulties people experience in child support matters can sometimes arise because parents do not fully understand the features of the child support scheme. At other times, the difficulties stem from shortcomings in the administration of the child support scheme by the CSA. The following example of a complaint that we investigated illustrates the complexity that can arise in a child support case, and how parents can as a result be surprised or confused by actions taken by the CSA.

'The difficulties people experience in child support matters can sometimes arise because parents do not fully understand the features of the child support scheme.'

A payer's child support liability for a certain period had been assessed on the basis of an estimate of the parent's income. Some time later, the parents agreed between themselves that some of the child support owing for that period should be discharged. Notwithstanding that agreement, the payer was later told by the CSA that he had a debt for the period.

A combination of two factors produced this result. The first was that a child support assessment that is based on an estimated or deemed income is subject to reassessment once the actual taxable income is known. In this case, the result of the reconciliation was that too little child support had been paid for the earlier period, resulting in a debt for the payer. The second contributing factor to this problem was that there had been a delay of two years on the part of the CSA in making the reconciliation after learning of the taxpayer's taxable income. The delay, combined with the agreement between the payer and the payee to discharge the arrears, resulted in the payer being confused and uncertain as to the legitimacy of the child support debt.

The CSA advised that under child support law they were obliged to recalculate the payer's child support liability and raise a debt against him, notwithstanding that the debt related to a past period and was the subject of an agreement between the parents. We suggested that the CSA should offer the payer a complete explanation of what had occurred, apologise for the incomplete information provided to him about the reconciliation action, negotiate a fair repayment agreement with the payer, and remit any late payment child support penalties once the debt had been fully recovered. It is encouraging that some of these actions had already been initiated by the CSA.

We took up the question of administrative delay exposed by this complaint. We were advised that prior to the implementation of the new computer system in 2002, reconciliation of actual incomes was completed manually. The manual process had broken down in this case, as the error was not detected until data integrity checks were run in late 2003. The CSA's new computer system now automates this process and ensures that this issue will not recur.

'We took up the question of administrative delay exposed by this complaint'

A suggestion agreed to by the CSA as a result of this investigation was that it would amend its procedural instruction dealing with debt recovery arrangements. The amendments will focus on the need for CSA officers to provide both payees and payers with full and comprehensive information about their rights and responsibilities, as well as the process for debt recovery. The changes also highlight the need for client service officers to review the entire case and to be aware of any estimated or provisional income prior to brokering a debt arrangement.

ERRORS IN RECORDING INFORMATION

The essence of the child support scheme is that it specifies a formula to be applied in calculating the amount of child support to be paid by one parent to another. The formula takes into account a range of different factors, such as the number

of children in each parent's care, the time spent by a child with each parent, and the income of each parent.

The formula is applied to data entered onto the system relating to those different factors. The integrity of the resulting decisions is conditional therefore on the accuracy and comprehensiveness of the information entered onto the system. This becomes all the more important when, as is often the case, many child support assessment decisions are made by the computer (or expert) system operated by CSA. The computer system can undertake some tasks without confirmation, and contains some built-in enforcement mechanisms.

'The integrity of the resulting decisions is conditional on the accuracy and comprehensiveness of the information ...'

It is human to err, and errors sometimes occur in data entry. The difficulties that can result are illustrated by the following two complaints handled by the Ombudsman's office during the year.

In the first case, a payer with a child support debt had an arrangement for regular weekly payments to be withheld from his salary and to be applied to the debt. The arrangement was to continue for four years until the debt was reduced to a nominated amount, at which time the remaining child support debt would be discharged by the payee. Near to that time, the payer contacted the CSA, which advised that a small amount remained outstanding. The CSA also said that upon payment of that amount the CSA would remit all penalties that accrued over the life of the case because the payer had not paid his child support on time. The CSA failed to implement the agreement and instead intercepted the payer's tax refund when it became available. It released the full amount to the payee. The amount given to the payee was greater than the outstanding arrears.

On investigation, we found that the CSA had not correctly recorded the debt repayment arrangement on its computer system. The system showed the full amount of arrears owing without reference to the repayment agreement.

The CSA accepted that it had made an error and acknowledged the payer's commitment and adherence to the arrangement for debt repayment. Initially, the CSA advised that the payer would need to recover the overpayment direct from the payee. However, after we highlighted the inequity in this approach and drew attention to the reason both parties were in this position, the CSA agreed to refund the payer the remainder of his tax refund and to take responsibility for pursuing the recovery of the overpayment direct from the payee. While the CSA would not normally take this action, in the particular circumstances of this case the action was an appropriate resolution for these clients.

The second illustrative complaint concerned entries made on the Child Support Register. Under the child support law, the Child Support Registrar must enter certain information about each child support case in the Child Support Register. Changes to the Register must be made within a specified time after new information that could affect a child support assessment is received from a payer, a payee or a third party. The information entered on the Register is significant in that it sets the legal basis on which a child support liability is calculated.

In a complaint to our office, the payer had told the CSA that he and his current partner had had a baby. The Register should have been amended to record the child as a dependent child of the payer, but was incorrectly amended to record a liable child support assessment between the payer and the payee. The consequence of this error was that the assessment was based on the payer and the payee each having sole care of one liable child, when in fact there was only one liable child who was in the care of the payee. The payer's child support was accordingly assessed at a lower rate than it should have been. The error was identified days later and a new, updated assessment notice sent to the parents. The parents were not provided with any explanation of why a new assessment was issued.

The problem arose again following the introduction of the new computer system. The system automatically reverted the new child from dependent child status, to liable child status, thus again reducing the amount of child support payable by the father. This error was only discovered when the payee questioned

the amount of assessment after a further change to the Register, more than 12 months later.

As the child support payments had been made under a private collection arrangement between the payer and the payee, the payee was not able to get the CSA to enforce recovery of the unpaid amounts, other than for the compulsory three months period provided for in the legislation.

‘... we asked the CSA to review the content of current notices.’

On investigation, it seemed to us that neither the payer nor the payee had identified the errors because of the ambiguous format of the assessment notices they had received from the CSA. Changes have since been made by the CSA to the assessment notices, but we asked the CSA to review the content of current notices to ensure that an error of this nature would be easier to identify in the future. Furthermore, we noted that the CSA had not provided an adequate explanation to either party, even though the matter had been subject to a complaint from the payer’s Federal Member. We also learned that the CSA had not formally apologised to either party for the error and asked that it attend to this matter with urgency. The CSA has since issued an apology.

ADVICE ON RECOURSE OPTIONS

If a parent has overpaid or been underpaid, reconciliation of the debt can be foremost in their mind. They are likely to turn to the CSA in many cases for advice on whether they have any recourse, and the options available. It is important that any advice given to a parent is both accurate and realistic.

The point is illustrated by one complaint we investigated. A payer had made an overpayment because of a CSA computer system error. He was advised by the CSA that he could either make a gift of the overpayment or take the payee to court to seek a civil remedy for repayment. While those

were two options, our concern was that the CSA had neglected to suggest as an additional remedy that the payer could lodge a claim for client compensation on the basis that the error constituted defective administration by the CSA resulting in financial loss.

INFORMATION PROVIDED TO PARENTS

Another aspect of the child support scheme, about which parents rely on the CSA for advice, concerns the private collection of child support. Arising from some complaint investigations we undertook this year, we suggested to the CSA that it should evaluate the adequacy of the information made available to parents about private collection.

‘We suggested to the CSA that it should evaluate the adequacy of the information made available to parents ...’

It is open to parents for whom a child support assessment has been made to make a private and informal arrangement for payment of a lesser child support amount. However, if the payee later arranges for the CSA to collect child support, the CSA will collect at the rate specified in the child support assessment, not the rate agreed between the parents. Furthermore, it is open to the payee to request the CSA to seek three months of arrears payment from the payer (up to nine months in exceptional cases) equal to the difference between the CSA-assessed child support amount and the amount agreed privately between the parents.

Not surprisingly, some payers feel aggrieved when action is taken by the CSA to collect an amount greater than the payer understood they had agreed to pay. It is important in such instances that parents are fully aware, from any advice or information they obtain from the CSA, of the ramifications of making a private collection agreement.

defence

Complaints under the heading of Defence fall into two categories: the Defence Force Ombudsman (DFO) jurisdiction, covering employment-related matters for serving and former members of the Australian Defence Force (ADF); and the Commonwealth Ombudsman jurisdiction, covering complaints about administrative actions of the Department of Defence. The combined DFO and Commonwealth Ombudsman jurisdiction also encompasses complaints about the Department of Veterans' Affairs (DVA), the Defence Housing Authority, Defence Service Homes and the Defence Force Retirement and Death Benefits Authority.

2004 is a 21-year milestone for the Defence Force Ombudsman. The DFO office was given a statutory basis in 1983 by amendment of the *Ombudsman Act 1976*. The functions and powers of the DFO were conferred upon the Commonwealth Ombudsman. The DFO investigates employment-related matters for serving and former members of the ADF, including complaints about compensation and veterans' entitlements, which are administered by the DVA.

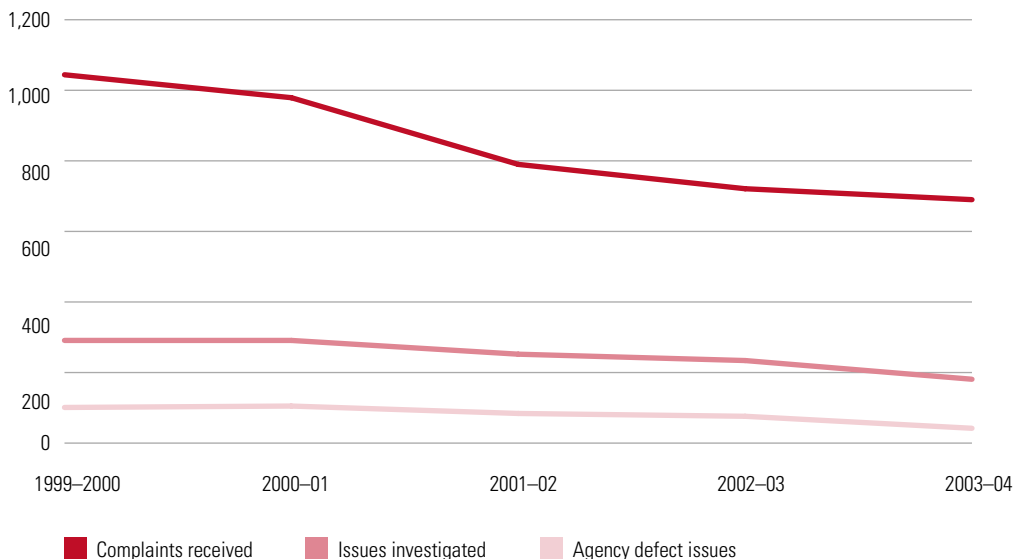
'2004 is a 21-year milestone for the Defence Force Ombudsman.'

There has been a steady decline in the number of Defence complaints, dropping to 690 in 2003–04 (see Figure 5.6). We are evaluating the causes of this decline, but they can be hard to discern. It could be that there is less cause for complaint, that complaints are being better handled internally, or that there is a loss of faith in the Ombudsman's effectiveness.

AUSTRALIAN DEFENCE FORCE EMPLOYMENT-RELATED COMPLAINTS

In 2003–04, the most common causes of complaint from Defence personnel were discharge matters, pay and allowances, dissatisfaction with the outcome of a Redress of Grievance (ROG) process, discrimination and harassment, and posting decisions. Complaints about discharge action were evenly spread between medical discharge and discharge on the ground of a person's unsuitability for continued service in the Army, Navy or Air Force.

FIGURE 5.6 Defence complaint trends, 1999–2004



The DFO will not ordinarily initiate the investigation of a complaint by a serving member of the ADF unless the complainant has sought redress through the ADF's internal ROG process and that process has been completed. This approach, which is required by s 19E of the Ombudsman Act, is designed to ensure that the ADF has the opportunity to resolve a matter before there is a need for the DFO to become involved.

If the ROG process is not finalised in a timely manner, it becomes progressively more difficult for the matter under complaint to be resolved fairly or to be remedied effectively. Delay in finalising a ROG can have an adverse impact on a member, financially and psychologically.

The DFO's concern about delay in finalising ROG's has been brought to the attention of the Department of Defence in previous annual reports. The number of complaints still received about the ROG process, particularly about the time taken to finalise investigations, indicates that the problem of delay is still a concern to members. During the year, in a submission to the Senate Inquiry into the Effectiveness of Australia's Military Justice System, the Ombudsman took up this ongoing concern about the time taken to finalise ROG investigations.

'Delay in finalising a ROG can have an adverse impact on a member, financially and psychologically.'

Other concerns were also taken up in the submission to the Senate inquiry:

- **Investigative practices** Complaints to the Ombudsman indicate that in some cases there has been a considerable delay by the ADF in initiating the investigation of serious complaints it received. Deficiencies in the quality of ADF investigations were also identified in some cases.
- **Learning from complaint management** There is room for improvement in the extent to which the ADF draws lessons, about complaint management and how to stem the flow of complaints, from investigations undertaken internally or by other agencies such as the Inspector-General of the ADF, the Defence Equity Organisation and the Ombudsman's office.

- **Legalistic approaches to addressing complaint issues** A tendency noted increasingly during the past 12 months has been for the Department to respond to Ombudsman investigations with more formal, legally-based responses. It is questionable whether this is necessary in relation to Ombudsman investigations, but also the practice can unnecessarily delay the resolution of complaints.

As these points indicate, the DFO jurisdiction presents a number of challenges. A delay by the ADF in finalising a ROG can adversely impact on the ability of the DFO to finalise complaints and to provide complainants with an efficient service. The Ombudsman's 2004 Client Satisfaction Survey highlighted that complainants in the DFO jurisdiction are generally less satisfied with our service than complainants in other jurisdictions.

Following discussion between the DFO and the Chief of the Defence Force, it has been agreed to conduct a joint review of the ROG system with a view to reporting before the end of 2004. The review will seek strategies to refine the system. We are also reviewing the adequacy of our own resources devoted to the DFO jurisdiction, the timeliness of our processes and how well we are educating complainants to have a realistic appreciation about the outcome they can expect from a complaint investigation.

DEPARTMENT OF VETERANS' AFFAIRS

Complaints about the actions and decisions of the DVA fell to 172 in 2003–04, a decrease of 14% from 2002–03.

Several well-established avenues of review and appeal are available within the DVA portfolio, and applicants for pensions and allowances also have a right of appeal to the Administrative Appeals Tribunal (AAT). We encourage complainants to exercise these rights of review and appeal. During 2003–04, approximately one-third of inquiries from DVA complainants resulted in a referral to either the DVA's internal review mechanisms or the AAT.

The Ombudsman received a number of complaints in relation to the Veterans' Home

Care (VHC) program (decisions on VHC matters are not reviewable by the AAT). The complaints raised various concerns from veterans and their supporters about the way the DVA had assessed whether a particular veteran was eligible for home care services, the manner in which veterans were advised of reductions in home care services, the impact of reduced services, the lack of notification of review rights and the failure of the DVA to provide a revised service provision plan to a veteran.

'The complaints raised various concerns about the way the DVA had assessed eligibility for home care services.'

The Department provided timely and comprehensive responses to our inquiries, which assisted us to provide a high standard of service to veterans in most instances. For example, in one particular case, an ex-member of the ADF applied for compensation under the Military Compensation Rehabilitation Scheme administered by the DVA for an injury they claim to have suffered during enlistment in the ADF. The ex-member was concerned about the time it was taking for the DVA to make a decision about permanent incapacity and incapacity payments, as well as the lack of progress reports on the matter.

In response to our informal inquiries, the DVA acknowledged that there had been a delay in processing the claim. The DVA apologised for the delay and for not responding to inquiries in a timely manner. The Department also confirmed that, following our inquiry, contact had been made with the claimant to finalise the matter.

DEPARTMENT OF DEFENCE

Complaints against the Department of Defence fall within the jurisdiction of the Commonwealth Ombudsman. In 2003–04, we received 135 complaints about the Department. Of the 135 complaints, we conducted inquiries or investigated 42 complaints. The majority of complaints not investigated were referred back to the Department for appropriate action or we decided not to investigate, because an investigation was not warranted in all the circumstances.

Issues raised in complaints included concerns about military aircraft noise in residential areas, delays in finalising requests made under FOI legislation, delays in finalising claims against the Australian Government under the Compensation for Detriment Caused by Defective Administration scheme and delays in finalising payment of monies owed. In a significant number of cases involving the payment of accounts, inquiries by the Ombudsman's office resulted in action being taken to finalise the matter.

immigration

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) continued to be a significant source of complaints to our office during the year. Overall, we received 865 complaints about DIMIA in 2003–04. This was a decrease of almost one fifth (255 complaints or 23%) on the number of complaints received in 2002–03 (see Figure 5.7).

We investigated just under half (46%) of complaint issues arising from complaints about DIMIA. This compares to the general average of 30% across all Australian Government departments and agencies. Of the 486 DIMIA issues investigated, arguable administrative defect or error was identified in 76 issues (15.6%).

Complaints about DIMIA can be categorised into three distinct areas: migration issues, which are usually about decisions on visa applications; immigration detention facilities, made by or on behalf of detainees; and other issues, such as Freedom of Information (FOI) applications and citizenship processes. Complaints about migration issues formed the largest category.

The most common concerns about migration issues were decisions that DIMIA made on permanent visa applications for overseas family members or spouses, and temporary visa applications for students and tourists.

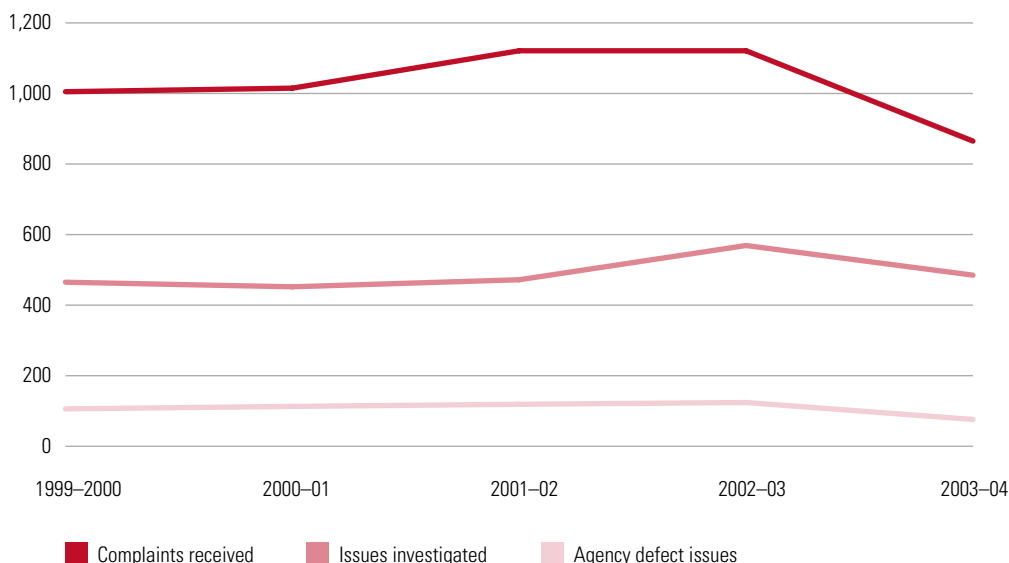
Complaints from detainees in immigration detention facilities most commonly revolved around access to medical services, property that was allegedly lost or stolen and allegations of assault, both by detention centre staff and by other detainees.

‘Complaints received about immigration matters are often complex and can take some time to resolve.’

FACILITATING IMPROVED COMPLAINT RESOLUTION

Complaints received about immigration matters are often complex and can take some time to resolve. Visa applications must meet statutory requirements before they can be approved and information often

FIGURE 5.7 Department of Immigration and Multicultural and Indigenous Affairs complaint trends, 1999–2004



has to be obtained from overseas immigration posts. The detention facility environment is a difficult one and, although the number of people still in detention has decreased over the years, many of those who remain have been in detention for lengthy periods. Complaints often relate to the day-to-day experiences of detainees living in detention and are difficult to resolve given the limitations of the detention environment.

‘Complaints often relate to the day-to-day experiences of detainees living in detention ...’

Officers from both DIMIA and the Ombudsman’s office have worked hard throughout 2003–04 to ensure better communication and speedier resolution of complaints.

- Senior staff from the Ombudsman’s office and DIMIA met regularly throughout the year to keep each other informed of potential issues of concern and to discuss significant cases.
- Members of the office’s Immigration Team met monthly with staff from DIMIA’s Ombudsman, Privacy and Freedom of Information Section to discuss current complaints and facilitate resolution.
- Detailed quarterly reports were provided to the Secretary of DIMIA to ensure that complaint trends and significant cases were brought to the attention of DIMIA’s Executive in a timely manner.

These measures resulted in many longstanding complaints being resolved and a marked improvement in the working relationship between the two agencies.

We appreciated DIMIA arranging a meeting during the year with managers from the newly appointed detention service provider, Global Solutions Limited (GSL). At the meeting we discussed some of our past concerns about detention centre management.

DIMIA officers also showed an increased willingness to discuss potential issues of concern with the Ombudsman’s office and to invite our comments on draft policies and documents, particularly relating to the management of detainees. The majority of the Ombudsman’s

comments have been adopted on the following policies and procedures:

- GSL’s new draft complaint-handling guidelines, which are designed to facilitate speedy complaint resolution within the Immigration Detention Facilities (IDFs).
- A proposed new Migration Series Instruction on ‘Transfers of Detainees within Detention Facilities’. Decisions to transfer detainees to a more restrictive environment have been the source of complaints from all IDFs in recent years. Concerns about inadequate record keeping and the absence of opportunities for detainees to comment on proposed transfer actions were raised with DIMIA on a number of occasions and, in particular, following a general disturbance within one IDF.
- Proposed procedures for transferring a number of longer-term detainees to Baxter IDF which had been designed to accommodate the longer-term detainees.

Feedback from detainees about the effectiveness of GSL’s new policies has been encouraging. One measure of the positive change achieved by the new complaints management regime is that in the period January to June 2004 there was a 45% reduction in complaints compared to the same period in 2003. Specifically, 173 complaints were received in January–June 2003, 111 in July–December 2003, and 95 in January–June 2004. This is against a small drop in the number of detainees.

‘Feedback from detainees about the effectiveness of GSL’s new policies has been encouraging.’

Ombudsman staff (including the Ombudsman and Deputy Ombudsman) visited detention facilities regularly throughout the year. We welcomed DIMIA and GSL’s support and cooperation with these visits, which often needed to be arranged at short notice.

PARTICULAR ISSUES

Proposal for legislative change

A key objective of the Ombudsman’s office is to facilitate improved administrative practices and

to draw attention to legislative provisions that result in unfair or unreasonable consequences for individuals. These issues are taken up with DIMIA, sometimes with a proposal for legislative change, as the following example illustrates.

In December 2003, the Ombudsman wrote to the Secretary of DIMIA recommending that action be taken to overcome the problem that visa holders who had appealed successfully to the Migration Review Tribunal (MRT) could still end up in a disadvantaged position. For example, if the MRT had set aside a decision by DIMIA to cancel a student visa, the student may still be unable to meet the requirements for a permanent visa, because their student visa had expired before the MRT appeal process was finalised. Under the migration legislation, DIMIA cannot then grant another visa without a new application being made, yet the student may be unable to make such an application in Australia if their substantive visa has expired. The student then faces the predicament of having to leave the country in order to make a new application.

‘The Minister has since approved the introduction of amending legislation.’

DIMIA acknowledged this as an issue affecting not only student visas, and accepted the need for legislative change to address the problem. The Minister has since approved the introduction of amending legislation. Until that amendment is enacted, cases of this nature may be referred to the Minister, who has a public interest discretionary power to grant a new visa.

Cancellation or refusal of visa on character grounds

A number of complainants during the year expressed frustration at the uncertainty of their visa entitlement. The complainants had each appealed successfully to the Administrative Appeals Tribunal (AAT) against a decision by a DIMIA officer to refuse or cancel their visa on character grounds. Notwithstanding the AAT decision, it is open to the Minister under s 501A of the *Migration Act 1958* to refuse or cancel a visa if the Minister reasonably suspects that the

person does not pass the character test and is satisfied that refusal or cancellation is in the national interest. Instances occur in which the Minister does make such a decision, and visa applicants and holders are aware of the possibility. Some have complained to the Ombudsman about the failure of DIMIA after months of delay to advise whether their case is to be referred to the Minister for consideration of cancellation or refusal under s 501(3).

The Ombudsman’s office has conducted research on the general problem, and has taken up with DIMIA the importance of clarifying the administrative procedures for handling s 501 cases. We will continue to monitor the issue.

Use of search and entry powers

To facilitate compliance activity, the migration legislation confers upon authorised officers of DIMIA wide-ranging search and entry powers—commonly described as coercive powers. The exercise of these powers has been the subject of a number of complaints to this office. Issues commonly raised are whether it was necessary for a search to be conducted, and the demeanour of DIMIA officers in discharging their duties. Another issue taken up by this office in investigating the complaints is the adequacy of the records maintained by the Department. It is, in our view, a vital element in securing adherence to the law and safeguarding civil liberties that each stage of the process of executing coercive powers is properly documented. Given the significance of the issue, we will be concentrating on it during 2004–05.

IMMIGRATION DETENTION ISSUES

During 2003–04 there were significant changes in the number of individuals held in immigration detention, the location of the detainees, and the management of the IDFs. The Curtin and Woomera IDFs were closed in 2002 and 2003, and the Port Hedland facility was closed in June 2004. The changes in facilities were reflected in the number and types of complaints we received and investigated in relation to immigration detention.

To assist detainees to understand the alternative avenues available to them for making a complaint,

we highlighted to DIMIA and GSL the benefits of information posters to summarise the complaint-management processes within IDFs. The posters should also provide details of relevant external complaint bodies, including the Commonwealth and State Ombudsmen, the Human Rights and Equal Opportunity Commission, and the Health Care Complaints Commission. It is expected that information posters will be ready for distribution early in 2004–05.

Basis of complaints

Access to medical and dental care in detention has been a regular source of complaints in previous years. This year there was a significant reduction in this type of complaint. The change to a new provider (GSL) provided an opportunity to review relevant practices and procedures. The downward trend in complaints is particularly pleasing, given that an increasing proportion of detainees have spent more than two years in detention and are more likely to require access to such services.

The number of complaints from detainees alleging assault by another detainee or a detention officer and the process in place to address such complaints is another matter of continuing concern. In May 2004 we wrote to DIMIA pointing to some of the issues thrown up by the complaints, such as confusion over where allegations of assault should be reported and delays in reporting allegations to police. We suggested a possible strategy for managing such complaints, which included providing detainees with an information card that clearly outlines the steps to take relating to allegations of assault. Discussions with DIMIA at senior levels are continuing on this issue.

We finalised 35 complaints from detainees about property during 2003–04 compared to 21 complaints in the previous year. To try to reduce and resolve complaints relating to property, we have agreed to develop an information brochure for detainees, in consultation with DIMIA, to highlight actions that detainees can take to safeguard their property. We expect to finalise this brochure early in 2004–05.

Port Hedland inquiry

Although we investigate many of the complaints received by the office, we believe that agencies

should first have the opportunity to conduct their own investigation into an issue and be able to take remedial action if required. This approach, which is widely followed by complaint-handling agencies, sometimes needs restatement and explanation in the context of an inquiry that attracts public attention. Such was the case when we received a number of complaints from detainees and their advocates about the management of a major incident at the Port Hedland IDF in December 2003.

After first raising the complaints with DIMIA, we opted to allow an investigation initiated by the Department to continue. DIMIA appointed an independent investigator with considerable experience in critical-incident and use-of-force management. We played an active role in developing the terms of reference for the inquiry, defining the issues to be addressed during the investigation and undertaking ongoing monitoring of the investigation as it progressed.

‘... this investigation demonstrated how collaborative action by the Ombudsman and a government agency can sometimes be the most efficient and effective way of ensuring that a serious incident is expertly investigated ...’

The consultant’s report was finalised in May 2004. The Ombudsman was satisfied that the report represented a thorough investigation of the incident and addressed the concerns raised with our office. DIMIA advised that action has been taken on a number of the recommendations. These included recommendations for letters of apology to some detainees, appropriate record keeping, further training for detention officers, and the referral of some incidents to State and federal police for further investigation. We will review the implementation of the recommendations in the report throughout 2004–05.

Generally, this investigation demonstrated how collaborative action by the Ombudsman and a government agency can sometimes be the most efficient and effective way of ensuring that a serious incident is expertly investigated and improvements to administrative practice implemented.

Monitoring detention facility standards

During 2002–03, Ombudsman staff conducted a review of conditions in IDFs and of how complaints were being investigated in those facilities. The review identified a range of concerns about how detention facilities were being managed by the detention service provider, and how the provider's performance was being monitored by the Department against the agreed Immigration Detention Standards.

At one stage we had foreshadowed preparing a separate report on the review, but that plan was overtaken by other events (chiefly, a change in the detention service provider and the closure of some IDFs). The information gleaned from the review was put to use in other ways described above, such as consultation with the Department

about contractual conditions applying to the new detention service provider. As well, we provided significant elements of the information from the review to the Australian National Audit Office (ANAO) for its audit of the Detention Services Contract conducted during 2003–04.

The ANAO website (www.anao.gov.au) provides access to ANAO Audit Report No. 54 2003–04 Performance Audit, *Management of the Detention Centre Contracts -- Part A*. The ANAO acknowledged that the information we provided assisted them to determine areas requiring particular scrutiny. The ANAO report was tabled on 18 June 2004 and makes a number of recommendations about monitoring the detention service provider's contract.



Staff of the NSW Ombudsman, Commonwealth Ombudsman, and Energy & Water Ombudsman NSW at the Arabic Carnival in Homebush Bay, Sydney, April 2004.

law enforcement

There has been significant legislative change in recent years to enlarge the powers of federal law enforcement agencies, specifically the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and the Australian Protective Service (APS). This change has partly been a response to a new security environment. It is also being driven by the objective of ensuring effective and efficient detection of crime, particularly serious crime. The legislation granting additional powers to law enforcement agencies includes measures to ensure that the right of people to complain to

the Ombudsman about law enforcement activity and the ability of the Ombudsman to investigate any such complaints, are not diminished.

Broadly stated, the role of the Ombudsman's office is to review the handling of complaints about Australian Government law enforcement agencies and to oversight the use by agencies of coercive and intrusive powers. Table 5.1 lists the activities that come within the Ombudsman's independent complaint and oversight role and the legislative underpinning for each role.

TABLE 5.1 Commonwealth Ombudsman's investigative functions, by legislation

Agency	Legislation	Investigative function
Australian Federal Police	<i>Complaints (Australian Federal Police) Act 1981</i>	Complaints about AFP members in international, national and community policing roles
		Practices and procedures of the AFP
	<i>Telecommunications (Interception) Act 1979</i>	Inspections of the record-keeping requirements of the Act
	<i>Crimes Act 1914</i>	External scrutiny of the conduct of controlled operations
		Adequacy and comprehensiveness of controlled operations reports to Parliament
		Adequacy of procedures implemented for the consent and sampling provisions for forensic procedures relating to disaster victim identification
	<i>Witness Protection Act 1994</i>	Complaints from people placed on the witness protection program or from unsuccessful applicants
	<i>Australian Security Intelligence Organisation Act 1979</i>	Complaints about AFP members relating to search of property, detention and questioning of suspected terrorists; complaints investigated under Complaints (AFP) Act
Australian Crime Commission	<i>Ombudsman Act 1976</i>	Complaints about administrative decisions of the ACC
	<i>Telecommunications (Interception) Act 1979</i>	Inspections of the record-keeping requirements of the Act
	<i>Crimes Act 1914</i>	External scrutiny of the conduct of controlled operations
		Adequacy and comprehensiveness of controlled operations reports to Parliament
Australian Protective Service	<i>Ombudsman Act 1976</i>	Complaints about administrative actions

AN INCREASINGLY COMPLEX JURISDICTION

The Commonwealth legislative framework for law enforcement can be expected to change even more in the next few years in ways that are relevant to the work of the Ombudsman. An example is the additional power conferred on law enforcement agencies to combat terrorism by detaining suspected terrorists. Other examples are the proposed introduction of a national framework for the use of surveillance devices and for a register of child sex offenders. As a result, the Ombudsman's office has been more actively engaged during 2003–04 in reviewing how the Ombudsman's complaint and oversight role should be adjusted to take account of changes in law enforcement activity. The following discussion takes up this theme.

Law enforcement across borders

Criminal activity is not constrained by State and Territory boundaries. An abiding danger in a federal system is that the existence of a different legal system in each State can frustrate the investigation of crime across borders. The legislative response to 'cross-border' crime has been to develop suites of model legislation that allow for the 'mutual recognition' of certain law enforcement activities between participating jurisdictions.

'... a strong focus on the importance of developing appropriate accountability mechanisms for law enforcement powers.'

In November 2003, the Joint Working Group of the Australasian Police Ministers' Council (APMC) released a report on model ('harmonised') legislation relating to surveillance devices, controlled operations, the protection of witness identity, and assumed identities. In considering the APMC report, the Standing Committee of Attorneys-General resolved that it should also consider a report from the Commonwealth, State and Territory Ombudsmen and Privacy Commissioners on cross-border law enforcement activity, which canvassed:

- whether there are gaps at national, State or Territory level in the accountability framework

relating to the investigation and handling of complaints or the carrying out of accountability audits

- whether there is also a need for 'harmonisation' of the laws and administrative arrangements to allow independent oversight, monitoring and accountability
- what measures are necessary to address any identified legislative impediments to joint investigation and monitoring by oversight agencies.

The report by the Commonwealth and State Ombudsmen and Privacy Commissioners to the Standing Committee represents a significant collaborative effort on their part, and signals a strong focus on the importance of developing appropriate accountability mechanisms for law enforcement powers.

The Australian Government is well advanced in developing the first legislation in the suite of harmonised law enforcement powers (for the use of surveillance devices). The Commonwealth Ombudsman has been involved in consultations between agencies about the Surveillance Devices Bill 2004, which was still being considered by Parliament.

AFP powers to combat terrorism

Amendments made in 2003 to the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) provided for the entry and search of property by police (including the AFP) in order to arrest and detain persons on behalf of ASIO.

'... a detainee can contact the office's Law Enforcement Team 24 hours per day.'

The ASIO Act amendments created a new complaints role for the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act), by allowing a detainee to complain about the actions of AFP members making an arrest or overseeing detention.

We took steps to ensure that a detainee can contact the office's Law Enforcement Team 24 hours per day. We are also working with the Inspector-General of Intelligence and Security and

the Commissioner of the AFP to develop protocols between all agencies involved with warrants under the ASIO Act. These protocols will ensure that detainees are advised of their right to make a complaint, are provided with access to a telephone for that purpose, and that all agencies understand and agree on the complaint-management process.

We have not received any complaints arising from the amendments, which commenced on 23 July 2003.

Police accountability mechanisms

The Complaints Act has been operating for 23 years, and has proved to be a solid foundation for the investigation of complaints about the AFP. The Act will also form the basis for the complaints management system for the Australian Protective Service on its integration with the AFP integrity regime on 1 July 2004.

'The Complaints Act has been operating for 23 years, and has proved to be a solid foundation for the investigation of complaints about the AFP.'

The Complaints Act and the AFP's integrity management framework were subjected to a review by the Hon. William Fisher AO QC in 2002–03, *A Review of Professional Standards in the Australian Federal Police* (2003) (the Fisher Review). The Fisher Review also evaluated the models of other police oversight agencies. Among the recommendations in the report were some to refresh the legislative base for the AFP complaints system. The report was tabled in Parliament in December 2003.

The Kennedy Royal Commission into corruption in the Western Australian Police Service undertook a similar review in Western Australia during the year. In a report presented in January 2004, the Commission recommended sweeping changes in police oversight mechanisms, drawing strongly on the conclusions of the Fisher Review.

There were similar developments in Victoria in 2003–04, stemming from a concern about police corruption. The Victorian Government responded by significantly increasing the powers and resources available to the Victorian Ombudsman to investigate

police corruption in that state. The statutory powers newly granted to the Victorian Ombudsman match those already held by the Commonwealth Ombudsman. However, the Commonwealth Ombudsman's office has customarily seen its role as one of administrative review and oversight, not corruption investigation. At the same time, there is a thread that links administrative misbehaviour and official corruption.

The AFP more appropriately deals with some complaints against police as management issues without the direct involvement of the Ombudsman's office. Under the Fisher model, the Ombudsman's involvement in minor complaints about the AFP would be reduced and attention would be focused on handling more serious complaints. This model is well established in New South Wales and Queensland and is to be introduced in Western Australia. The Australian Government has yet to respond to the Fisher Review and details of implementing the Fisher model are yet to be finalised.

The Ombudsman is confident that the Fisher Review and the office's review of the relevant Acts (see 'Year in review' chapter) are an appropriate response to the need to modernise the AFP complaints system.

Complaint handling

The major activity of the Ombudsman's office during the year in regard to law enforcement was to perform its accustomed roles of handling complaints about law enforcement agencies and conduct external reviews of AFP internal investigations.

As well, we were involved in two significant special investigations into complaints about the AFP and the APS. The investigations highlighted the role that can be played by the Ombudsman when police corruption is alleged or suspected. Although corrupt activity was not revealed in either case, such a finding is nevertheless important in its own right in bolstering public confidence that allegations of corruption have been properly investigated and eliminated if they are not soundly based.

'... investigations highlighted the special role that can be played by the Ombudsman when police corruption is alleged or suspected.'

Corruption allegations were made during the year against two officers of the ACC. We again brought an independent mind to the issue by reviewing whether the Commission had itself conducted a proper investigation of the allegations. Our role in doing so is discussed below (see 'Australian Crime Commission' section).

The remainder of this section provides an overview of the activities undertaken by the Ombudsman's office this year in relation to the three law enforcement agencies that fall within the Ombudsman's jurisdiction. The oversight of AFP complaint handling constitutes the majority of our work in law enforcement, largely because of the AFP's relative size, its high level of interaction with the public (especially through community policing in the ACT) and because of the requirement, specific to the AFP, that certain types of complaints about the AFP be disclosed to the Ombudsman for external assessment.

AUSTRALIAN FEDERAL POLICE

Under the Complaints Act, the responsibility for investigating complaints about the AFP is shared between the AFP and the Ombudsman. The AFP's Professional Standards investigates most complaints about AFP members; the Ombudsman reviews all AFP investigations and, if appropriate, conducts an independent inquiry or investigation.

Complaints about the actions of the AFP can be made direct to the Ombudsman's office or to the AFP. As the Ombudsman's main role is to ensure that all complaints are satisfactorily managed, the Ombudsman is notified of all complaints promptly. When complaints are finalised, the AFP provides a report to the Ombudsman explaining how the complaint was managed or investigated.

Approximately 70% of all complaints received about the AFP relate to ACT Policing, with the remaining complaints relating to the AFP's corporate, national and international roles. It is natural that a high number of complaints are made about ACT Policing because of the level of public interaction involved in community policing work. Most complaints are of a relatively minor nature and concern alleged conduct of police, such as incivility or rudeness.

The Complaints Act allows the AFP to conciliate complaints of a less serious nature directly with complainants through its workplace resolution process; where this is done, a senior police officer conciliates the complaint in the relevant workplace. This process combines the benefits of direct accountability with the opportunity to learn from mistakes. A minor mistake by a police officer that warrants an apology or explanation can often be easily conciliated with the complainant without the need for the Ombudsman's intervention. Complaints that potentially reveal more significant matters, such as alleged serious misconduct or a substantial breakdown in procedure, require a more comprehensive response.

'Most complaints ... concern the alleged conduct of police, such as incivility or rudeness.'

While the Ombudsman investigates some matters that are not appropriate for the AFP to examine, the Complaints Act contemplates that AFP Professional Standards will investigate most serious complaints. Ombudsman staff have the opportunity to consult with the AFP during an investigation about the progress of a complaint. It is then our role to review the evidence gathered in the investigation, consider the findings and recommendations, and inform the complainant of the outcome. Ombudsman staff provide independent scrutiny, paying particular attention to the thoroughness of the AFP investigation and deciding whether further investigation is necessary.

Appropriate investigation and resolution of complaints about serious concerns is an important anti-corruption measure. Complaints may provide a crucial source of information about police corruption, and can also act as an early-warning system for practices and procedures that are failing to deliver desirable outcomes. An organisation that takes complaints seriously and deals with them effectively can maintain public confidence.

In reviewing AFP investigation reports, we found most reports showed a comprehensive investigation and analysis, resulting in reasonable and appropriate recommendations. On a small number of occasions the reports were returned to the AFP for further action, such as a quality assurance

review of the report or further clarification of a particular issue. We continue to work with the AFP to ensure that complaint investigation reports represent a robust response to complaint issues.

Complaints overview

In 2003–04, the Ombudsman’s office received 712 complaints about the AFP, compared to 737 in 2002–03, a decrease of 3%. There was also a decrease in complaints finalised, to 664 from 718 in the previous year (down 7.5%). Fluctuations in complaint numbers have occurred over the past five years, as shown in Figure 5.8.

Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a different outcome. Analysis of complaint complexity, as indicated by the number of issues raised per complaint, shows that on average complainants consistently include between one and two issues per complaint.

AN EFFECTIVE COMPLAINTS SYSTEM

Ombudsman staff meet on a weekly basis with the AFP to discuss complaints and emerging issues, and to develop a better understanding of police policy and practices. During the year, we explored possible improvements to our complaint-handling systems under the Complaints Act. Some of the outcomes are reported below.

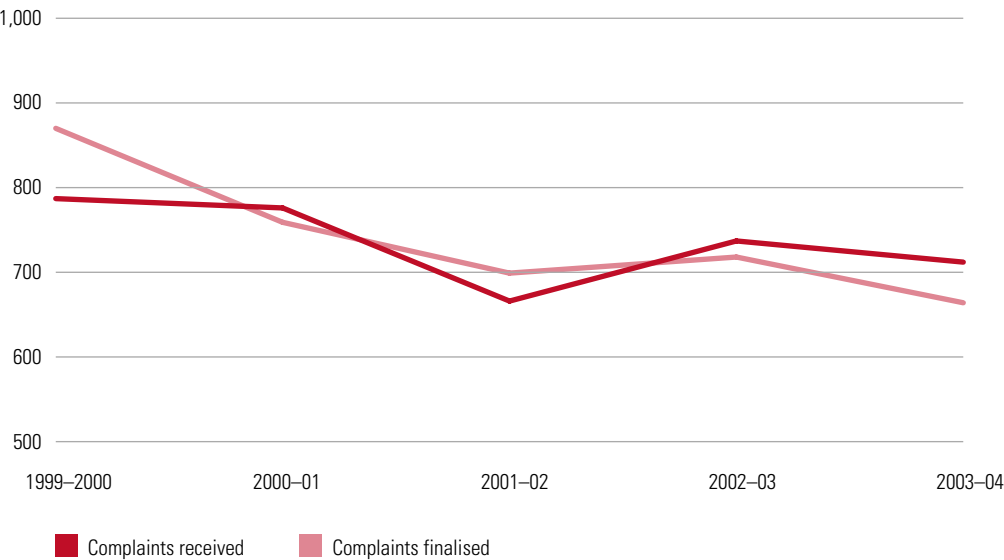
Pathways to remedies for complaints

In 2003–04, a significant proportion of cases, that in past years might have been investigated by AFP Professional Standards, were investigated by management within the AFP’s workplace resolution process. These cases typically revealed errors made in good faith, a misunderstanding of police powers, or other unsatisfactory performance elements, as opposed to corrupt intent. Had these matters been investigated, the outcome would have been no different, but most likely would have resulted in a delay in investigation and unnecessary expense.

Even when the result of a workplace resolution process may not be the outcome sought by the complainant, the process is nearly always beneficial. Improved understanding is achieved and the complainant is given an opportunity to discuss the matter directly with senior police. For example, a person may believe that police should not be able to place an intoxicated person in protective custody when no offence has been committed. The complainant may not accept the decision made in the individual case, but will be better informed as to the difficulty of the issue.

Our preliminary assessment is that this approach has led to improved outcomes for complainants and the accountability framework as a whole.

FIGURE 5.8 Australian Federal Police complaint trends, 1999–2004



Decisions not to investigate further

One of the roles of the Ombudsman under the Complaints Act is to determine in each case whether further investigative effort, or indeed any investigative effort, is warranted, having regard to all relevant circumstances. The AFP cannot terminate a complaint investigation without the agreement of the Ombudsman's office.

'One of the roles of the Ombudsman under the Complaints Act is to determine ... whether further investigative effort ... is warranted ...'

As a general rule we would consider that it is unproductive and an ineffective use of limited Ombudsman staff resources to investigate a matter if:

- the complainant is not committed to using the conciliation process or the nature of the complaint has not been properly detailed
- a complaint includes insufficient evidence to allow a firm conclusion to be reached
- relevant documents or witnesses are no longer available.

As detailed in Table 2 in the 'Statistics' section, there was an increase in the number of issues we decided not to investigate on receipt of a complaint or after making preliminary inquiries (222 or 24%, compared with 17% the previous year). This allowed Ombudsman staff to devote more time to ensuring that issues warranting investigation received appropriate attention. Taking this approach has resulted in a decrease in the number of conciliations attempted and an increase in the success rate, with a corresponding increase in the number of preliminary inquiries and decisions not to investigate at the outset.

Critical incident reporting

The investigation of some complaints is 'time-critical', usually because of the need to preserve evidence or prevent collusion. The effectiveness of the current Complaints Act accountability system is heavily dependent on having a protocol between the Ombudsman's office and the AFP to ensure disclosure of critical incidents.

A critical incident is a crisis event, in which police action had or could have had a serious, adverse effect on a member of the public, particularly an incident that could lead to the death or serious injury of a person in police custody. AFP Professional Standards contacts us as soon as possible in such a circumstance to determine what investigative response we consider appropriate.

One critical incident was reported to the Ombudsman during the year—the death of a person in the ACT resulting from a crash of a car that had been pursued at high speed by an AFP vehicle. We provided input to the initial stages of the AFP investigation to ensure that all relevant evidence was secured, and that the AFP's investigation considered the possibility that police (or police practices) contributed to the death. This matter is subject to a coronial investigation in the ACT.

SPECIAL INVESTIGATIONS

During the year, Ombudsman staff worked on four special investigations under powers conferred by the Complaints Act. One of the special investigations, conducted jointly with the AFP, was carried over from the previous year. Two of the investigations were finalised in 2003–04 and the other two will be completed in 2004–05. The two investigations completed this year are reported below.

National Witness Protection Program

We investigated certain aspects of the AFP's administration of the National Witness Protection Program (NWPP) that had come under criticism in a matter before a court. The specific complaint related to the provision by the AFP of a substitute medical certificate to a court that excused a key witness from attending a committal hearing in Sydney. A doctor employed by the AFP, who had not sighted the witness, had issued the medical certificate. The concern was that the AFP had sought to mislead the court in order to secure an adjournment for the prosecution.

A special investigation by the Ombudsman's office concluded that the creation of a second certificate, though done in good faith, was ill advised. There was no evidence to support the contention that

the witness or the AFP was attempting to avoid an appearance before the court. While the AFP did not initially disclose all information to the court about the creation of the second certificate, the AFP did not mislead the court about the health of the witness.

In reporting to the AFP, the Ombudsman recommended several changes to NWPP procedures to accommodate the needs of the court, but without compromising a witness's assumed identity (consistent with the *Witness Protection Act 1994*).

Allegation of assault and false charges

The focus of a special investigation completed during the year was a complaint that the AFP and the APS (the complainant's employer) had conspired to bring false charges against the complainant relating to the falsification of time sheets that had resulted in a significant overpayment of wages. The complainant had alleged that the charges were in retaliation for being a whistleblower at work. Some weeks before his scheduled court trial in 2002, the complainant was found dead in his flat. In the previous week, he had phoned the emergency number, alleging that an AFP officer had assaulted him.

A team of investigators, drawn from Ombudsman staff and the AFP and reporting to the Ombudsman, investigated the allegations of assault and laying of false charges, and tried to identify any whistleblowing in which the complainant might have been involved. The Ombudsman accepted that there was no evidence to support any of the complainant's allegations.

The New South Wales Coroner is currently inquiring into the complainant's death. Under the public interest provisions of the Complaints Act, the Ombudsman has made available all material requested by the Coroner, including the special investigation report.

AFP COMPLAINTS OUTREACH PROGRAM

The office's Law Enforcement Team maintains a range of relationships designed to make the AFP complaint system accessible to those who want to exercise their right to complain. The aim is to generate public awareness of the Ombudsman's role in managing AFP complaints and to build confidence

in the complaint system. Additional funding was allocated in the 2004–05 Budget for outreach activities, and an enhanced strategy has been developed for AFP complaints.

The Ombudsman's outreach program ... can obtain information about the community's interaction with the AFP'

The organisations identified for law enforcement outreach activities are those with a large number of clients from disadvantaged and minority sectors such as the multicultural, indigenous Australian, youth, gay and lesbian sectors, and those with mental health problems. The outreach program will also serve to provide a forum where the Ombudsman's office can obtain information about the community's interaction with the AFP.

During the year, we continued to liaise with government agencies that are closely associated with the AFP, including CrimTrac, the ACT Director of Public Prosecutions, the ACT Legal Aid Office, the ACT Victims of Crime Coordinator, and the Attorney-General's Department. The perspective of these offices provides a valuable insight into current and potential issues involving police practices.

Staff members conducted an outreach visit to the Jervis Bay area, and conducted training sessions for students of criminal law at the Australian National University. We also presented seminars to AFP members about our role and the rights of people to make complaints.

AUSTRALIAN PROTECTIVE SERVICE

The APS provides a guarding service for Australian Government facilities and airports. The APS also provides a first-response capability at airports in terror alert incidents, and in 2003–04 was part of the Regional Assistance Mission to Solomon Islands. APS officers have a reasonably high level of interaction with the public.

The APS was granted additional powers by Parliament in January 2004. Using these new powers, an APS officer can require a person suspected of a particular offence to furnish their

name and address, stop and search a suspect and their vehicle, use reasonable force to effect a search, conduct frisk searches, and seize items from suspects. No complaints were received during the reporting period about alleged abuse of these new powers.

As noted in last year's annual report, the APS became an operational division of the AFP on 1 July 2002; under that arrangement, complaints about the APS are handled under the Ombudsman Act. Seven complaints were received in 2003–04, and a further five complaints were carried forward from the previous year. Of these 12 complaints, ten were closed during 2003–04.

In May 2004, Parliament approved full integration of the APS and AFP by approving amendments to the *Australian Federal Police Act 1979*. From 1 July 2004, APS members will be subject to the Complaints Act and come under the same professional conduct and complaint regime as AFP members. Significantly, complaints against the APS and its members will have to be notified to the Ombudsman's office, as is currently the case with AFP complaints. Our experience shows that the requirement to disclose all complaints is an excellent accountability mechanism.

'The Ombudsman is confident that the APS's capacity to manage its complaint handling will improve ...'

Several of the complaints about the APS in 2003–04 were outside the Ombudsman's jurisdiction, because they related to employment matters. In all other complaints, we considered that the APS internal complaint-handling mechanisms adequately responded to each complainant's concerns. While we expressed concern about a delay in providing a response to a complainant in one case, the Ombudsman is confident that the APS's capacity to manage its complaint handling will improve as the organisation gathers relevant experience and skills.

Members of the Law Enforcement Team spent two days with APS senior managers from around Australia at a workshop in Canberra in June 2004, discussing the implications of subjecting the APS to the Ombudsman's oversight. We look forward

to working more closely with APS management and staff in the 2004–05.

AUSTRALIAN CRIME COMMISSION

Complaints about the ACC are managed under the Ombudsman Act. Only six complaints were received in 2003–04, largely reflecting the fact that the ACC's role does not bring its staff in close contact with members of the public. A further two complaints were carried over from the previous year. During the year, seven complaints were finalised, and one complaint was carried over.

Of the seven matters finalised during the year, the Ombudsman decided not to investigate four as they were of a trivial nature or were based on an improbable scenario. A fifth complaint related to the ACC's failure to return seized property in a timely manner, which the ACC quickly remedied.

Ombudsman staff made inquiries about a sixth complaint that was of a more serious nature. It was found that the complainants' concerns had been adequately raised and reviewed before a court on previous occasions. In such a case, notwithstanding that a person may be disappointed and continue to debate an outcome in the judicial process, there is no further role for the Ombudsman's office.

A second serious allegation was forwarded to the ACC for investigation under the Ombudsman's supervision. After significant investigative effort, the complainant's allegation could not be substantiated due to lack of conclusive evidence.

While the Ombudsman Act does not confer power to compel an agency to disclose to the Ombudsman all complaints received by the agency, it is pleasing to note that we receive regular briefings on all matters being investigated by the ACC that relate to the integrity of its staff. This provides the Ombudsman with the opportunity to judge whether or not to use own motion powers for certain matters. Considering the sensitive nature of the work of the ACC, we have appreciated the ACC's approach to the disclosure of integrity matters.

'... regular briefings ... provide the Ombudsman with the opportunity to judge whether or not to use own motion powers.'

Own motion investigation

In June 2004, the Ombudsman conducted an own motion investigation into a review of the operational and corporate implications for the ACC of alleged corrupt activity by two former secondees.

The scope of the Ombudsman's investigation was limited. It focused on assessing whether the review, which was conducted by independent consultants, met the terms of reference provided by the ACC and whether the recommendations reflected the operational implications identified in the review report. The Ombudsman did not conduct a separate investigation of the allegations of corrupt activity.

The Ombudsman concluded that the review conducted for the ACC had been undertaken in a proper manner and made appropriate recommendations. The Ombudsman's report made two further recommendations to the ACC about developing effective management and compliance systems to address deficiencies identified in the consultants' review report. The Ombudsman also recommended that the ACC implement the package of recommendations made in the consultants' report. The ACC has accepted all the recommendations of both reports.

The Ombudsman will conduct a further own motion investigation during 2004–05 to monitor the ACC's progress in implementing the recommendations.

MONITORING ACTIVITIES

The Ombudsman's office undertakes a variety of monitoring roles in addition to its complaint investigation function. Monitoring activities encompass the inspection of records relating to telecommunications interceptions and controlled operations undertaken by the AFP and the ACC. The Surveillance Devices Bill 2004, which was still under consideration by Parliament at the end of June 2004, would broaden the Ombudsman's inspection role to include records relating to surveillance devices.

In the 2003–04 Budget, the Australian Government provided additional ongoing resources for the Ombudsman's monitoring and inspection function. We are acutely aware that the Commonwealth Ombudsman is part of a larger community of

bodies that oversight law enforcement practices, both within Australia and internationally.

The office's Law Enforcement Team is actively developing a network of contacts with other Ombudsman offices to share knowledge and ideas. For example, we hope to achieve a nationally coordinated and consistent approach between Ombudsman offices that will make our collective activities more efficient and enhance our advice to government.

We have commenced an extensive review of our inspection methodologies both for telecommunication interceptions and for controlled operations. This review will be finalised in 2004–05, and will be followed by consultation with the AFP and the ACC.

These reviews have identified a small anomaly in the reporting requirements placed on the office. We currently report on the inspections we conduct in a financial year, rather than on the records generated in that period. This situation has the effect that the Ombudsman's reports to the Attorney-General cannot reasonably include interception records generated in the last months of the financial year. We intend to progress this issue in 2004–05.

'The Ombudsman is required to inspect the records of the AFP and the ACC ...'

Telecommunication interceptions

Under the *Telecommunications (Interception) Act 1979*, the Ombudsman is required to inspect the records of the AFP and the ACC to ensure that telephone interception activities are conducted in accordance with the provisions of the Act.

During the year, a total of four inspections of telecommunications intercept records were conducted. Two inspections were conducted at the AFP and two inspections at the ACC. A report was made to the Attorney-General on the results of those inspections. The reports concluded that the agencies are generally complying with the requirements of the TI Act. However, there are also opportunities to improve the administrative and compliance systems for both agencies, especially in developing guidelines and training to assist staff in administering telecommunications interception warrants.

These inspections continue to form an important element of the work of the Ombudsman's Law Enforcement Team. The inspection methodology used and resource levels required are continually reviewed to ensure that the accountability role of the office continues to be performed adequately.

In conjunction with the AFP, we gave presentations to AFP investigators in Melbourne, Sydney and Perth, about the importance of accountability. These occasions gave investigators an opportunity to discuss issues of concern.

While in Perth, we had discussions with the ACC, a representative of the Western Australian Ombudsman and the Parliamentary Inspector of the Western Australian Corruption and Crime Commission. Representatives of the ACC also travelled to Canberra to meet with us to discuss new procedures and training.

We met with representatives from the Security Law Branch of the Attorney-General's Department to discuss matters relating to the TI Act.

Controlled operations

Controlled operations can be broadly described as covert operations carried out by law enforcement officers for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence under the *Crimes Act 1914*. These operations may also result in the law enforcement officers engaging in conduct that, unless authorised under a controlled operations certificate, would constitute an offence.

The Ombudsman has an oversight role in ensuring that controlled operations are approved and

conducted in accordance with Part 1AB of the Crimes Act, and that information in formal reports is comprehensive and accurate. Relatively low numbers of controlled operations are undertaken in the federal law enforcement arena.

The Ombudsman has an oversight role in ensuring that controlled operations are approved and conducted in accordance with the Crimes Act ...'

During the year, a total of four inspections of controlled operations records were conducted. Two audits were conducted at the AFP and two audits at the ACC. These inspections resulted in reports to both agencies and the Minister for Justice and Customs, a briefing to the Parliamentary Joint Committee on the ACC, and the presentation of a report to the President of the Senate and the Speaker of the House of Representatives in January 2004. The reports concluded that the agencies are generally complying with the requirements of the Crimes Act and providing comprehensive and accurate information in formal reports.

Following the Ombudsman's briefing to the Parliamentary Joint Committee on the ACC in October 2003, an own motion investigation was conducted under the Ombudsman Act into controlled operations carried out by the ACC under State and/or Territory legislation. The investigation is due to be completed in 2004–05.

other agencies

The jurisdiction of the Commonwealth Ombudsman extends to nearly all Australian Government agencies. However, nearly 90% of complaints to the Ombudsman are about the few agencies dealt with in the earlier sections of this chapter. The remaining 1,952 (or 11%) of complaints are received about 82 other agencies across 16 portfolios. Table 5.2 sets out ten of the agencies for which the most complaints were received.

Any description of the complaint and investigation role played by the Ombudsman in relation to 82 different agencies is necessarily selective. Many of the complaints relate to administrative decisions or actions that form part of the specific, and at times unique, schemes being administered by particular agencies. There are, nevertheless, common themes that emerge in complaint handling, often to do with the timeliness of decisions, transparency in the decision-making process, rigidity in applying rules, and the clarity and sufficiency of the reasoning given in support of decisions.

'There are common themes that emerge in complaint handling ...'

This section provides some examples of the complaints handled this year by the Ombudsman, and the themes taken up by the office. The themes and examples have been selected to provide a picture of the diversity of issues handled each year. They show, at the same time, the variety of situations in which people seek assistance from an independent agency such as the Ombudsman in relation to their dealings with government agencies. Complaints also present an opportunity to improve government administrative practice. In focusing on this systemic dimension, the Ombudsman's office can draw on 27 years of experience in handling a broad range of complaints.

DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS

The Department of Employment and Workplace Relations (DEWR) is one of many government agencies that manage financial assistance schemes and other programs that provide grants or financial concessions to individuals and companies. It is to be expected that any scheme of entitlement in

TABLE 5.2 Complaints received about top ten other agencies, 2001–2004

Agency	2001–02	2002–03	2003–04
Department of Employment and Workplace Relations	145	245	295
Health Insurance Commission	152	125	137
Comcare	119	118	116
Australian Securities and Investments Commission	118	81	114
Department of Transport and Regional Services	40	49	104
Telstra Corporation	114	137	101
Department of Health and Ageing	73	85	101
Department of Foreign Affairs and Trade	50	60	99
Family Court of Australia	69	59	90
Insolvency and Trustee Service	58	40	78

which applications are not always successful will generate complaints about the adverse decisions and how those decisions were made. This is particularly the case in the early days of a new scheme, when systems and processes are being developed, and entitlement criteria are being refined. At this stage in the development of a program it can be all the more important to have oversight by an Ombudsman or another review process.

These observations have been borne out in complaints received by the Ombudsman regarding the administration of the General Employee Entitlements and Redundancy Scheme (GEERS) introduced in 2001. Complaints regarding GEERS now account for over 40% of all DEWR complaints, and underscore the noticeable increase in the total number of DEWR complaints received by the Ombudsman. There was a 69% increase in DEWR complaints in 2002–03 and a further 20% increase in 2003–04.

As Table 5.2 shows, these numbers are small in absolute terms. The 20% increase is in a figure of only 245 complaints for the year. Of the DEWR complaint issues investigated, 59% resulted in a remedy being proposed, compared with 69% for all issues investigated by this office. An example of a complaint dealt with this year is in the case study, *Defining the period*.

GEERS is a scheme that was established by executive rather than legislative action. The only

right of review provided for by the scheme is to a more senior DEWR officer; there is no appeal right to an external tribunal. Complaint investigation by the Ombudsman can therefore play an important role.

A meeting was held between staff of the Ombudsman and DEWR in early 2004 to discuss a number of issues, including:

- denial of natural justice, which can occur if an applicant for a GEERS payment is not given the opportunity to comment upon information obtained from a third party that conflicts with the applicant's information
- a lack of detail in notification letters about how amounts are calculated and the evidence on which a decision is based
- inadequate investigation, when an unsuccessful applicant has sought review of the decision, particularly where 'independent verification' of outstanding entitlements is required
- inadequate notification of the scheme to those eligible to apply under it, resulting in some applicants failing to lodge an application within 12 months of the termination of employment, as required by GEERS.

DEWR responded positively to the meeting with Ombudsman staff, drawing on our experience both in the administration of other entitlement schemes and in the handling of complaints. The Department undertook to respond to the matters raised at the meeting and to action a review of the particular GEERS processes and documentation in question.

CASE STUDY defining the period

Mr K's employment was terminated due to the insolvency of his employer. As his employment contract provided for three months payment in lieu of notice, Mr K applied for payment in lieu of notice under GEERS. However, Mr K's employment contract did not define the term 'month'. In calculating how much money Mr K was entitled to receive, DEWR defined a month as a four-week period. Mr K sought internal review of the decision on the basis that his contract referred to a calendar month and not four weeks. His appeal was not successful.

Ombudsman staff contacted DEWR, pointing out that case law supported the proposition that when the term month was not defined it referred to a calendar month. We also pointed to the *Acts Interpretation Act 1901* (Cth), which provides that the term 'month' refers to a calendar month.

DEWR agreed with our view and paid Mr K 13 weeks payment in lieu of notice (instead of 12), and advised that instructions would be issued to ensure that this becomes standard practice.

The other major area of complaint in DEWR is the Job Network, which provides job search assistance and other employment services for people registered for unemployment benefits. The Job Network provider organisations are private and community-based organisations that have been selected through a competitive tendering process. They are contracted by DEWR to provide employment services in accordance with a code of practice. The case study, *Tailoring services to individual requirements*, provides an example of complaints received about the Job Network.

The Ombudsman conducted an own motion investigation into complaint handling in the Job Network, releasing a report in August 2003. This investigation checked the progress made by DEWR in implementing recommendations made by the Ombudsman in 2001 regarding suggested improvements to Job Network complaint-handling arrangements. DEWR had accepted ten of the 11 recommendations arising from the investigation. The Ombudsman noted that some of the recommendations had already been incorporated into requirements under the new employment services contract, which commenced in July 2003. While the investigation revealed that there had been significant progress in complaint handling within the Department, improvements were still required to arrangements for complaints made directly to Job Network providers.

We will continue our interest in DEWR's administration of complaints about the Job Network and the response to the recommendations in our 2003 report. A copy of the August 2003 report, entitled *Own motion investigation into complaint handling in the Job Network*, is available on our website at www.ombudsman.gov.au.

AUSTRALIAN ELECTORAL COMMISSION

A complaint about a decision by the Australian Electoral Commission illustrated the point that on occasions the decisions made by government agencies do not adhere to legislation or internal guidelines. External review by a body such as the Ombudsman can be useful in drawing attention to such a deficiency. This point was taken up in the case study, *A street by no other name*.

FAMILY COURT OF AUSTRALIA

Members of the public frequently rely on agency staff for advice on completing an official transaction. It is therefore important for staff who have direct contact with the public to be well-trained and experienced. The *Experienced counter staff* case study illustrates where this can be an issue.

HEALTH INSURANCE COMMISSION

The issue of the accuracy of agency advice given to a member of the public also arose in two complaints

CASE STUDY tailoring services to individual requirements

Mr N was required to negotiate a Job Search plan with his Job Network member. He was told that, as part of this plan, he needed to complete a 100-hour Job Search training course, which included resume preparation and interview techniques. As part of his redundancy package, Mr N had attended extensive training covering the same issues, but was nevertheless told that he had to do the Job Search training regardless of his previous training. When he called the Job Network Hotline, Mr N was told to contact the Ombudsman as there was nothing the hotline could do about the issue.

Job Search training is compulsory, but equally a Job Network member is required to assess the labour market skills and job search needs of the individual during this training. This enables the member to tailor the training to the job seeker's specific needs.

DEWR undertook to contact Mr N and to explain his rights and apologise for not resolving the complaint when he contacted the hotline. DEWR also undertook to contact Job Network members and emphasise the importance of tailoring services to the individual job seeker.

about the Health Insurance Commission. In one case, a Medicare office incorrectly refused to recognise a citizenship certificate as proof of Australian permanent residency. The Commission made a written apology and undertook to target specific training at the particular Medicare office.

In another case, Medicare staff told the complainant, whose Medicare card had expired, that he had to apply for a new card, even though no details had changed since he was last issued with a card. Medicare staff admitted that this was incorrect advice and apologised to the complainant.

TELSTRA CORPORATION

Telstra Corporation remains within the jurisdiction of the Commonwealth Ombudsman, although the Ombudsman's office handles few complaints since the introduction of the Telecommunications Industry Ombudsman (TIO). Generally, we advise a person complaining about Telstra to take their complaint to the TIO for consideration.

We sometimes receive complaints from individuals who do not agree with the TIO's conclusion. It does not come within the Ombudsman's jurisdiction

CASE STUDY a street by no other name

A Member of Parliament complained on behalf of a constituent, Mr T, concerning the way that Mr T's address details were set out on the electoral roll. Mr T had moved to a retirement village in 1996, and initially the Australian Electoral Commission (AEC) accepted the address he nominated.

In May 1999 the AEC changed all the addresses for the retirement village using an internal but non-gazetted road as the point of reference for the roll details. Mr T complained about the change but the AEC refused to alter the details and maintained that its staff had the power to make changes to street names or any other part of an address on the roll.

Following our investigation, the Electoral Commissioner agreed that the decision to change the address did not reflect the AEC's view of the law or current procedures. The intent of the relevant provisions of the *Commonwealth Electoral Act 1918* was to give the AEC authority to alter the roll when local government bodies change street names and/or numbers. The provisions imply that this power should only be exercised once official or gazetted changes have been made, and the AEC's internal procedures had been explicit on this point since at least 2001.

The AEC developed a new form of roll address in compliance with the law for all the residents of the retirement village and apologised to Mr T for any distress caused.

CASE STUDY experienced counter staff

Mrs B complained that the Family Court had dismissed her divorce application. The ground of dismissal was that the affidavit verifying the application had not been sworn before an appropriately authorised person. Mrs B claimed that she had followed the advice of a Court Registry officer as to the requirements for swearing a document, and that the Court Registry had not detected the error when her divorce application was presented to the Court Registry for filing.

Our investigation was not able to establish whether Mrs B had been given incorrect advice. The Court advised that it has procedures designed to detect and remedy some of the flaws in material presented by clients for filing, but that at the time Mrs B had filed her divorce application there were staffing problems caused by experienced counter staff leaving the Court. Further training was conducted when errors of the nature experienced by Mrs B had been discovered.

The Court acknowledged that it would have been preferable had the incorrect swearing of the application been detected. The Court advised that consideration would be given to waiving the filing fee if Mrs B presented a new application.

to review the decisions of the TIO and we therefore do not investigate these types of complaints.

We receive a small number of complaints about Telstra each year, falling outside the charter of the TIO, in which the Ombudsman has a role to play. Two examples are in the case studies, *Verifying events* and *Services and billing*. The first, concerning the emergency telephone service (the 'triple 0' call facility) that Telstra provides as part of its Community Service Obligation, was outside the TIO's charter because it was not a matter of a competitive nature. The second, concerning difficulties an Internet Service Provider stated he was experiencing with Telstra relating to service provision and billing

issues was outside the TIO's charter because the TIO does not examine disputes between its 'members'.

AUSTRALIAN CUSTOMS SERVICE

The low number of complaints received about the actions and decisions of the Australian Customs Service (ACS) is notable, given the frequency with which the ACS interacts with members of the public and the increased scrutiny of passengers and goods at airports. Only 73 complaints were received in 2003–04 (compared to 70 the previous year).

In a small number of cases, our investigation indicated that a Customs officer may not have

CASE STUDY *verifying events*

Mr G believed that attempts by his daughter to contact the 'triple 0' number were not appropriately handled by Telstra operators and had contributed to the total loss of his house in a fire.

In response to our inquiries, Telstra was able to provide evidence of all calls made to the 'triple 0' service at and around the time Mr G alleged the incidents occurred. Telstra also provided us with an audio copy of the telephone conversations between Mr G's daughter, other callers about the fire and Telstra operators.

As there was nothing to support Mr G's version of events, we decided to cease further investigation unless Mr G was able to provide additional information. Our investigation did not satisfy Mr G, but it did provide him with detailed evidence of Telstra's record of all calls made to the 'triple 0' service from the telephone number he nominated. We also advised Mr G about the further information required if he wanted us to take this matter further.

CASE STUDY *services and billing*

A complaint from an Internet Service Provider was about the technical cause of service supply interruption, as well as billing issues. The complaint was complex due to the protracted nature of discussions between the Provider and Telstra.

We examined the processes pursued by Telstra to identify the cause of the supply interruption; the nature, content and regularity of advice and contact to the Provider from Telstra; and the reasonableness of its actions in the circumstances, particularly given the relative size of the two organisations. We did not examine the technical aspects of the case other than to assure ourselves that Telstra's response to these aspects appeared fair in the circumstances, with Telstra commissioning an independent review of the technical issues.

Ombudsman staff were satisfied that Telstra had acted reasonably in addressing the Provider's concerns and in dealing with the technical disagreement. While our office's role in this complaint has ceased, financial resolution of the matter between Telstra and the Internet Service Provider continues. In this particular complaint, the involvement of the Ombudsman's office helped both parties to focus on the need for resolution and pointed to options to move the process forward.

treated a passenger appropriately. ACS provided details of the strategies it put in place to minimise the likelihood of a recurrence and offered apologies to the passengers involved.

The willingness of ACS to respond to feedback was demonstrated during the investigation of a complaint about the return of a package to the sender during the period allowed for an objection to additional tax. ACS acknowledged that the information it published needed to be revised to provide clearer advice to importers of their responsibilities in such a situation. In addition, ACS decided to amend decision-making procedures so that more senior and experienced officers would be involved in such matters.

During the year, ACS released a revised Client Service Charter and an updated complaints and compliments brochure. These publications have taken feedback from our office into account. The new complaints and compliments brochure combines two former brochures and is designed to encourage feedback from members of the public affected by the actions of the ACS. The brochures are available at www.customs.gov.au.

TENDER AND CONTRACT ISSUES

It is common for government agencies to contract with private sector bodies to deliver services previously provided directly by an agency. When this occurs, it is important that the public should not lose their right to complain about the way in which a service is being delivered.

Where a government service has been contracted out, the Ombudsman can often look at the responsibility of the government agency that is contracting the service, even if the contractor itself is outside our jurisdiction. For example, a private company manages immigration detention facilities, but that does not absolve the Department of Immigration and Multicultural and Indigenous Affairs from responsibility for the operation of detention facilities. Many complaints to the Ombudsman about the facilities are taken up with the Department.

The right to complain to the Ombudsman is not the only administrative law right that can be inhibited by the contracting out of government functions, as illustrated by the *Outsourced service* case study.

CASE STUDY outsourced service

Ms A had settled in Australia as a refugee with her husband (since deceased) and four young children. She and the children lived for a short while in a group accommodation house, operated by a non-government organisation that was funded by government to provide resettlement services. Prior to leaving the accommodation, there had been disagreement between Ms A and the non-government organisation about such matters as the suitability of the accommodation for a family, the operation of bank accounts, and religious preference in choice of schooling.

Ms A approached our office for assistance in obtaining Freedom of Information (FOI) access to medical and financial records relating to her resettlement in Australia. We were able to assist her in pursuing the FOI claim in relation to two Australian Government agencies, but were not able to assist her in obtaining access to the records of the non-government organisation. The organisation was not subject to the Ombudsman's jurisdiction, and was under no legal obligation to provide Ms A with access to its records.

Complaints of this nature raise the general issue of whether public information access rights should apply to documents relating to the discharge by non-government organisations of services they have been funded by government to provide to the public. A recommendation in support of this principle was made in the 1995 report of the Administrative Review Council and the Australian Law Reform Commission, *Open Government: A Review of the Federal FOI Act*. The report recommended that the obligation be imposed and spelled out as appropriate by statute, in service contracts, or in executive guidelines issued by an FOI Commissioner. The recommendations have not been implemented, but this is an issue of continuing interest for the Ombudsman's office.

The Government has accepted in principle a recommendation by the Parliamentary Joint Committee of Public Accounts and Audit that the Ombudsman's jurisdiction be extended to cover the actions of Commonwealth contractors. The Government's view was that the action should be limited to contracts for the provision of goods and services to the public. As part of a review of the Ombudsman Act being undertaken by the office, we are examining the option of proposing to government that the Act be amended to confer this jurisdiction upon the Ombudsman.

Another way in which the Ombudsman becomes involved in contractual issues is that a private-sector body can complain to the Ombudsman about its dealings with government, including dealings around the tender and contract process. In 2003–04, we received 53 complaints about tendering processes and contractual disputes.

Before pursuing a complaint about a contractual matter, the office first considers whether

a legal avenue may be a more appropriate alternative. In some instances, parties are better served by protecting their legal interests and pursuing a legal rather than an administrative remedy. There are, on the other hand, situations in which administrative review of the kind provided by the Ombudsman is a more suitable mechanism for resolving a problem that might otherwise escalate into a protracted and costly legal dispute.

Generally, we are prepared to commence preliminary inquiries or to conduct an investigation where there are indications of poor administrative practice and where a company's or an individual's financial capacity to pursue the issue through the courts appears more limited. Our aim is not to circumvent legal processes, but to try to assist in obtaining a quicker, less expensive resolution for both parties, and to identify any systemic administrative deficiencies and processes, in what are generally very complex cases.

freedom of information complaints

There is a close relationship between democracy, accountability and transparency. The purpose of the *Freedom of Information Act 1982* (the FOI Act) is to extend, as far as possible, the Australian community's right of access to information in the Australian Government's possession. The FOI Act expressly empowers the Ombudsman to receive and investigate complaints about the actions of Australian Government departments and agencies in response to FOI requests. The Act also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters. The Ombudsman's role is to ensure that agencies maintain sound records, provide information clearly and accessibly, and have an open and responsive approach to complaint handling.

COMPLAINTS ABOUT FOI

During the year, we received 236 complaints and finalised 229 complaints about the way Australian Government agencies handled requests under the FOI Act (see Table 5.3). This is a 10% decrease from the 263 complaints received in the previous year.

As in previous years, the bulk of complaint issues during the year related to the processing of FOI requests, with two-thirds concerning delay. Agencies continue to take more time to make decisions than the FOI Act allows. In some cases staff appeared to have problems recognising FOI applications as such and forwarding them to the appropriate area for processing.

'... the bulk of complaint issues ... related to the processing of FOI requests, with two-thirds concerning delay.'

Where the Ombudsman finds there has been delay, the usual remedy is to encourage the agency to speed up the processing and give an apology. For some complaints we have suggested more, such as a remission of fees and charges. Occasionally, the Ombudsman requests that the agency provide appropriate staff training and remind staff of the statutory time limits.

TABLE 5.3 Freedom of Information complaints and issues finalised, by agency, 2003–04

Agency	Complaints	Issues
Centrelink	104	105
Australian Taxation Office	22	26
Department of Immigration and Multicultural and Indigenous Affairs	15	19
Child Support Agency	11	11
Department of Defence	9	10
Australia Post	8	8
Department of Veterans' Affairs	6	8
Department of Health and Ageing	5	6
Other	49	53
Total	229	246

It is not always possible for agencies to identify all relevant documents relating to an FOI application in the first instance. In one case investigated this year, the agency provided further documents to the applicant following an internal review by the agency and then again after investigation by the Ombudsman of the applicant's complaint. Our investigation found that the existence of the further documents only became apparent in the context of continuing inquiries.

'Another common complaint issue was about the correctness of the FOI decision itself.'

In these circumstances, given the nature of the documents requested and the relative obscurity of the procedure to which they related, we were reluctant to criticise the agency. We did, however, negotiate a waiver of the fees for the internal review request and a review of FOI procedures within the agency to ensure that, in future, the agency's FOI officers received appropriate technical advice relating to requests about technical processes.

Another common complaint issue was about the correctness of the FOI decision itself. The majority of these complaints were not investigated, mainly because the complainants had not yet exercised their review rights. The FOI Act provides that an

applicant who disagrees with a decision under the Act (for example, an exemption claim or an FOI charge) can seek internal review of that decision by a more senior officer of the agency, followed by an appeal to the Administrative Appeals Tribunal.

OWN MOTION INVESTIGATION

In the last quarter of 2003–04, the Ombudsman conducted an own motion investigation into the quality of FOI processing by Australian Government agencies. This investigation follows on from the 1999 Commonwealth Ombudsman's report, *Needs to Know* (available on our website), and from the work done earlier in the reporting year by the Australian National Audit Office, *Administration of Freedom of Information Requests*. During this investigation, we:

- reviewed our office's complaint records
- analysed decisions of the Administrative Appeals Tribunal
- reviewed agency guidelines
- analysed a selected sample of FOI files from a range of agencies.

In early 2004–05, we will publicise the general trends identified in the investigation. As the sample size is limited, we do not propose to identify specific agencies. Issues of concern will be raised with individual agencies.

FEATURE

social support team

The Social Support Team is located in the National Office in Canberra and is staffed by a team of three investigation officers, headed by a Senior Assistant Ombudsman. Their collective knowledge and practical experience equates to approximately 35 years of working for social welfare agencies.

The Social Support Team was established in 2001 following identification of the need to establish a small team of specialist analysts to consider systemic issues arising in the delivery of social support programs, particularly those developed and administered by the Department of Family and Community Services (FACS), Centrelink and the Child Support Agency (CSA). Complaints received about Centrelink and the CSA account for nearly 60% of all complaints received by the Ombudsman.

Since 2001, the Social Support Team has been responsible for investigating complex or common theme complaints, providing advice and guidance to investigation staff nationally throughout the office and conducting statistical analysis of complaint data and complaint trend assessment. When required, the Social Support Team assumes responsibility for complex investigations originating in other offices and provides feedback to staff about achieved outcomes.

Being based in Canberra, the Social Support Team is able to take advantage of its close proximity to the national offices of FACS, Centrelink and the CSA, and meet regularly with senior staff to discuss complaint issues and trends. This interaction has proved beneficial from the viewpoint of negotiating complaint remedies and reducing the potential impact of some systemic complaint issues. The Social Support Team sees value in the ability to have open and frank discussions about complaint matters and finds direct and regular contact with senior agency officials the key to achieving results.

The Team also works on the Ombudsman's own motion investigations relating to social support programs. The result of one such investigation during 2003–04, was the publication of a major study into the CSA's administration of change of assessment decisions made on the basis of parent's income, earning capacity, property and financial resources. This own motion investigation is reported on in the 'Promoting good administration' chapter.

Further information in Chapter 5 (pp. 38–45).



how the ombudsman helped people

The core function of an Ombudsman's office is to receive and investigate complaints from members of the public. The complaints range across the entire spectrum of Australian Government decision making—in areas as diverse as Centrelink debt recovery, management of immigration detention facilities, taxation assessment, conduct of police inquiries, assessment of custom duties and handling of Freedom of Information requests.

'This chapter provides a fuller picture of the work of the Ombudsman ...'

The complaints also range in complexity. Many are about the smaller irritations that people experience in their dealings with government, such as discourtesy and delay. Other complaints express dissatisfaction with how complex legislation has been applied in an individual instance, or question the essential principles of a substantial government program.

The work of the Ombudsman is mostly known through the investigations undertaken by the office. Some investigations culminate in a formal finding of defective administration against a government agency. Many other investigations that span a great deal of time and investigative work conclude that there was no agency error. In either case, there can be a demonstrable public benefit—correcting defective administration in one instance and, in the other, allaying any such concern by an independent and objective examination of a grievance against government.

Investigative work, although the most prominent role of the Ombudsman, is just one aspect of how the Ombudsman helps people in their dealings with government. This chapter provides a fuller picture of the work of the Ombudsman by looking at the different ways in which the office handles

the 25,000 or more complaints, inquiries and other approaches it receives each year.

HELPING TO RESOLVE COMPLAINTS IN A SYSTEMATIC FASHION

The philosophy of best practice complaint handling to which the Ombudsman's office is committed is in line with good dispute resolution principles. These principles stress that an agency should generally be given the first opportunity to consider a complaint and resolve it. Complaints can then be addressed at their source directly with the agency. Often this speeds the process of complaint resolution. By handling complaints directly, agencies are better placed to learn from their mistakes, to clarify any public misunderstanding about the agency's policies and practices, and to rebuild trust with their clients.

'... assisting complainants to use an agency's internal complaint-handling process ...'

Ombudsman staff will often suggest that a complainant first raise a matter with the agency concerned. In fact, the majority of complaints and inquiries to the Ombudsman are handled in this way. This process is specifically recognised in s 6(1A) of the *Ombudsman Act 1976*, which gives the Ombudsman the authority to decline to investigate a complaint that has not yet been raised with the relevant agency. We see this as an important function of the office—to explain to people why they should first go to the agency, to provide advice on how to approach the agency, and to invite them to approach us again if they remain dissatisfied with the agency's response to their complaint.

The principle of assisting complainants to use an agency's internal complaint-handling process is viable only if the Ombudsman's office can have

confidence in that process. Ombudsman staff work with complaint-handling areas within agencies to ensure that complaints are handled seamlessly and professionally. For example, we have an ongoing arrangement with the Australian Taxation Office (ATO) internal complaint-handling unit, ATO Complaints, that it will accept a referral from the Ombudsman's office with the agreement of a complainant who has not previously contacted the ATO. This avoids the need for a complainant who has first contacted our office to repeat the details of their complaint to the ATO. ATO Complaints or the relevant ATO business line will then seek to resolve the matter and advise the complainant directly of the outcome and any remedy. An example is provided in the *Prompt and courteous response* case study.

The referral of complaints is also an in-built aspect of the legislation for handling complaints about the AFP. This process allows for the conciliation of relatively minor complaints—a quick and effective way of resolving such complaints, as the *Improvements to policies* case study illustrates.

In 2004–05, the Ombudsman will examine how well the complaint referral function is working. This function was partly addressed by the 2004 Client Satisfaction Survey (discussed in the

'Performance report' and 'Challenges' chapters of this report). Two issues were assessed: the extent to which complainants took our advice to complain directly to the relevant agency; and their satisfaction level upon doing so. The survey results suggest that most complainants followed our suggestions and pursued their complaints with the agency concerned. Disappointingly, the level of satisfaction among complainants with agency complaint handling was lower than we would hope. The latter issue is something we are able to address if the complainant returns to this office after contacting the agency. The Ombudsman will also take up the issue, possibly by an own motion investigation on the performance of agency complaint-handling units.

HANDLING COMPLAINTS FROM MEMBERS OF PARLIAMENT

A distinctive role of the Ombudsman is to handle complaints referred from Members of Parliament (MPs). The link between Parliament and the Ombudsman is strong and historically rooted. The first ombudsman in Australia (in Western Australia) was described as the 'Parliamentary Commissioner for Administrative Investigations'—as, initially, was the Queensland Ombudsman.

CASE STUDY prompt and courteous response

Mr X, a tax agent, wrote to us on behalf of a client, complaining about an ATO decision not to remit the General Interest Charge on a tax debt.

We telephoned Mr X and explained why we believed it would be useful for his complaint to be taken up first with the ATO. We advised Mr X about our transfer arrangements with the ATO and Mr X authorised us to transfer his complaint directly to ATO Complaints.

Mr X wrote back to us several weeks after the transfer, advising us that the ATO had acted promptly and courteously in response to the complaint and had granted a financial remedy that was entirely to his client's satisfaction.

CASE STUDY improvements to policies

Ms F complained that during her time in Australian Federal Police (AFP) protective custody she was refused access to a translator. Ms F also complained about the time and manner in which the AFP released her from the ACT City Watch House.

The matter was referred to the AFP and was successfully conciliated through the AFP's workplace resolution process. As a result of this complaint, the AFP made some improvements to its policies for handling people in custody.

Some Ombudsmen abroad have the status of a parliamentary officer, with direct responsibility to the Parliament. In some systems, a complainant can only approach the Ombudsman through their local MP.

MPs in Australia, in discharging their constituency role, perform a function similar to the Ombudsman of taking up the grievances of their constituents directly with government agencies. This is a major function of the electorate offices of many MPs. Even so, many MPs find that the Ombudsman's office can be a useful supplement or alternative to their own constituency work. Sometimes we are better placed because of our resources, experience and information-gathering powers to investigate an issue brought initially to an MP's attention, as illustrated in the *Clarification* case study.

Difficulties for MPs can arise where a constituent has no confidence in the investigation carried

out by an agency. This may arise because the relationship between the agency and the constituent has reached an impasse, or because the constituent holds the agency responsible for some event, particularly in a significant family trauma (as illustrated in the *Verifying events* case study). The Ombudsman's office can independently verify whether or not an agency's actions were carried out properly.

Ombudsman staff have been working to develop the office's relationship with MPs in various ways:

- meeting with MPs and their staff to explain the complaint process followed in our office, and the reasons for decisions reached in particular cases
- regularly distributing information to MPs' parliamentary offices
- visiting MPs' electorate offices as part of our regional and rural outreach program

CASE STUDY clarification

A Member of Parliament complained about the ATO's imposition of general interest charge (GIC) on a constituent who had previously been led to believe by ATO staff that no such charge would apply.

One day after Ombudsman staff inquired about this complaint, the ATO had contacted the constituent, clarified the situation, apologised for any inconvenience, and arranged to have the GIC remitted. The ATO then undertook subsequent follow-up action to confirm that the remitted GIC was properly credited to the constituent's bank account.

CASE STUDY verifying events

A Member of Parliament (MP) had been approached by a constituent who alleged that an agency had improperly altered its records on two occasions. The MP asked the Ombudsman to investigate the allegations.

The first allegation was that an alteration by an agency to its paper records had resulted in a benefit payment not being deposited to the correct bank account of the constituent's relative (Mr C). It was claimed that this incident had contributed to a significant family trauma involving Mr C.

Our investigation found that Mr C, in applying for the benefit, had supplied the bank name and account number to which the benefit was to be paid, but did not know the code number of the bank branch. The agency officer had obtained the number from the branch and entered it on the form. This explained both why the benefit was not paid to the correct account and why there was different handwriting on the form.

The second allegation was that details of Mr C's emotional state had been deleted from the agency's computer records. We were advised by the agency that this could not be done without an annotation being made to the computer record, which had not occurred.

- making submissions to parliamentary committees (the 'Promoting good administration' chapter of this report provides more detail).

BRIDGING THE INFORMATION GAP

Many complaints and inquiries to the Ombudsman's office stem from the confusion or misunderstanding that people have about a particular decision or government program that affects them. In many instances a person will be satisfied with an explanation for a decision or program, without wanting to take the issue further. It is easier to accept an adverse result if it is known why it happened.

The Ombudsman's office plays an important role in providing this explanation to people. Being one step removed from a dispute, we are frequently able to explain things differently and in a way that a complainant can understand and accept. The experience we have accumulated in dealing with similar questions raised by other complainants can be valuable. Over time, the office develops some insight on common areas of confusion and misunderstanding that people experience in their

dealings with government. The *Explanation* case study provides an example.

The Ombudsman's office can also play a role in stimulating a more systemic change to the way that agencies provide advice and information to the public. From the experience of handling individual complaints, we can often point to aspects of an agency's letters, pamphlets and other communication material that is in need of revision and better explanation, as in the *Revised forms* case study.

PROVIDING REASONS

It is a fundamental principle of good public administration that reasons for an administrative decision should be provided to anyone aggrieved by the decision. Members of the public are more likely to have confidence in how and why government decisions are made if a satisfactory written explanation is provided. In a publication of the Administrative Review Council, *Commentary on the Practical Guidelines for Preparing Statements of Reasons* (2002), the Council set out fundamental interests that are advanced by reasoned decision

CASE STUDY explanation

Mrs A had purchased some land and complained to the Ombudsman about the delayed development of the site, which was subject to an environmental investigation by an Australian Government agency. Mrs A had raised her concerns with a number of people, including the developer and her local MP, but could not get a clear explanation of what was happening.

Following some quick inquiries, we were able to explain to Mrs A the process used by the agency to conduct an environmental impact study of the site and advised that this could often be a lengthy process. Mrs A thanked us for the advice and decided that she would pursue the matter again with the developer.

CASE STUDY revised forms

Ms H contacted our office claiming that an Australian Customs Service assessment form was ambiguous, particularly relating to the question of who was responsible for advising Australia Post to hold on to an item where the duty was not paid as a result of a dispute.

Following our inquiry, Customs acknowledged Ms H's concern. To reduce the possibility of a similar problem arising, Customs decided to revise the form to clarify where the responsibility lay, and to provide more specific information about the responsibility for payment of duty where an assessment form is queried.

making, among them, to improve the quality of decision making and to institute transparency in decision making. Providing clear and concise reasons for decisions is an essential part of the system of governmental accountability.

Many public-sector bodies have made an agency commitment to reasoned decision making, to supplement whatever legal obligations may apply. One such example is the Taxpayers' Charter, which provides an undertaking that the ATO will provide a clear explanation of decisions except in very limited circumstances (for example, if explaining a decision would involve a breach of another person's privacy). This ATO commitment reflects best practice that is now widely adopted by other government agencies.

The Ombudsman Act reflects the same theme. Section 15(1)(c)(ii) of the Act provides that the Ombudsman can form an opinion that a person should have been furnished with reasons for a decision about exercising, or refusing to exercise, a discretionary power in a particular matter.

Many of the complaints received by the Ombudsman's office each year relate to instances where there was scope for better explanation of decisions by agencies, as illustrated in the *Providing a statement of reasons* and *Declined*

Act of Grace payment case studies. In fact, the most common remedy for complaints investigated in 2003–04 was the provision of a detailed explanation by an agency of its decision or action.

PROVIDING AN INDEPENDENT ASSESSMENT

An essential component of the Ombudsman's commitment to the values of independence, impartiality and professionalism is that the office should listen to both sides of a complaint or disagreement. The first step ordinarily taken after a complaint is received is to elicit an agency's response to what a complainant has said, and then to give the complainant a further opportunity to comment. Sometimes the Ombudsman's office is the only body that has been independent of the dispute and has heard both sides. The office is not an advocate for either party.

Maintaining independence and objectivity can be important to the professional resolution of disputes. If complainants can trust that those values have been respected, they are more likely to accept the Ombudsman's explanation for an adverse government decision. Conversely, agencies are more likely to accept our viewpoint on an issue

CASE STUDY providing a statement of reasons

Ms C complained about a refusal by the Tax Agents' Board of New South Wales to provide reasons for its decision not to pursue a complaint made to it about the conduct of a tax agent.

After investigation, the Ombudsman accepted that the Board was not in breach of any legal obligation in declining to provide a statement of reasons. However, on other grounds the Ombudsman disagreed with the Board's approach of not providing reasons. It was pointed out to the Board that it is now widely accepted in the public sector that a decision maker should at least attempt to give an explanation that will satisfy a complainant.

While accepting that the Board has very limited resources and works under considerable time and workload pressure, the Ombudsman considered that it was incumbent on the Board to recognise the importance of reasoned decision making in its dealings with members of the public and to be prepared to provide a sensible explanation of its decision-making process on request. What will suffice as an explanation may vary markedly according to the circumstances of the particular case, including the nature of the decision being made.

In the course of the investigation, the Board prepared a draft letter to the complainant that, in the Ombudsman's view, contained adequate reasons. The Board confirmed that the letter had been sent and that it has changed its policy. The Board now provides all complainants with a general explanation of its processes and, where applicable, specifies reasons on request.

and to acknowledge that a dispute needs to be seen in a different light. The *Adequate action* case study provides an example.

Independent assessment of complaints is also the basis of our work within the police jurisdiction, as the *Aware of obligations* case study demonstrates.

FACILITATING COMPENSATION FOR FINANCIAL LOSS

It is not necessary for a person to resort to legal action to obtain compensation for loss suffered as a result of defective administration by a government agency. A discretionary payment

CASE STUDY declined act of grace payment

Mr R made a claim for an Act of Grace payment against the Commonwealth Director of Public Prosecutions (DPP). The claim was rejected by the Parliamentary Secretary to the Minister for Finance, who set out his reasons in a letter addressed to the Attorney-General as the Minister responsible for the DPP. The DPP declined to provide a copy of the Parliamentary Secretary's reasons to Mr R, considering that it was not their letter to release.

The Ombudsman took the matter up with the Department of Finance and Administration, pointing out that other agencies provided Act of Grace claimants with the reasons for rejection of an application. Often this was done by attaching a copy of the Parliamentary Secretary's reasons to the letter sent by the department or agency to the applicant.

The Department confirmed that reasons should be provided irrespective of whether the decision not to approve a payment was conveyed via ministerial correspondence. The Finance Secretary also advised that the Department would issue a general circular to departments and agencies advising that reasons for Act of Grace payments should be provided to claimants. Applying that practice, the DPP provided the reasons to Mr R in this case.

CASE STUDY adequate action

Mr A complained that the ATO had not taken adequate action to recover unpaid superannuation contributions from his previous employer.

The relevant legislation prevents the ATO from disclosing to an employee the particulars of any action that the ATO has taken, although the ATO is authorised to provide information to the Ombudsman. It is inappropriate for us to pass on information that is otherwise protected; however, we do seek to satisfy ourselves that action by the ATO is consistent with its guidelines and processes.

In this case, we were able to assure Mr P that, although he had not yet seen any results, we were satisfied that the ATO was taking appropriate action.

CASE STUDY aware of obligations

Mr J complained about the conduct of AFP members during a raid on his client's home under the new counter-terrorism laws.

The matter was referred to AFP Internal Investigations. The AFP report concluded that the complaints about the AFP's conduct of the raid and the search and seizure of documents and property were unsubstantiated.

Our own review of the report confirmed that the AFP members were sensitive in their use of the new powers and alert to their obligations. We provided a detailed explanation to Mr J, who has not raised any further concerns.

of compensation can be made under one of two administrative schemes: as an Act of Grace payment by the Minister for Finance and Administration (or a delegate), under s 33 of the *Financial Management and Accountability Act 1997*; or by an agency under the government-approved scheme for Compensation for Detriment Caused by Defective Administration (CDDA).

The purpose of the CDDA scheme is to provide agencies with a discretionary authority to compensate where there is no legal entitlement but where a claimant has suffered loss as a result of an agency's defective administration. Although the Department of Finance and Administration (DOFA) is responsible for CDDA policy and guidelines, each agency is responsible for administering the CDDA guidelines in relation to claims against the agency.

The Ombudsman's office has taken a close interest in the development and administration of these compensatory schemes. The office issued a major report on the topic in 1999—*To compensate or not to compensate: own motion investigation of Commonwealth arrangements for providing financial redress for maladministration*. The CDDA scheme explicitly recognises the Ombudsman's role, in clause 21 of the CDDA guidelines issued by DOFA:

Where the circumstances of a case do not clearly fall within the exact criteria for defective administration, but the agency concerned agrees with the Ombudsman that detriment has occurred as a result of defective administration and the agency is inclined to compensate a claimant, a recommendation by the Ombudsman supporting compensation is sufficient basis for payment.

CASE STUDY incomplete advice

Mr Q, a Finnish national, made inquiries with two Department of Foreign Affairs and Trade (DFAT) officials about how to send his personal effects, including a van, from Finland to Australia. One DFAT official based in Australia advised Mr Q to contact the Australian Customs Service (ACS) and to access the ACS website. Another official, based in Helsinki, arranged for certain ACS documentation to be sent to Mr Q.

Mr Q subsequently shipped his van to Australia. When he sought to have it released by the ACS he was advised that he needed a vehicle import approval from the Department of Transport and Regional Services (DOTARS). Mr Q applied for this approval, but was refused on the grounds that his vehicle did not meet the relevant vehicle standards. This resulted in Mr Q shipping the van back to Finland. Mr Q complained about DFAT's advice in relation to Australian compliance requirements for the van.

After inquiries, our investigation concluded that it was DFAT policy to provide people inquiring about vehicle importation with certain standard referral information to DOTARS. We found that DFAT's advice to Mr Q, including referral to the ACS website, was insufficient. DFAT accepted there was some scope for a misunderstanding to occur based on the advice, and offered Mr Q \$7,500 in compensation for his losses.

CASE STUDY processing a claim

Mr N complained about delay by the Australian Taxation Office (ATO) in processing his compensation claim.

Although the ATO had already formed the view that the compensation claim be rejected, our investigation identified a number of areas of possible agency error or deficiency. We also formed the view that it would be difficult for the claimant to establish his original claim of financial detriment.

In response to our inquiries, the ATO recognised that the matter had not been handled as well as it might have been and undertook to negotiate with the claimant on the basis of a fair and reasonable settlement of the claim.

The criteria and procedures for payment of compensation are now clearly spelt out in the CDDA guidelines, and the role of the Ombudsman's office will shift from the routine operation of the scheme. We continue to play a strategic role, and each year either investigate complaints about the refusal of compensation or suggest to agencies that compensation should be paid as a suitable remedy for administrative error detected by the Ombudsman. The role that we can play is illustrated by the *Incomplete advice* and *Processing a claim* case studies.

OVERSIGHTING AGENCY INVESTIGATIONS

Some of the complaints made each year to the Ombudsman raise issues that can only be investigated thoroughly by a major investigation or by drawing on specialist investigation skills. In the mid-1990s, the Ombudsman established a separate section in the office to conduct major investigations. Some of those investigations were initiated by the Ombudsman's office itself, usually into aspects of government administrative practice, while others were in response to specific complaints to the office.

It became apparent that the Ombudsman's major investigations section could not provide the resources or range of specialist skills needed

for all the work it was called on to do. A decision was made in 2002–03 to disband the section and reallocate its resources to the specialist teams across the office. The office has been exploring alternative ways of meeting the challenge posed by major and specialist investigations.

One approach is to play a role with other agencies in conducting a major investigation. Two examples are given in the case studies *Joint investigation of police complaint* and *Managing major incidents*. In one we conducted an investigation jointly with staff from an agency; in the other we played more of a consultative role in relation to an investigation by a specialist consultant employed by an agency. In other instances during 2003–04, we pointed out to an agency that a matter warranted thorough investigation in a specialist manner, and called on the agency to advise whether it proposed to take action, failing which the Ombudsman's office would consider doing so. To that extent, the office has variously prompted, facilitated or oversighted investigations, without fully conducting the investigation itself.

Our recent experience is that there can be clear advantages in this flexible approach, which can be adapted to the circumstances of a particular issue. Investigations tend to be conducted more efficiently and promptly than the office could itself

CASE STUDY joint investigation of police complaint

Mr G complained of being assaulted by a member of the AFP. He had also told various acquaintances that he feared that the Australian Protective Service or the AFP might murder him to cover up corruption that he alleged existed in those organisations. Mr G was subsequently found deceased in his residence in NSW. The death was investigated by the NSW Police Service under the direction of the NSW Coroner's office.

Because of the serious nature of Mr G's complaints, the Ombudsman decided to investigate. Terms of reference were agreed for a joint AFP/Ombudsman investigation. Two sworn AFP officers, with experience in investigating serious crimes, worked with an investigator from the Ombudsman's Law Enforcement Team as special investigators under s 46(1)(e) and s 47(2) of the Complaints Act.

The joint investigation was effective in gathering information from witnesses who were reluctant to talk with the police. The AFP members brought considerable experience in interviewing witnesses, serious crime investigation methodologies, operational planning and correct handling of physical evidence. The Ombudsman's office contributed experience in the collection and analysis of documentary evidence and major report writing, and brought an independent perspective to the investigation.

manage while handling tens of thousands of other complaints, inquiries and approaches each year. This approach is also less resource intensive for the office, and enables Ombudsman staff to access the specialist investigation skills and knowledge that some agencies either have or can employ.

There are, on the other hand, certain risks to be borne in mind. The special role of the Ombudsman is to bring an external, independent and objective eye to the investigation of complaints against government. If we are partly relying on an agency to conduct or to facilitate an investigation, we need

to reassure complainants and the public generally that those values have not been sacrificed. Difficult questions to do with the disclosure of the findings of an investigation can arise as well. Depending on the arrangements with the agency concerned, it may not be within the discretion of the Ombudsman to release publicly the investigation report—although we are committed to ensuring that complainants are properly informed of the results of an investigation. There must also be a readiness on the part of the Ombudsman's office to conduct a further review of its own, should this be required.

CASE STUDY managing major incidents

In December 2003, we received a number of complaints about the management of a major incident at the Port Hedland Immigration Detention Facility.

Following our initial inquiries about the use of force (and other issues), the Department of Immigration and Multicultural and Indigenous Affairs appointed an independent investigator with considerable experience in such matters to investigate the complaints. We suggested a number of changes to the draft terms of reference for the investigation, which were accepted by the Department. We met with and provided input to the consultant on the issues to be addressed, and generally monitored the course of the investigation.

The consultant prepared a report that in our view was a thorough and fair analysis of the issues, with appropriate recommendations for remedial action. The recommendations were accepted in full by the Department. Overall, our view was that the investigation was quick and effective.

FEATURE

tax team

While the Ombudsman's office has always had jurisdiction over the Australian Taxation Office (ATO), the Joint Committee of Public Accounts recommended in 1993 that the Ombudsman's office be given sufficient resources to investigate tax complaints more adequately. The Committee's recommendation stemmed from its conclusion that a fundamental imbalance existed between the powers of the ATO and the rights of taxpayers. Accordingly, the Ombudsman may now call himself the 'Taxation Ombudsman' when performing his functions in relation to the ATO. Since mid-1995, when the specialist Tax Team commenced operation, the Ombudsman has received over 20,000 taxation complaints.

The Tax Team is supervised by the Special Tax Adviser, and comprises five officers and a part-time consultant. Other Ombudsman staff, located in offices throughout Australia, also provide assistance by investigating less complex complaints and by acting as referral points. The Tax Team provides advice and support to those staff members, as well

as handling around half of all tax complaints received. The Ombudsman is the only external complaint-handling agency for taxpayers with complaints about the ATO. The Ombudsman also continues to identify systemic remedies arising from individual complaints, and can conduct own motion investigations.

The Tax Team liaises with the office of the Inspector-General of Taxation (IGT), who conducts reviews on aspects of the tax system. To avoid duplication in the work of the Taxation Ombudsman and the IGT, there is regular consultation between the two offices. In developing his work programs, the IGT consults with the Ombudsman and provides an opportunity to comment on reviews. During 2003–04, the Ombudsman made submissions to the IGT in relation to a review of the ATO's remission of the general interest charge for groups of taxpayers in dispute with the ATO, and in relation to a review of ATO's small business debt collection practices.

Further information in Chapter 5 (pp. 34–37).



problem areas in government decision making

The central purpose of complaint handling is to resolve the particular grievance at hand, but that is only part of the function. Complaints about a government service or program can typify a more systemic difficulty, which affects many other people. It is therefore generally accepted within government—especially within agencies with a large service-delivery role—that complaint handling is an integral and valuable function of an agency. Dealing with problems can provide valuable intelligence not only on how a program is operating, but also on areas of potential difficulty.

External complaint handling by agencies such as the Ombudsman is part of a continuous loop of organisational learning from experience. There can also be added insight from external complaint handling, when problems arising across government come to notice. Difficulties faced by people in one area of government are often faced in other areas.

‘... complaint handling is an integral and valuable function of an agency.’

From year to year, the Ombudsman’s office has sought to draw attention to these general problem areas in government decision making that invite a general response. Issues that have been taken up in previous annual and special reports of the Ombudsman are the need for improvement in internal complaint handling, recording oral advice to the public, and paying compensation for defective administration.

This report takes up a few problem areas identified in the course of complaint handling and investigation during 2003–04. The way these problems manifest can vary from agency to agency, yet they remain issues of concern. The Ombudsman’s office will continue to pay special attention to these issues in 2004–05.

RECORD KEEPING

If an agency is called on to explain or justify its actions, the written record will be the key to doing so. An investigation by the Ombudsman’s office will often focus heavily on scrutinising the written record. Inadequacies in the record trail are therefore a matter of special concern to this office. General problems with record keeping that were identified during the year included the effectiveness of agency systems for registering correspondence and papers, repeated requests by agencies for information already provided, and the quality of agency documents.

As a matter of good administrative practice, a relatively detailed record should be kept of any significant meeting between an agency and an individual. Ideally, the record should be agreed between the parties to avoid any future dispute about precisely what was said and agreed.

This point was illustrated by one case handled during the year, in which millions of dollars were potentially riding on the outcome. Our investigation did not uncover sufficient evidence to challenge the agency’s account of the meeting—the most plausible explanation was that this was at best a misunderstanding on the part of the complainant—but we were able to impress upon the agency that the importance of the meeting should have been reflected in the way it was minuted. If nothing else, it would then be easier to deal with any future complaint.

‘... a relatively detailed record should be kept of any significant meeting between an agency and an individual.’

We have been critical of agencies in the past for reaching decisions based on the presumption that the absence of information on the agency’s

electronic system is evidence in itself that no such information was provided. Regrettably, complaints of this nature continue to be received, even in agencies that now require an electronic notation of every contact with a customer. An area of particular difficulty is that people often feel that they raised more issues with an agency than the record suggests. Another area of concern is the quality of record keeping in relation to decisions on compensation for detriment caused by defective administration.

We do, on the other hand, appreciate the reasons sometimes given by agencies for not keeping a more elaborate record, especially of oral advice. They include lack of time, the pressure to attend to the next customer, that the information sought was so general as not to warrant recording, or that it is staff practice to record only the primary issues discussed with a client.

We accept that recording of oral advice is a complex issue. Record-keeping requirements for oral advice should not inhibit an agency's capacity to provide prompt, efficient service. To record all oral advice in detail would be an unreasonable and excessive burden. Yet these realities of administrative practice should not overshadow the extent to which this problem cannot be ignored. People rely on government for accurate advice; the receipt of, or eligibility for substantial benefits can sometimes hinge on the advice that is given. Government itself accepts that providing advice is one of its functions. It is correspondingly important to perform that function with an understanding of the expectations to which it gives rise, and of the standards that must be observed.

Numerous complaints were received during the year about agencies making continual requests for the same information. One complainant reported he had been asked more than eight times for his wife's tax file number, even though he had already provided it on several occasions. Another general problem area was that a medical certificate that a benefit recipient was required to lodge was lost or missing. It was clear that the certificate had been received, as payment of the benefit had continued. However, the absence of the certificate on the file meant that no alteration was made to a condition imposed on the recipient to report or

attend an information session, with the result that an administrative breach was recorded against the person.

On other occasions we were told that a customer file was missing and was therefore not accessible for review by Ombudsman staff. In some instances this problem originated from off-site records management and batch filing practices. Related problems were that files did not contain documents that should have been there, that files were lacking in chronology, that inadequate folioing meant that the adequacy of record keeping could not be scrutinised easily, and that numerous files on an individual were held in different locations. For these and other reasons we regularly ask to see the agency file when investigating a complaint.

*'The accuracy or quality
of agency advice ...
is a recurring theme ...'*

GIVING ADVICE

The accuracy or quality of agency advice—oral advice particularly—is a recurring theme in many of the case studies and the discussion elsewhere in this report. Typical complaints received by the office during the year were those alleging incorrect advice about how the assets test affects eligibility for social service benefits, whether a voluntary cessation of work to undertake university study will lead to a reduction in child support payments, the requirements to be met for a visa of a particular subclass, and the tax treatment of eligible termination payments.

The issues on which people turn to government agencies for advice can be matters of great importance in how they structure their lives and finances. They can also be complex issues, on which people rely heavily on agencies for correct advice. When the advice is given orally, and—as it increasingly is—by a call centre officer, the difficulty of the issue is apparent.

Dealing with complaints about inaccurate advice is similarly challenging for the Ombudsman's office. It is necessary first to resolve whether inaccurate advice was given. This can be especially difficult if the advice was given orally,

if there is no written record, or if there are conflicting written accounts kept by the complainant and the agency.

There is also the issue of remedy. In some cases it is possible to unscramble the problem, and to put the complainant in the position they would have been in had accurate advice been given (or understood). At other times an apology will suffice. In more serious cases there may be irremediable detriment to a person who has followed advice, and questions of compensation or remission of penalties will need to be addressed. It then becomes all the more important to clarify just what was said and when and by whom.

The development of appropriate strategies has been a central concern of the Ombudsman's office, shared by agencies.'

Disputes about the accuracy of advice will never go away, but they can be minimised. The development of appropriate strategies has been a central concern of the Ombudsman's office, shared by agencies. The issue was earlier taken up by this office in the publication *Oral Advice—Clients Beware*; it will be a topic of renewed attention in 2004–05.

We accept that it is not always feasible to keep a written record of all advice, particularly advice of a general nature given by a call centre handling millions of calls each year. Nevertheless, we revisit this issue regularly with agencies, and generally take a hard-headed approach in querying whether it is as difficult as sometimes claimed to make a brief contemporaneous written record. Electronic coding of the nature or category of advice given is one way of partly addressing the issue.

Other strategies adopted by agencies can also be effective in minimising difficulty. One is to have supplementary written information such as brochures and pro forma letters that can be sent to inquirers, who can then reconsider or confirm their understanding of an issue. Another approach is to adopt greater caution in giving oral advice, and to alert a person to the need to explore other means and sources of advice (such as written publications, a professional adviser, or the tax ruling system). Yet another strategy noted in the Ombudsman's

2003 report into complaint handling by the Australian Taxation Office is the 'one plus one' policy. If a tax officer cannot resolve a taxpayer's inquiry in the first instance, rather than simply passing them on to someone else, the tax officer makes contact with other tax officers on behalf of the complainant to identify a person who can respond to the inquiry.

DEALING WITH THE EXCEPTIONAL

A purpose of legislation is to lay down common rules that govern access to or termination of government benefits and concessions. The common rule will usually deal adequately with the generality of situations to which it applies, but there can be unexpected cases where an exception to the rule is required.

Complaints to the Ombudsman are more likely to deal with the exceptional case, or with the alleged failure of an agency to permit an exception to be made to the common rule in a particular case. Our experience in handling complaints points to two matters of general principle. The first is that it is important for legislation to anticipate the exception. This can be done in different ways, notably by a 'hardship' provision or a 'safety net discretion' in the legislation. Safety net provisions are those that allow the decision maker the ability to correct anomalies or unintended consequences.

We encounter instances in which legislation that is increasingly specific and complex in format does not contain provisions of this kind. In these instances, an agency may be unable to respond adequately to an acknowledged case of hardship or unforeseen difficulty.

'Safety net provisions are those that allow the decision maker the ability to correct anomalies or unintended consequences.'

A second general principle is that legislative provisions accommodating the exceptional or the unforeseen should be administered by an agency in a manner suiting that objective. While agencies are understandably alert to the danger that an exception can expand and overtake the

common rule, it is equally necessary for agencies to be flexible and open-minded in accepting that exceptional situations should be responded to when they arise.

The following examples illustrate in different ways how exceptional problems can arise or may need to be dealt with.

The first example is from the migration legislation, which has a highly specific set of rules to govern eligibility for and renewal of visas. In circumstances encountered by the Ombudsman's office, an onshore applicant for renewal of a visa may be ineligible because of circumstances beyond their control. A common reason is that the time limit for applying for or seeking renewal of the visa has expired during the period that the person was awaiting a decision in an appeal case. In limited circumstances, the Minister has a personal and non-reviewable power under the legislation to grant a visa to a person who otherwise does not qualify. However, a familiar scenario encountered by our office is that a person may have no practical option other than to leave the country to lodge a fresh application for a visa.

The second example comes from legislation governing eligibility for social service benefits. The legislation contains a formula by which the existing assets of a person can be relevant in deciding their eligibility or ineligibility for a benefit. An asset can be disregarded on hardship grounds spelled out in the legislation. In some cases brought to the office, we have been critical of decision makers for taking an unduly narrow stance in applying the hardship provisions. While acknowledging that subjective judgment necessarily has a part to play in applying hardship provisions, we have noted on occasions that merit review tribunals have similarly been critical of decision makers for the same reason.

The third example illustrates the way that legislation is read and applied will sometimes influence whether exceptional difficulties can be taken into account. In one instance about which complaints were received, a person's eligibility for a benefit could depend on the 'base year' they had nominated. The agency initially declined to allow any subsequent alteration to the base

year, claiming that it had no discretion under the legislation to allow alteration or correction of mistakes. The agency relented when we pointed out that other details given by the person in their application indicated that the year had been incorrectly recorded. In effect, viewing the application as a whole, a correction should be made to validate the intent of the applicant.

The same contention has been accepted by an agency in another situation, where money paid by a person and to be credited to their account in a particular year had not been passed on by an intermediary (their employer) until a later year. Our point was that it was consistent with and would validate the intent of the legislation to treat the money as having been given to the agency at the time the payee had done all that was required of them.

REVIEW OF AGENCY DECISIONS

There is now an extensive system for review of decisions made by Australian Government agencies. The review body in some instances is an external tribunal, in others an internal review unit, and in a growing number of instances both an external and an internal review body. Much work has been done in Australia by bodies such as the Administrative Review Council in refining the principles for independent review of agency decisions.

The value of review mechanisms is repeatedly seen by the Ombudsman's office; indeed, we often decline to investigate if a complainant has not first exercised a right of review. On the other hand, we receive complaints each year that point to the need for close scrutiny of the operation and adequacy of review mechanisms. There is no theme consistently emerging, other than the importance of ensuring that review mechanisms are well structured and integrated with other decision making in the agency.

'... we receive complaints each year that point to the need for close scrutiny of the operation and adequacy of review mechanisms.'

The following examples are illustrative of problems seen by the Ombudsman each year.

An example from the migration legislation illustrates the irregular situation that can arise when not all aspects of a decision are reviewable. There are numerous conditions to be satisfied by a person in order to be granted a visa of a particular class. A decision that an applicant fails to meet some of these conditions is appealable to the Migration Review Tribunal or the Refugee Review Tribunal. A decision that an applicant fails to meet some other of the conditions can result in the application being classified as 'invalid'. Though not appealable, an applicant may be able to relodge the application once the deficiency has been remedied.

On the other hand, there can be a negative outcome if, by this time, the applicant is unable to meet some other condition for the visa when making a fresh application. (For example, the applicant has passed a specified age or does not have a recent educational qualification.) Such may not be the case if the decision was appealable to a tribunal, since some features of the decision may be 'preserved' pending resolution of the appeal. (Some decision makers have responded to this problem by informally reconsidering the initial assessment that an application was invalid. While beneficial, this still lacks the quality of independent review, namely, that the right is exercisable by all on defined criteria and is properly recorded.)

We see examples pointing the other way, in which the conferral of rights of review can be disadvantageous in a practical sense. Applicants in the social security stream have the opportunity to seek internal review by an Authorised Review Officer (ARO), and external review by the Social Security Appeals Tribunal and the Administrative Review Tribunal. To facilitate speedy and informal review of decisions, steps have been taken at an executive level for original decision makers to reconsider their own decisions before review by an ARO. We have questioned the practical benefit of this initiative. We found that only a small percentage of decisions were overturned upon reconsideration, and complaints to our office suggest that the additional level of review can cause 'review fatigue' for applicants.

A different issue in relation to review of decisions is that we have detected a disconformity in some areas of decision making (such as debt waiver) between the approaches taken by decision makers and external review tribunals. This is not a new issue; over time, senior agency officers have occasionally and publicly defended their reluctance to give effect to a line of tribunal decisions of which they disapprove. Even so, it is a problem that should not be dismissed lightly. For example, some complaints that we have investigated highlight that in debt waiver cases primary decision makers have sometimes been concentrating too narrowly on the legitimacy of a debt being raised. They have not been dealing with the additional question (taken up by tribunals applying the statutory criteria) of whether there are special circumstances that warrant a discretionary waiver.

An undesirable consequence, when there is a disconformity between the approaches at primary and review levels, is that the outcome for a person can depend unduly on whether or not they seek review. The different levels of decision making and review should operate compatibly as part of a coherent system.

Another perennial issue in relation to the appeal system concerns the approach that should be adopted by an agency when it is faced with conflicting tribunal decisions and legal opinions, and resolution of the disagreement by legislative action or judicial review is still some time away.

This issue arose during the year in relation to the question of whether import approval could be given by the Department of Transport and Regional Services (DOTARS) for vehicles already physically landed in Australia. Several complainants, who had been refused import approval by DOTARS, pointed to their different expectation and to the disconcerting and expensive range of options they faced (re-exporting the vehicle, crushing it, abandoning it, or having it impounded).

Pending resolution of an appeal initiated by DOTARS to resolve the issue, we held lengthy and cooperative discussions with them to explore options for addressing and minimising the problem. Options included facilitating discussion between complainants and DOTARS, expediting the hearing of the appeal, examining payment of compensation,

exploring options for legislative change, and developing internal complaint-handling procedures. (The upshot is that the Full Federal Court held that import approval could be granted under existing legislation: *Minister for Transport and Regional Services v Marra* [2003] FCAFC 294.)

SCHEMES ESTABLISHED BY EXECUTIVE ACTION

Many government schemes and programs are established by executive rather than legislative action. An example given in the 'Looking at the agencies' chapter is the GEERS scheme administered by the Department of Employment and Workplace Relations, for payment of redundancy benefits. There are advantages to an agency in schemes of this nature, principally in the flexibility for the agency in establishing, altering, redefining and dismantling the scheme as circumstances require.

Yet that flexibility poses risks to the enjoyment of rights by members of the public. We have received a small number of complaints dealing with a few different executive schemes, and perceive some areas of common concern. One is that the criteria of entitlement are not necessarily as clear or ascertainable in an executive-based scheme as in a legislation-based scheme. This is particularly a problem if the internal agency documents that constitute the scheme are in a state of flux, or different decision makers are applying different versions.

A related problem that we dealt with, involving an executive program for disaster assistance, was that a restructure of the program did not deal with the transitional problem of applications that had been lodged but not determined at the time the program was restructured. A complainant to our office had his application rejected for failure to meet the new criteria. We pointed out to the agency that if the scheme had been established by legislative action it was unlikely that Parliament would have agreed to a restructure that did not make favourable allowance for applications lodged but not determined. The agency agreed and approved the grant.

Another difficulty with schemes based in executive action is that there is usually a reduced range of

review and appeal rights. For example, the appeal jurisdiction of the Administrative Appeals Tribunal is conferred by legislation only. The right to complain to the Ombudsman is ordinarily the only external review option. We point out to agencies that it is important when establishing executive schemes to build an internal review framework into the schemes.

'Another difficulty with schemes based in executive action is that there is usually a reduced range of review and appeal rights.'

OTHER ISSUES

Other problem areas in agency administration that we have noted during the year, which will receive close attention by the Ombudsman's office in 2004–05, are discussed briefly below.

Agency complaint handling

A consistent theme in Ombudsman reports is that the integrity and professionalism of complaint handling within agencies is a key element of an administrative justice system. Whether there is effective internal complaint handling can have a measurable impact on the number and seriousness of complaints coming to the Ombudsman and the time taken to resolve those complaints. Our general experience is that internal complaint handling is of distinct benefit to agencies, in terms of their accountability and responsiveness in service delivery, and their policy development and organisational learning.

For this reason the Ombudsman's office works closely with agencies to assist them to develop and improve complaint-handling processes and structures. During the year we worked with a number of agencies in training, development and consultation about complaint handling. In particular we worked closely with the Australian Taxation Office, Centrelink, the Child Support Agency and DOTARS.

Compensation for defective administration

Some mention is made in the 'How the Ombudsman helped people' chapter of the role played by the Ombudsman in investigating complaints about

failure of claims under the scheme for Compensation for Detriment Caused by Defective Administration (CDDA).

We received numerous complaints during the year, relating to a few different agencies, about CDDA claims. Among the matters complained about were inconsistency between agencies in making CDDA decisions; lack of experience of CDDA decision makers; rejection of CDDA claims at an inappropriate level in the agency; reluctance to talk directly to the claimant in examining a claim; a tendency without proper investigation to prefer an agency's version of events to a claimant's; failure to address the core issues underlying a claim; undue delay (of between 6 and 18 months in one agency) in deciding CDDA claims; and inadequate reasons explaining why a claim had been rejected.

Apologising for agency error

One of the more common remedies that the Ombudsman's office suggests to agencies is to apologise to a complainant for a difficulty that arose. This can often be an adequate remedy, for instance, where the matter complained about was an agency letter that was unnecessarily threatening or demanding in tone.

Some agencies will readily accept the need to apologise, whereas others can be more reluctant. One obstacle we encounter at times is a misplaced concern that an apology will be construed as an admission of liability should legal action ensue.

'We would like to see more agencies taking the initiative to offer an apology as a possible remedy without having to be prompted ...'

Our general point in raising this issue is to draw attention to the role that an apology can play. Too often we find that an agency is reluctant to offer an expression of regret, or in the event that an acknowledgment is forthcoming, that the quality

and content of the apology is meaningless. We would like to see more agencies taking the initiative to offer an apology as a possible remedy without having to be prompted or goaded into doing so by the Ombudsman's office.

Persistent complainants

We note in the 'Challenges in complaint handling' chapter that we are taking up the problem posed by complainants who are persistent and inflexible beyond any reasonable limit. We are aware that this can also be a problem for agencies, and we have generally been supportive of steps taken by agencies to address the problem.

'We are taking up the problem posed by complainants who are persistent and inflexible beyond any reasonable limit.'

An example is a draft plan adopted by Centrelink in 2003, outlining the manner in which staff should deal with difficult and persistent customers. The focus in the draft Centrelink plan is heavily on one-on-one interaction and on nominating a specific case officer to manage an individual's needs. By nominating a point of contact, the individual is less likely to become frustrated at repeatedly having to tell their circumstances and may develop a relationship of confidence with the individual officer dealing with their complaints. The strategy is aimed at correctly capturing the issues raised by the individual and not allowing old or exhausted issues to keep resurfacing. There is a strong focus on finalising outstanding issues, reporting in writing, and closing the issue to further discussion. This approach can avoid duplication of work and instruction, and reduce miscommunication or misinterpretation.

We have sometimes shared with agencies our own experience and strategies. For example, at times we have felt the need to restrict a complainant to communicating with the office in writing, and on other occasions to explain that subsequent correspondence will be read and filed but may not be answered if no new issue is raised.

FEATURE

corporate communication, information and outreach team

The Corporate Communication, Information and Outreach Team located in Canberra supports the core business of the office, providing an integrated and coordinated approach for corporate communication, information management and outreach activities. The Team consists of the Chief Information Officer and two staff.

Key responsibilities and activities include developing and maintaining the office's internet and intranet websites; managing corporate information in electronic and hardcopy forms; coordinating content, design and printing of publications (for example, the Commonwealth Ombudsman and ACT Ombudsman annual reports); producing brochures, posters and corporate stationery; supporting outreach activities; responding to information requests; and facilitating the flow of information between the office and the general community, government agencies, Parliament and the media.

During the year, the Commonwealth Ombudsman was exempted from having to use the Australian Government logo and given authorisation to continue to use the office's logo. Subsequently, the Team worked on refreshing our logo and corporate branding to ensure consistency, and has gradually applied this to corporate stationery, signage and publications. Significant progress was achieved in revising and updating the office's Complaint



Investigation Guidelines, which will be adapted for online use in the new complaints management system. The Team also coordinated a client satisfaction survey of 2,000 complainants, which provided the office with valuable benchmark data for assessing how well complainants think we are doing our job.

In conjunction with the Information Technology Director, the Team researched web content management systems and options for website redevelopment, specifically targeting the online complaint function.

In the coming year, we will develop and implement an enhanced outreach program to rural and regional Australia. The Ombudsman received additional funding for the office's outreach program in the 2004–05 Budget, and new positions were created throughout Australia, including an Outreach Manager based in Canberra.

promoting good administration

Through its complaint handling and investigation work, the Ombudsman's office comes into contact with most aspects of Australian Government. We are well placed to spot problem areas in government decision making and the options for change. A distinct role of the Ombudsman, defined in our strategic plan for 2003–04, is to play a role in promoting good administration by 'contributing to public discussion on administrative law and public administration' and 'fostering good public administration that is accountable, lawful, fair, transparent and responsive'.

This chapter looks at some of the ways in which the Ombudsman has pursued these objectives during 2003–04. Particular themes that are taken up are submissions by the Ombudsman to external inquiries and reviews, own motion investigations conducted by the office, and the development of the Ombudsman's international program. Similar work undertaken by the office in giving addresses to conferences and seminars is listed in an appendix to this report.

'... fostering good public administration that is accountable, lawful, fair, transparent and responsive.'

SUBMISSIONS AND PARTICIPATION IN INQUIRIES

The Ombudsman's office is frequently invited to contribute to inquiries being conducted by parliamentary committees and executive agencies.

The submissions made to parliamentary committees are listed more fully in the 'Year in review' chapter. They included (in addition to the two submissions listed below) submissions on the Medicare safety net, Norfolk Island governance, and human rights education in the Pacific.

The contribution made to executive inquiries is sometimes by way of a formal submission: an example during the year was a submission to the Australian Law Reform Commission for its report *Keeping Secrets: the Protection of Classified and Security Sensitive Information*. More commonly, the contribution to executive inquiries has been less formal. An example is the comments and information provided during the year to the Inspector-General of Taxation, and to the Australian National Audit Office concerning its inquiries into aspects of the superannuation surcharge, the management of immigration detention facility contracts, and Freedom of Information administration. Two other projects to which the office provided assistance are described below concern reviews into forensic procedures and income tax self-assessment.

Senate Select Committee on Ministerial Discretion in Migration Matters

Our 2002–03 annual report discussed the importance of the Minister for Immigration's 'safety net' discretionary powers under the *Migration Act 1958*. The Minister is authorised on public interest grounds to grant a visa to a person who otherwise does not qualify for a visa. The Ombudsman made a submission to the Senate Select Committee on Ministerial Discretion in Migration Matters in August 2003. The Ombudsman does not have jurisdiction to investigate ministerial actions, and the submission therefore focused on the role of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) in providing assistance to the Minister, especially in the preparation of submissions for ministerial consideration.

The report of the committee in March 2004 contained a number of recommendations that reflected the input provided by the Ombudsman's office. One such recommendation was that DIMIA should establish a system for routinely auditing the

departmental submissions prepared for the Minister. The audit process should address areas previously identified by the Commonwealth Ombudsman as important and potentially problematic. Of particular concern was the need to improve departmental processes for handling cases, to ensure that claims are processed in a timely way and that case officers consider all the available material relevant to each case. The committee also recommended that the Ombudsman's office carry out an annual audit to gauge the adequacy of DIMIA compliance with the ministerial and administrative guidelines on the operation of the Minister's discretionary powers.

The Committee's full report can be viewed at: www.aph.gov.au/senate/committee/minmig_ctte/report/index.htm

The Ombudsman's submission to the inquiry is available at: www.aph.gov.au/senate/committee/minmig_ctte/submissions/sub28.doc

Senate Inquiry into the Effectiveness of Australia's Military Justice System

The Ombudsman provided written and oral submissions into the inquiry by the Senate Foreign Affairs, Defence and Trade Committee into the Effectiveness of Australia's Military Justice System. The issue has attracted public comment and some controversy, both as a result of the Committee's inquiry and more generally.

Our submission commenced by noting the role played by the Defence Force Ombudsman (DFO) in investigating complaints by members of the Australian Defence Force concerning personnel and grievance matters. The DFO cannot investigate matters in connection with a military discipline proceeding, but can investigate some administrative actions and inquiries occurring prior to commencement of a discipline proceeding. Examples of complaints investigated by the DFO are decisions on discharges, postings, performance assessment, formal warnings and promotions, as well as claims of harassment, victimisation and assault, and investigative practices employed by Defence personnel.

We drew attention to areas of difficulty that we had noted—principally, delay in the investigation

process occurring within Defence. Generally, the DFO will not commence investigation of a complaint until the Redress of Grievance (ROG) process is finalised. If there is considerable delay in that process, it compounds the difficulty faced by the DFO in providing administrative justice to a complainant. We raised with the Senate inquiry the possibility of initiating Ombudsman investigations within a specified period of the lodgment of a ROG, both to hasten the resolution of complaints and to provide a practical incentive for early Defence resolution of grievance matters.

'...planning was underway for a joint Ombudsman/Defence study into delays in the ROG process.'

Other concerns we took up with the committee were that investigators within Defence were not always adequately trained for the investigation task they perform, and that efficient investigation by the Ombudsman's office has been hampered in some cases by a tendency within Defence to seek legal advice unnecessarily. We put the view that the DFO role is a valuable one. It is our view that it is important, particularly in relation to an organisation such as Defence with a strong internal culture, to have a mechanism for independent and impartial investigation of personnel disputes and grievances.

Some of the issues raised in our submission were already the subject of discussion with Defence, and have since been taken up specifically with senior officers in Defence. At a later public hearing of the Senate Committee, the Chief of the Defence Force, General Cosgrove, announced that planning was underway for a joint Ombudsman/Defence study into delays in the ROG process.

The Ombudsman's submission to the Senate Committee is available at: www.aph.gov.au/senate/committee/fadt_ctte/miljustice/submissions/sub28.pdf

Review of forensic procedures—overseas incidents

The October 2002 bombings of nightclubs in Bali presented a significant challenge for Australia's disaster victim identification processes. Division 11A of Part 1D of the *Crimes Act 1914* (Cth) was inserted by the *Crimes Amendment Act 2002* as an

urgent response to the terrorist bombings. Division 11A facilitates, among other things, the matching of DNA profiles across jurisdictions to assist in victim identification in incidents which occur outside Australia and Norfolk Island.

The Minister for Justice and Customs appointed former National Crime Authority Chair, Mr Tom Sherman AO, to lead an independent review of the operation of Division 11A of the Act. The review is to be completed in 2004–05. The Ombudsman's office is represented on the committee conducting the review. The committee will consider the extent to which the provisions of Division 11A contributed to the identification of persons who died as a result of the Bali bombings and to the criminal investigation of those bombings; the effectiveness and deficiencies of Division 11A; problems encountered in the administration of Division 11A; and any issues relating to privacy or civil liberties.

Review of aspects of income tax self-assessment

Drawing from our complaint experience, the Ombudsman's office made a submission in response to a discussion paper issued by the Department of Treasury on the Review of Aspects of Income Tax Self Assessment. The self-assessment system is now an established feature of the income taxation system, but contains some elements of concern. The responsibility placed on individual taxpayers to complete all transactions necessary for assessing their liability to taxation will lead to occasional and possibly acrimonious disagreement between them and the Australian Taxation Office (ATO) as to how properly that responsibility has been discharged.

'The thrust of our submission ... was that there is a corresponding duty on the ATO ...'

The thrust of our submission to the Treasury Review was that there is a corresponding duty on the ATO to manage the self-assessment system in a manner that is responsive to the problems and uncertainties sometimes faced by taxpayers. We drew attention to the importance of the discretionary powers exercisable by the ATO in managing the problems that can arise in a self-assessment system. These

include discretionary powers to relax penalties and to approve arrangements for payment of unpaid tax. We also noted the improvements in administrative practice initiated by the ATO in recent years, which reflect a more developed understanding by the ATO of its role in administering a self-assessment system. These include a more active program by the ATO to make information available about arrangements considered to involve tax avoidance, the product ruling system, and ATO rulings and advice.

'During the year, reports were released on four own motion investigations.'

OWN MOTION INVESTIGATIONS

The Ombudsman can conduct an investigation as a result of a complaint or on his own motion (or initiative). During the year, reports were released on four own motion investigations. Two of the investigations were completed and provided to the relevant agency in 2002–03, and were reported in last year's annual report. They dealt with ATO complaint handling and complaint handling in the Job Network administered by the Department of Employment and Workplace Relations. The other two reports dealt with Child Support Agency (CSA) change of assessment decisions (described further below), and a review of the operational and corporate implications for the Australian Crime Commission arising from alleged corrupt activity by two former secondees (see Chapter 5, page 62). The four reports made 31 recommendations that were accepted by agencies.

Several own motion investigations currently being conducted are due to be completed in early 2004–05. Details of three investigations are set out below: under-aged people in the military, the administration of traffic infringement notices, and the use of coercive powers by the ATO. Another own motion investigation into the quality of Freedom of Information processing by Australian Government agencies is described in the 'Looking at the agencies—Freedom of Information complaints' section.

In 2003–04, the Ombudsman revised the system for publication of reports, including reports on own motion investigations. Reports that culminate

in a formal finding by the Ombudsman of agency deficiency are, as far as possible, published in full or in an abridged version on our website at www.ombudsman.gov.au. The reports are presented in a numbered series. Reports are not always made available, wholly or in part, because of statutory secrecy provisions or for reasons of privacy, confidentiality or privilege.

Child Support Agency's assessment decisions

In May 2004, the Ombudsman released a report of his investigation into the CSA's change of assessment decisions based on one or both parents' income, earning capacity, property or financial resources. This report looked at the administrative procedure for making a change of assessment to a person's child support payment. More than 1,000 decisions made over a six-month period were evaluated for their standard of decision making.

**The Ombudsman made
12 recommendations,
which were all accepted ...'**

The Ombudsman found an acceptable quality of decision making in a majority of cases. Nevertheless, in 25% of the cases analysed the decisions were rated as not being reasonably open or available to the decision maker, not being the best possible decision or not being possible to categorise.

The report pointed to regional differences in the quality of decisions and the criteria applied by decision makers in assessing a parent's liability or entitlement. The Ombudsman made 12 recommendations, which were all accepted by the Department of Family and Community Services and the CSA. The recommendations included the need for the CSA to provide more guidance to decision makers and to develop training programs that address areas of weakness and inconsistency. The Ombudsman noted that the CSA had cooperated fully with the office in conducting the study and responding to the recommendations. The CSA showed a readiness to resolve problems promptly when they were identified in the course of the investigation.

The report is entitled *Child Support Agency change of assessment decisions—Administration of change of assessment decisions made on the basis of parents' income, earning capacity, property and financial resources* and is available on our website at www.ombudsman.gov.au.

Under-aged people in the military

An own motion investigation was initiated in 2003 into administrative matters relating to the Department of Defence's dealings with Australian Defence Force (ADF) personnel under the age of 18 years. The investigation is in response to several serious complaints that were received in recent years raising concerns about the adequacy of Defence's administration of such people. The purpose of the investigation is to determine whether:

- policies and procedures are in place to deal with key issues that arise in dealing with people under the age of 18 years
- there are mechanisms and procedures in place to ensure that these policies are understood by key staff, and that the policies are implemented and monitored
- there are mechanisms in place to handle complaints and to respond to any problems identified.

**'... examining the treatment
of ADF personnel under
18 years ... extensive site visits
have been completed and
interviews conducted.'**

Issues being considered include:

- the legal status of the ADF-member relationship, and the ADF-parent relationship where the member is under 18 years (for example, *in loco parentis*, duty of care, United Nations convention and privacy issues)
- the advice provided to young people on how to deal with any concerns (on matters such as equity, harassment and complaints)
- how on-base living arrangements are set up, what guidelines are used to guard against inappropriate activity and to monitor and deal with it if it occurs, and the recreational and support services available

- identifying and assisting young people in crisis (arising from Defence or external circumstances)
- the involvement of parents where there are problems.

Extensive site visits have been completed and interviews conducted with Army, Navy and Air Force personnel (both supervisors and trainees) to gather information relevant to the investigation. It is expected that a draft report of the investigation in relation to ADF members will be provided to the Chief of the Defence Force late in 2004. While not specifically covering ADF cadets, the report should inform the ADF's consideration of how it deals with cadets.

Administration of Traffic Infringement Notices

For two years, Ombudsman staff have been working collaboratively with the Australian Federal Police (AFP) on a project to investigate the AFP's role in deciding whether disputed Traffic Infringement Notices issued in the Australian Capital Territory should be withdrawn by executive action, or whether the dispute should be resolved in court. The project was initiated because of the high level of complaints over several years about the AFP's traffic responsibility.

'The project was initiated because of the high level of complaints ...'

This has proven to be a complex area of administrative decision making, as the investigation deals with the difficult issue of the administrative resolution of legal liability where a judicial process is also available. The investigation also considers the adequacy of the internal administrative policies that structure this exercise of discretion to ensure consistency of decision making and effective complaint-handling procedures. It has been beneficial to run the project for a two-year period, and to map and address the range of issues that have led people to complain.

During the course of this investigation—and partially in response to it—the AFP has adopted new procedures for traffic disputes. The new procedures reflect a heightened appreciation of the principles of procedural fairness, and have resulted

in a significant reduction of complaints. We hope that agreement will be reached early in 2004–05 on a new policy to guide decision makers in traffic adjudication. We also expect that lessons learned from this investigation will be applied to other government agencies facing similar challenges in administrative decision making.

Australian Taxation Office coercive powers

We continued an own motion investigation, mentioned in last year's annual report, into a selected aspect of ATO's use of its entry and search powers. The investigation was in response to a recommendation by the Senate Standing Committee for the Scrutiny of Bills that the Commonwealth Ombudsman undertake a regular, random 'sample audit' of the ATO's use of these powers.

An initial audit of the ATO's use of access powers conducted during 2003–04 examined a sample of high-profile cases from the serious non-compliance and aggressive tax planning areas of ATO operations. The audit did not bring to notice any significant difficulty with the ATO's use of these powers. Consistent with the Standing Committee's recommendation that the Ombudsman conduct ongoing monitoring, a further own motion investigation will be conducted in 2004–05.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

The institution of Ombudsman has spread rapidly throughout the world in the past two decades. Ombudsman offices are now established in over 100 countries, having crossed political, cultural and language barriers.

The office of the Commonwealth Ombudsman is part of a global network of bodies with the similar objective of promoting principles of administrative justice and good governance. By means of their independence in handling complaints against government, ombudsman offices can play a key role in monitoring the human rights performance of governments and providing a check on arbitrary or unfair actions by the state. They can also play a 'lighthouse' role in encouraging the development of standards, ensuring compliance with good governance principles and reforming public administration.

'... development and training of Ombudsman staff in the Asia-Pacific region ... advice to neighbouring Ombudsman offices ... technical assistance and support.'

Compatible with this ethos, the Commonwealth Ombudsman's office has an established program of providing assistance and mentoring to Ombudsman offices in the Asia-Pacific region. The program is funded in part by AusAID, in support of the Australian Government's efforts to assist institutional capacity-building in neighbouring countries. The Commonwealth Ombudsman is well placed to contribute to the law and justice stream of that program by providing practical assistance and peer support to Ombudsman offices in neighbouring countries. The broader objective is to promote good governance, supported by democratic and accountable governmental institutions.

An established theme in this support program has been the development and training of Ombudsman staff in the Asia-Pacific region. Each year, our office organises workshops and courses in Australia, which are attended by Commonwealth Ombudsman staff, officers from other State, Territory and Australian Government departments, and by overseas Ombudsman officers. We have also enabled some overseas staff to work in our own office to gain practical experience in investigative techniques. On a less structured basis, we also provide advice to neighbouring Ombudsman offices on the development of investigation policies and procedures.

Two countries that have received institutional support are Indonesia and Thailand. We are currently managing two AusAID-funded

Government Sector Linkages programs to facilitate the exchange of specialist advice, training, technical assistance and support to the National Ombudsman Commission of Indonesia and the Thailand Ombudsman. These projects are scheduled for a three-year period. To date, we have:

- conducted project scoping visits to Indonesia and Thailand
- entered into major cooperative programs with the Ombudsmen of both countries
- supported the visits of senior officers from both countries to attend investigation training courses and work placements in our office
- supported Indonesian representation at the 21st Australasian and Pacific Ombudsmen's Conference in Madang, Papua New Guinea
- provided in-country training and mentoring in Thailand and Indonesia.

Two visits to the Asia-Pacific region in May and June 2004 were undertaken for training and mentoring purposes. The Ombudsman visited Indonesia to provide the keynote addresses at two regional conferences organised by the National Ombudsman Commission. The Special Tax Adviser and Information Technology Director visited Thailand to conduct training sessions and liaise on complaint handling and mediation methods and information technology issues.

Feedback from Ombudsman organisations in the Asia-Pacific region suggests that our support is highly valued, and is strengthening the capacity of those organisations to play a role in improving government accountability and integrity.

We are in the process of broadening this support program, to provide advice and assistance to other Ombudsman institutions in the South Pacific region (notably Papua New Guinea,



The Commonwealth Ombudsman visited Yogyakarta and Medan in Indonesia to provide the keynote addresses at two regional conferences.

Vanuatu, Solomon Islands, Cook Islands, Fiji, Tonga and Samoa). We will once again be relying on AusAID funding for this purpose.

Another means of international cooperation has been to host senior-level delegations from several foreign offices, including:

- a six-member delegation from China's Ministry of Supervision
- an 11-member delegation from China's Ministry of Agriculture to discuss issues relating to supervision of corruption in the public service

- a delegation from the Japan National Conference of Tax to discuss the role of the Taxation Ombudsman and the nature of and handling of complaints about taxation matters.

We also provided information and/or advice to delegations and researchers from Fiji, Indonesia, Malaysia, Papua New Guinea, Thailand, Tonga, the United Kingdom's Department of Constitutional Affairs, the Macau Department of Administration and Justice, and the Commissioner of the Mauritius Independent Commission Against Corruption.



The Special Tax Adviser and IT Director in Thailand, June 2004. From left: Chalernsak Jantaratim (Deputy Secretary-General, Thailand Ombudsman); Philip Moss (Special Tax Adviser, Commonwealth Ombudsman); Poonsup Piya-Anant (Thailand Ombudsman); Gen. Teeradej Meepien (Thailand Ombudsman); Peter Rankin (IT Director, Commonwealth Ombudsman); and Viyada Simasatien (Assistant Secretary-General, Thailand Ombudsman).

FEATURE

information technology team

The Information Technology (IT) Team is based in Canberra and comprises seven people. The Team is responsible for facilitating network and desktop electronic services, security and access controls to all offices nationally. It covers three essential operational areas: case management and information management; network/systems administration; and help desk support.

The complaints management system is the office's core business application, supporting the workflow of information and management of data pertinent to investigations. Two case management officers configure and control this application. The Network Administrator manages the systems aspects of the IT environment, including networking and servers. This includes database systems and security configuration and control. The help desk is responsible for initial staff introduction and training, desktop support and asset management. The IT Director manages the aspects of strategic planning, budget planning, project management and contracts management for the IT services for the office.

The IT Team works closely with the investigation and management areas of the office to ensure appropriate planning and delivery of services. This includes facilitating



reporting and trend analysis. The Team coordinates market testing and analysis to ensure appropriate service delivery and value for money according to functional requirements for management of information and service delivery.

Significant functionality enhancements are currently underway to improve IT services for the office. These include improvements in management of web services, information management and complaints management systems.

Further information in Chapter 10 (pp. 111–112).

challenges in complaint handling

Managing the large number of complaints and inquiries received each year is a major challenge for the Ombudsman's office. The scale of this challenge is captured in the office statistics for 2003–04. We received 17,496 complaints and 9,036 other approaches at our eight offices in capital cities around Australia. Complaints are made by telephone, in person, in writing (by letter, email or fax), and by use of the online complaint form on our website. An investigation staff of 69 officers handles the complaints.

The way that a complaint is dealt with by the Ombudsman's office can be as important to a person as the correctness of the decision they are complaining about. Timeliness in complaint handling is a foremost concern. There are other important challenges as well, particularly for a dispersed national office such as the Commonwealth Ombudsman. It is important to ensure consistency across the office in the way complaints are dealt with. Maintaining a uniformly high quality of service delivery is a dimension of that challenge.

'Timeliness in complaint handling is a foremost concern.'

These issues and challenges are long standing ones in the work of the Ombudsman's office and have been taken up in many ways. A principal initiative was to define the criteria for good complaint handling in *A Good Practice Guide to Effective Complaint Handling*, available on our website at www.ombudsman.gov.au. The guide is as useful for the office in monitoring its own standards as it is for monitoring complaint handling in agencies. A key objective of the Ombudsman's office is to model the principles and standards expressed in the *Good Practice Guide*. An essential step in that process has been to create a Client Service Charter that sets out the standards the

office strives to achieve. The charter contains commitments to complainants about the service that can be expected from the office, ways to provide feedback, and steps that can be taken if standards are not met.

This chapter describes other steps taken by the office, over a long period of time and during 2003–04, to develop a framework and system for complaint handling. Some challenges facing the office to be taken up in 2004–05 are also noted.

THE TECHNOLOGICAL DIMENSION TO COMPLAINT HANDLING

When the Ombudsman's office was established in 1977, it was customary at the time for a paper file repository to be maintained of all complaints received and information on how they were handled. Since the late 1990s, the office has increasingly computerised its complaints management and record keeping, using databases in all aspects of its operations.

In late 2001, a new complaints management system was introduced—the Commonwealth Ombudsman Information System, known as COMBi. COMBi was developed especially for the office and complements, rather than replaces, paper file records. All complaints are registered in COMBi as they are received. Each complaint is allocated an automatically generated identifying number, and the database enables investigation staff to record all relevant information about the handling of a complaint. This includes personal details of the complainant, details of the agency and issues complained about, actions taken by the investigator, and conclusions reached.

The primary use of COMBi is to record, search and retrieve complaint information. This database is also used in a number of other ways to facilitate

the work of the office. COMBi enables case records to be transferred efficiently around the office, such as from a State office to a specialist team in Canberra. It also helps staff to manage complaints by reminding them when action is due or overdue. COMBi allows supervisors to check on the workload of investigation staff in order to maintain high standards of timeliness and decision making. Senior managers are able to access COMBi for data on trends in the number and nature of complaints over time. This can assist in managing resource allocation across the office, and in identifying areas of public administration that require attention from the Ombudsman in the form of an own motion investigation.

'... access COMBi for data on trends in the number and nature of complaints over time.'

COMBi is used to inform the strategic direction of the office. For example, during 2003–04 we examined the postcodes of complainants to identify the regional areas from which we were receiving complaints. In the light of this information, we decided to improve outreach to regional areas and received additional funding for this purpose in the 2004–05 Budget.

Information extracted from COMBi is also used outside the office. We provide consolidated statistical data throughout the year to agencies about which we receive the most complaints, such as Centrelink, the Australian Taxation Office (ATO) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). This data includes the number of complaints received, the issues raised and complaint outcomes. The information helps agencies to identify areas where there may be problems in their administration or internal complaint-handling processes.

Other bodies often call on us to assemble profile information on the complaints received by the office. In 2003–04 we provided information to parliamentary inquiries examining the governance of Norfolk Island, the Medicare safety net, the exercise of safety net discretionary powers by the Minister for Immigration, and to the Senate Estimates Committee. COMBi was also used to provide information to the Treasury inquiry into self-

assessment; to the Inspector-General of Taxation's review of the ATO's small business debt collection practices; and to the Australian National Audit Office for its review into the ATO's administration of the Australian Business Number (ABN) system.

Information is entered into COMBi by Ombudsman staff around Australia. There is a heavy reliance on the accuracy and professionalism of their work in doing so. A matter of increasing concern within the office was that if the process of data entry was too complex, the quality and timeliness of the input would suffer. To address this concern we decided during the year that problems with data entry and the 'usability' of the system required that we consider alternative databases. We have decided to replace COMBi with a more 'user friendly' system, which will help to streamline work practices. Work on a new complaints management system to replace COMBi is well advanced. The move to the new system has given rise to an unforeseen expense of \$195,000 in 2003–04. Chapter 10 provides further information on the technical aspects of COMBi.

BENCHMARKING

It has been customary for the Ombudsman's office to aggregate complaint statistics and produce a report annually on the outcome of investigations. Some people rely on these statistics as an indicator of standards and trends in public administration. As this report shows, we produce statistics on different aspects of complaint handling, including the number of complaints against individual agencies, the number of issues raised in those complaints, the proportion of complaints handled by formal investigation or in some other way, and the outcome of complaint investigations. If those statistics are to convey an accurate picture, there must be an equally sophisticated system for recording and interpreting them.

The production and interpretation of statistics poses an ongoing challenge for the Ombudsman's office. One dimension of this challenge is to ensure consistency in data entry. This means that Ombudsman staff who are entering data into COMBi must all work to the same definitions—for example, they should have a common understanding of the term 'defective

administration'. This is easier to achieve in some areas than others. The office's Taxation Team checks the consistency of outcomes by regularly reviewing all ATO complaints involving some administrative deficiency. It is difficult to replicate this process in some other areas of the office not supported by a specialist team. Another method for achieving accuracy and consistency across the office is to hold regular meetings of all investigation officers from around Australia to enable benchmarking issues to be discussed. During 2003–04, we reviewed and simplified the classification of complaint outcomes applied by investigation officers.

'Another prerequisite for high-quality data entry is best-quality work practices in the office.'

Another prerequisite for high-quality data entry is best-quality work practices in the office. At one level this means, in the context of a national institution with eight separate offices, that it is necessary to monitor constantly the workflow in each office so that staff have the time and opportunity to perform tasks such as data entry as proficiently as possible. Training and technological support for staff in each office is equally important. At another level it is important that the policies and manuals on which staff rely for guidance are comprehensive and current. A project reviewing the office's investigation guidelines was commenced during the year, with a particular focus on ensuring that they are congruent with the new complaints management system. It is expected that this will result in greater simplification and standardisation of data entry and statistical reporting across the office.

Statistics, of course, tell only part of a story. It is the way they are interpreted that conveys the real message. A question often asked of the Ombudsman is whether it is good to see complaint numbers go up or down. There is no easy answer to a simple question of that kind. For example, a reduction in complaint numbers to the Ombudsman can be read in contradictory ways. It could mean that public administration is improving and that agencies are 'getting it right' more often. Or it could mean that fewer people are aware of the service provided by the Ombudsman. Worse still,



... being coordinated and systematic ...

it could perhaps mean that people are disillusioned with the service and see little point in complaining. While it is difficult to be definitive, the discussion of these possibilities will be better informed if there is contextual data available on how people perceive the office. A client satisfaction survey conducted during the year yielded valuable benchmark data for assessing how well complainants think we are doing our job.

Benchmarking is a common problem for all Ombudsmen in Australia, in both the public and private sectors. During the coming year we will be working with other Ombudsmen to explore how we measure performance. A starting point will be to agree on definitions of key concepts and terms, such as 'complaint', 'issue', 'investigation', 'preliminary investigation' and so on.

'Benchmarking is a common problem for all Ombudsmen ...'

In summary, we are concerned that our current data does not provide a sufficiently reliable picture of performance, workload and results. We will be working to improve this situation over 2004–05.

CLIENT SATISFACTION SURVEY

The opinion of complainants as to their satisfaction level with the Ombudsman's office is an important element in assessing how successfully the office is discharging its function. It is equally important not to overstate the importance of this measure of office performance. The Ombudsman has defined its role as that of making an impartial and unbiased assessment of complaints, after conducting a professional investigation. An unduly high level of satisfaction from complainants could prompt the question of whether the office had developed an unhealthy bias towards agreeing with and advocating the grievances of complainants. Over time, that would be counterproductive to agencies' receptiveness to the Ombudsman's recommendations.

'Of great interest are the widely differing satisfaction levels of complainants according to the agency involved.'

In May 2004 the office conducted a client satisfaction survey. The last survey was conducted in 2000. It will take some time to analyse the results and decide on a further course of action, but basically the survey results show that we have maintained a high satisfaction rate among complainants (58% of complainants were satisfied with service delivery and 65% were satisfied that Ombudsman staff did as much as they should have when investigating complaints). This is similar to the results of the survey conducted in 2000. Of great interest are the widely differing satisfaction levels of complainants according to the agency involved. For example, for complaints we investigated about Centrelink, 71% of complainants were satisfied. The equivalent statistic for Defence was 50%. We will need to conduct further research before we can draw full meaning from the disparities in the results.

While we can feel reasonably satisfied with the results of the survey, and we are certainly maintaining our performance standards, considerable work is required to fully understand the results. This work is currently underway.

STRATEGIC PLANNING

Many of the projects described in this chapter stemmed from a strategic planning exercise undertaken by the office in mid-2003. A motivation for undertaking strategic planning was the recognition that the office will remain effective only if it is strategic.

The size and resources of the Ombudsman's office are small by comparison with the scale of government operations that the office oversees. Many of the areas of public administration about which complaints are regularly received—such as taxation, immigration, and social services—are highly complex and require specialist understanding. The pace of change in government programs is rapid. While these factors pose an extra challenge for an ombudsman's office, they likewise make the office more relevant, rather than less.

To maintain relevance and effectiveness in a strategic manner, the office devised a strategic action agenda for 2003–04, defining the enduring commitments, pressing issues and longer term projects for the office. Examples of the enduring commitments of the office are to maintain an effective national office structure, contribute to public discussion on administrative law and public administration, and nurture our working relationship with Australian Government agencies. The pressing issues—most of which are underway or being finalised—include restructuring the electronic complaints management database, developing an outreach program, revising the investigation guidelines in the office, reviewing each of the major teams in the office, and revamping the office's website to include a research hub about the Ombudsman. Most of the longer term projects have also been initiated—such as a review of the Ombudsman Act, a client satisfaction survey, development of a complaint-handling manual, and preparation of reports on problem areas in law and administration.

Another vital part of the strategic planning process was to define the role of the Ombudsman in a precise and distinguishing manner. A reason for doing so was to highlight the distinctive role of the office—how it can add something to the business of government and fulfil a role not



vision

- an office that safeguards the community in dealings with Australian Government agencies.

mission

- to correct defective administration, by conducting independent investigation of complaints about Australian Government administrative action
- to foster good public administration that is accountable, lawful, fair, transparent and responsive
- to assist people to resolve complaints about government administrative action.

values

- independence, impartiality, integrity, accessibility, professionalism and team work.

what we do

- investigate complaints about Australian Government agencies and make recommendations for resolving complaints
- foster good complaint handling in Australian Government agencies
- encourage and assist people to resolve problems directly with government agencies
- highlight problems in public administration through complaint handling, own motion investigations and reporting
- contribute to public discussion on administrative law and public administration
- focus attention on the adverse impact government administration can have on individuals
- promote open government
- inspect the accuracy and comprehensiveness of law enforcement records, including telephone interceptions and controlled operations
- provide assistance to Ombudsman offices in the Asia-Pacific region.

how we do it

- professional, high-quality and well-trained staff
- delivery of our services in accordance with professional standards
- efficient and effective information systems
- being responsive to criticism of our own performance.

discharged adequately by the growing number of other review and complaint mechanisms in government.

The resulting definition—of the vision, mission, values and function of the office—is republished here. The prevailing theme is that the office sees itself as primarily an independent, external, complaint agency. As a *complaint* agency, the role of the office is to pick up grievances expressed by members of the public and to gauge whether there has been defective administration. As an *external* agency, the Ombudsman should offer a perspective that might otherwise be lacking within government. As an *independent* agency, the office must—when the occasion requires—be resilient in pressing an unwelcome or unpopular viewpoint.

‘... the office sees itself as primarily an independent, external, complaint agency.’

This core function of the Ombudsman is supplemented by other roles, notably the role of the office in fostering good public administration. However, these other roles spring from the complaint and investigation role of the office and are aimed at supplementing rather than overshadowing the Ombudsman’s core function.

OTHER PROJECTS FOR 2004–05

In addition to the projects described earlier in this chapter, some other areas have been singled out for special project work in 2004–05.

Outreach

It is important that the Ombudsman’s office reaches all Australians. Theoretically this is possible, since most complaints come via telephone, the internet and mail. However, it is a matter of concern whether the office is well known to all Australians. Our belief is that it is necessary for the office to travel beyond capital cities—partly to develop its profile, but also to speak to community gatekeepers (such as community organisations and parliamentary electorate offices). We sought and were granted extra funding in the 2004–05 Budget for an outreach program and will appoint an Outreach Manager. Plans are being developed in each office for outreach projects.

Online complaint lodgment

We already have a facility for online complaint lodgment, but feel that it is under utilised. We will be revising our website and complaints form to make electronic access to our services more effective. This will be done in two ways: by linking the Ombudsman’s website to the complaint-handling mechanisms in other agencies, and by improving the information provided to the public to facilitate lodgment of complaints.

Persistent complainants

An issue faced by many complaint-handling agencies is that some complainants are unrelenting in not accepting the decision made by the agency. It is proper that decisions made by the office should be open to question and review, but in a small number of cases the complainants are persistent and inflexible beyond any reasonable limit. This can be a great drain on the resources of the office, and can lead to the paradox that the person’s original complaint becomes transformed into a complaint directed at the complaint-handling agency. We commissioned a study on the issue of persistent complainants during 2003–04. In 2004–05, we will consider how to address the issue.

Legislation review

The statute establishing the office of Ombudsman also prescribes the framework for administrative investigation. Early in the life of the office it was found that some features of the Ombudsman Act impede rather than facilitate efficient investigation. For example, in 1983 the Act was amended to provide that complaints could be received orally as well as in writing, and to authorise the Ombudsman to conduct preliminary inquiries of an agency before deciding whether to conduct a formal investigation. It is now considered time for a further review of the Ombudsman Act, to ensure that the Act better reflects the more flexible and informal way that many complaints and inquiries to the office are handled and resolved. The Prime Minister indicated his agreement in 2003 to a project to prepare a proposal for a revised Ombudsman Act for consideration by the government. This project is currently underway.

FEATURE

corporate support

FINANCE TEAM

The Finance Team is located in the Canberra office and comprises two staff. Team members are responsible for budgets, procurement and contract administration, business procedures, coordinating Senate reporting and supporting the office's Audit Committee.

The Team also oversee the office's outsourced finance function handled by Duesburys Chartered Accountants, who carry out accounting operations and financial administration, including taxation and most



financial reporting for the office. In 2003–04, Walter Turnbull conducted most of the office's internal compliance and business audits and reviews.

HUMAN RESOURCE MANAGEMENT, RECORDS MANAGEMENT AND SUPPORT SERVICES TEAM

The Human Resource Management, Records Management and Support Services Team of four provides advice and services to management and employees. This relates to pay and conditions, recruitment, training and development, occupational health and safety, workplace diversity, workplace relations, records management practices and procedures, office services and facilities management to underpin the Ombudsman's objectives.



The training programs coordinated by the team on introductory and advanced investigations are attended by staff from other government agencies, and from Ombudsman offices in Australia and the Asia–Pacific region.

accountability and management

INTERNAL AND EXTERNAL SCRUTINY

Audit Committee

The Audit Committee's role is to review, monitor and where necessary recommend improvements to:

- internal control
- financial reporting
- internal audit functions
- external audit processes
- the office process for monitoring compliance with legislation and government policy directives.

The Audit Committee comprises four members: Ron Brent, Deputy Ombudsman (Chair); Joe D'Angelo, Chief Finance Officer from the Department of the Senate; Philip Moss, Special Tax Adviser; and Natalie Humphry, Contract Manager. The Committee also has a standing position for the Australian National Audit Office.

Risk management

Risk management activities have been incorporated into the Ombudsman's planning and operations and the management of contractors. The office has developed a risk management policy and procedures to:

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

An external consultant was engaged to review the existing risk management framework and assess

the strategic business risks. It is expected that the Ombudsman will consider this matter early in 2004–05.

A review of occupational health and safety (OH&S) risks has been undertaken through a consultancy in relation to the Brisbane, Canberra and Melbourne offices. Security risks are also periodically reviewed.

Business continuity planning

Continuity management is an important issue for the office, allowing it to identify and assess risks that could disrupt services and functions, to predict likely problems, and to plan to avoid or minimise the impact of hazardous incidents.

We engaged a consultant during 2003–04 to assist in business continuity planning as part of our risk management strategy. The business continuity plan will:

- assess the impact on the Ombudsman's operations of a disaster which may render the Canberra office and central information technology facilities unusable for an extended period
- identify key components and provide recovery solutions for the Canberra computer systems and interstate voice and computer network
- create a complaint-handling solution for emergency operations
- establish a strategic plan for Canberra operations and the ability for the public to contact the Ombudsman in the immediate and medium-term period
- document a practical strategy for recovery, to include the office's strategic plan, key applications, essential procedural changes (if any) and team construction and responsibilities.

The plan will be finalised in 2004–05 and tested as part of the implementation.

Fraud control

The Ombudsman has adopted a fraud control policy in line with the government's Fraud Control Guidelines to reflect best practice in identifying and controlling fraud risks. This policy aims to:

- actively prevent, detect and investigate fraud
- refer offenders to appropriate agencies where necessary
- seek civil, administrative or disciplinary penalties where appropriate
- recover proceeds of fraudulent activity
- be accountable to Parliament and report to government
- maintain and improve appropriate fraud control standards
- train employees in ethical management, privacy and fraud awareness issues
- ensure that fraud control contractors have the required specialised training.

The office will review its fraud risks and controls in 2004–05, although the risks are considered to be low given the size of the office and a record of no fraud incidents.

Freedom of Information

The *Freedom of Information Act 1982* (the FOI Act) requires each Australian Government agency to publish a statement setting out its role, functions, decision-making powers, consultative procedures, the documents available for public inspection, and access to such documents. This statement is available in Chapter 11.

Privacy legislation

The Ombudsman provides information as required to the Privacy Commissioner for inclusion in the *Personal Information Digest*. No reports by the Privacy Commission under s 30 of the *Privacy Act 1988* concerning actions or practices by the office were received during 2003–04.

Litigation and legal issues

In July 2003, the Federal Magistrates Court made its decision on an application for review of the previous Commonwealth Ombudsman's decision to cease an investigation. The Court upheld the Ombudsman's decision, awarding costs. In another

matter, the Federal Court dismissed an application for review of an Administrative Appeals Tribunal (AAT) decision. The AAT had previously dismissed the application for review of a decision made under the FOI Act. Court costs were again awarded to the Ombudsman.

The office is dealing with another application to the Court, which is listed for a preliminary hearing early in 2004–05.

Several applications to the AAT for review of decisions made under the FOI Act were dealt with during the year, all but one from a single FOI applicant. One matter has been decided, with the AAT accepting the office's submission that a decision to transfer a request is not subject to internal or AAT review. The other matters relating to that applicant have been adjourned until early in 2004–05 at the request of the applicant.

The office has relied on its statutory non-compellability when required by subpoena or discovery to disclose documents in matters in which it was not a party.

Occupational health and safety

The office's OH&S Committee is made up of elected representatives from each regional office and chaired by the Human Resource Manager, who represents management. The Committee met three times during the year.

All new employees are made aware of the importance and responsibilities of both staff and management for health and safety in the workplace. New employees are encouraged to have workplace assessments conducted shortly after commencement.

There were no reportable incidents during the year.

During 2003–04, the office ensured that:

- obligations for Comcare premiums were met
- compensation cases were managed in accordance with approved guidelines
- health assessments were made available to employees, where necessary
- an influenza vaccination program was undertaken
- necessary eye examinations were undertaken

- workplace assessments were conducted for employees
- first aid supplies were made available.

The office provides an Employee Assistance Program to ensure that employees and their families have access to a confidential counselling service to assist with workplace problems and management of any work-related or personal stress.

Disability action plan

The Ombudsman recognises the importance of the *Disability Discrimination Act 1992* in ensuring equality of access to the services of the Commonwealth Ombudsman for people with disabilities and eliminating discriminatory practices by staff. The office endeavours to meet its obligations under the Act through implementation of the Commonwealth Disability Strategy and its Disability Action Plan.

As an employer, the Ombudsman's employment policies and procedures comply with the requirements of the Disability Discrimination Act. The following processes are in place.

- A workplace diversity plan provides for measures to assist staff who have particular needs.
- All employment policies and procedures are communicated in a manner that is responsive to the needs of employees.
- Recruitment information for potential job applicants is available direct from the office's website in accessible formats.
- Employment policies and procedures are made available in a manner that is responsive to the needs of prospective employees. Appropriate material in hard copy is provided to prospective employees when they seek details of employment opportunities.
- Managers and recruiters apply 'reasonable adjustment' principles.
- The Workplace Diversity Program allows for a flexible approach to management of employees with special needs.
- Training and development programs consider and respond to the needs of people with disabilities and include information on disability issues where they relate to the content of the program.

- Complaints/grievance mechanisms, including access to external mechanisms, are in place to address issues and concerns raised by staff and the public.

Environmental matters

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

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently and in an ecologically responsible manner. Policy guidance is provided on conservation of energy in use of lighting and computer equipment. The office actively recycles paper and cardboard products.

Advertising and market research

In accordance with reporting requirements contained in s 311A of the *Commonwealth Electoral Act 1918*, the total payment by the Ombudsman to advertising and market research organisations in 2003–04 is reported as \$64,410 (including GST). The payment comprised:

- **Advertising**—six ethnic newspapers promoting awareness of the office (total \$3,580).
- **Market research**—ACNielsen Research Pty Ltd—client satisfaction survey of random selection of complainants to the office (\$60,830).

Service charter

We are committed to providing the best service possible. The Commonwealth Ombudsman Service Charter is available on our website at www.ombudsman.gov.au. The charter outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met. Where a complainant disagrees with our decision on a complaint, a more senior officer not previously involved in the matter conducts a review.

The Ombudsman's Service Charter and the mechanisms for monitoring, responding to and recording complaints about our service will be reviewed in 2004–05.

Feedback from complainants to the office is an effective way to identify where changes may need to be made. During the year, 26 comments were received from complainants regarding our services. Most of the feedback concerned service delivery and decisions reached, with 23 of the comments positive and three negative. The negative comments related to dissatisfaction about decisions made by government agencies.

CORPORATE MANAGEMENT

Financial performance

Revenue from ordinary activities was \$10.520 million in 2003–04.

The office received \$9.462 million in direct revenue from departmental appropriation, amounting to \$0.995 million more than that received in 2002–03. The additional revenue was provided to increase the office's capacity to handle law enforcement complaints and complex investigations.

Total expenses for the office were \$10.563 million, leading to a deficit in 2003–04 of \$0.043 million, primarily due to a write-down of the complaints management system.

Financial position

The office's total equity—that is, the sum of the office's assets less its liabilities—increased by \$0.387 million due mainly to an equity injection in the 2003–04 year.

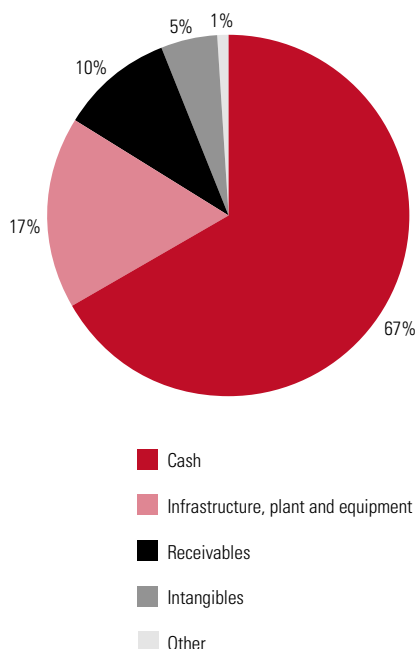
Assets may be broken down into four main categories:

- cash
- infrastructure, plant and equipment
- intangibles (non-physical assets such as software)
- receivables (amounts due to be paid to the office).

'Other non-financial assets' relates to prepayments.

The office's total assets increased to \$3.731 million in 2003–04 from \$2.193 million in 2002–03. The increase in financial assets arose from accumulated cash reserves. The proportion of each type of asset held during 2003–04 is set out in Figure 10.1.

FIGURE 10.1 Office assets, by category, 2003–04



Financial assets

The Statement of Financial Position shows cash holdings of \$2.477 million. This compares with the \$1.051 million held in 2002–03. The increase in cash holding is primarily due to:

- putting aside cash at year end to meet current obligations, employee entitlements and the replacement of infrastructure, plant and equipment, and intangibles
- the equity injection
- timing differences.

Non-financial assets

The office's non-financial assets decreased to \$0.870 million in 2003–04 from \$1.017 million in 2002–03, primarily due to the write-down of intangibles.

Liabilities

Total liabilities increased by \$1.151 million to \$3.477 million in 2003–04 compared to \$2.327 million in 2002–03. The major increase related to employee entitlements and creditors.

Factors affecting future performance

In the 2004–05 Budget, the government provided additional funding of \$7.061 million over four years to establish new roles for the office, for expanded delivery of Ombudsman services in regional and remote areas, for improved oversight of surveillance devices, and as partial funding of Comcover premiums.

Cash held will be used largely for implementing a new complaints management system and related electronic data management, as well as for replacing aged desktop information technology equipment.

Consulting and contracting services

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

There were nine consultancy service contracts let during 2003–04 with a value of \$10,000 or more. The total expenditure on these consultancy contracts was \$278,565. Services included provision of two client satisfaction surveys, investigation of decisions under the *Freedom of Information Act 1982*, and a risk assessment of occupational health and safety within the office. Details are available at www.ombudsman.gov.au.

INFORMATION TECHNOLOGY

During the year, the Ombudsman's office initiated significant changes to a number of key information technology functions:

- network information management architecture
- complaints management
- voice services
- facilities management.

These changes aim to improve the handling of strategic issues within the office, including better electronic management of information and a more robust technological environment.

The need to make significant changes to our technological environment has arisen as the demands to improve productivity and associated

pressures on staff have grown. The Ombudsman's office recognised that the inherent restrictions of our current complaints management system and our current network architecture would have inhibited our ability to make these changes. Importantly, the manner in which we use and think about information has changed over time, which has fundamentally challenged our information networks and network infrastructure. This has resulted in the pressing need to improve data input efficiencies and to streamline and integrate work practices. Replacement of desktop workstations throughout the organisation in 2004–05 is also part of the process of enhancing capacity and processing capability within the new environment.

Network information management architecture

With the aim of improving electronic workflow throughout our organisation, we have been reviewing the interaction between shared directories (where information is stored on our computer system), the complaints management system, corporate email, and web services. We have taken a standards-based approach to improve interoperability between these environments. Current work practices for case management require electronic documents to be moved into the complaints management system or printed to a manual folder. This has limited our ability to find information efficiently, to authenticate documents and to avoid duplication. Based upon this need, the office decided to restructure the document and information management systems, including the interaction of electronic systems and manual processes.

Following market evaluation, product reviews and pilot testing undertaken during 2003–04, we developed a strategy covering three primary areas: email application server; network document management; and web content management. This strategy will be implemented in conjunction with the new complaints management system and seeks to address the functional requirements of effective electronic management of information and workflow between all environments within the office.

As part of reviewing organisational business needs, we are addressing the need for mobility via

portable devices. As functionality expands and security is enhanced, these devices can be utilised. Initiatives are also underway to share secure email with other Australian Government offices.

A number of enhancements to the office's network environment were made during 2003–04 as a result of changes in technology and associated maintenance costs, and the rationalisation of ageing equipment. The network firewall was upgraded to create a secure area to house the upgraded external web server. These changes resulted in a more robust compliant firewall configuration and reduced maintenance costs.

A Sun V240 server has been installed and a pilot for a new email system was completed in June 2004. This machine will be the primary email serving system for the new environment. Operational production of this environment will be achieved by the end of 2004. Improvements have been made to desktop virus controls via the installation of automated network updates. A Microsoft Update server now enables operating system changes to be applied to all devices once they are available from Microsoft.

Complaints management

The electronic complaints management system is the office's core business application for complaint handling. There is a significant amount of workflow and reporting requirements associated with this system. Over time, we have developed a number of key operational criteria appropriate to our business needs. A review of the current system's functionality found a number of performance weaknesses, including:

- poor network performance and response time
- limited reporting functionality
- restrictions on configuration and control
- system inflexibility
- insufficient integration with other network applications.

In 2003–04, we sought quotations for a new electronic complaints management system to provide simplified data entry, more efficient workflow, and improved performance and reporting functionality. As part of this process,

we conducted a market review of application options to address the current issues, and an application strategy was developed. A new complaints management system will be implemented in the first half of 2004–05. The 'Challenges in complaint handling' chapter provides further information on how the complaints management system is used and some of the challenges faced.

Voice services

Digital phone handsets were installed in Canberra in 2003–04, bringing our national office in line with our other offices. Upgrades to connectivity between Canberra, Sydney and Melbourne reduced the operating costs of voice services. Enhancements were also made to the national router network to enable quality of service levels to be achieved.

Further to upgrades undertaken in 2002–03 to provide PABX capability in several offices, improvements to hardware and software were implemented in 2003–04 to provide the office with full PABX reporting capability. This new system enables bill verification and voice traffic analysis of dedicated PABX facilities in Canberra, Sydney and Melbourne.

In a drive to rationalise hardware and improve electronic capture of information, further desktop enhancements are planned, including 'fax to the desktop'.

Facilities management

The management of information technology facilities (equipment and help desk) has been maintained as an 'outsourced' function. This outsourcing arrangement is market-tested every three years. As the current agreement will conclude in 2004, a review of the help desk support function will be conducted early in 2004–05.

There has been a significant increase in help desk support over the past few months. This has been attributed to additional hardware requirements due to increased staff numbers and demand for mobile devices such as laptops. Considerable work was required to develop the desktop software profiles to ensure that they are compliant between the old and new equipment.

PEOPLE MANAGEMENT

During 2003–04 the Ombudsman's office managed its employees in accordance with the conditions of our Certified Agreement and a number of Australian Workplace Agreements (AWAs), as well as with our obligations under the *Public Service Act 1999*.

Statutory appointment details for the Ombudsman and Deputy Ombudsman are:

	TERM	EXPIRY DATE
Prof. John McMillan	5 years	16 March 2008
Mr Ron Brent	5 years	1 June 2008

Workplace relations

The Australian Industrial Relations Commission certified a new Certified Agreement on 22 October 2003. The new agreement remains in force until 30 September 2005.

The agreement focuses on people, remuneration and employment arrangements, working environment and lifestyle, further streamlining of personnel practices and processes, and performance management and improvement to underpin salary increases. These are also characteristic of the AWAs in place for a small number of employees. Full details are in Table 10.1 (the office's two statutory officers are not included).

TABLE 10.1 APS employees covered by Certified Agreement or Australian Workplace Agreement, by SES and non-SES, 30 June 2004

	SES	Non-SES
Certified Agreement	0	84
Australian Workplace Agreement	4	4

APS = Australian Public Service; SES = Senior Executive Service

Non-salary benefits provided to staff under the Certified Agreement include:

- employer-sponsored superannuation
- dependant care costs arising from arrangements that are required in specific circumstances.

The Certified Agreement and the non-SES AWAs do not make provision for performance pay. Salary advancement through pay points within each classification is linked to performance, in accordance with the policy parameters for agreement-making in the Australian Public Service. SES AWAs provide for annual salary advancement within the range based on performance.

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

Career development and training

Key areas of staff development during the year were:

- investigations training
- performance management training
- orientation training
- general information sessions.

Career development and training focused on continuous improvement of organisational performance through analysis of needs. The office developed and managed an Introductory Investigations Course in August 2003 and an Advanced Investigations Course in March 2004. The courses were designed to cater for investigation and compliance officers and senior investigation officers, respectively. Course participants were attracted from other agencies and overseas Ombudsman offices. These courses are to be conducted each year as part of the Ombudsman's commitment to improving the skills of investigation officers.

A new Performance Management Program was developed and implemented in 2003–04, with all staff receiving training in performance management principles and the new program.

An Orientation Program was held during the year to give all new employees from State Offices and the National Office a consolidated overview of the organisation and its functions.

The office also contributed to the development of its staff by providing study assistance.

Staffing profile

During 2003–04, 14 employees (13 of whom were women) were engaged on an ongoing basis.

Nine ongoing employees left the office during the year, equating to a turnover rate of 10%. Given the nature of the office's work and the fact that we run eight offices throughout Australia, this turnover rate is relatively modest.

Staffing levels

The actual number of employees at 30 June 2004 was 92, which included the Ombudsman and Deputy Ombudsman, who are statutory appointments. The full-time equivalent number of employees for the year was 89.5. The numbers of ongoing and non-ongoing employees, by gender and APS classification, are shown in Table 10.2. Five employees on long-term leave without pay under the Prime Minister's Directions 1999 are not included in the table. Table 10.3 provides the office's staffing profile by location.

TABLE 10.2 Staffing profile, by level and gender, 2003–04

Salary	Men	Women	Total
APS1 \$29,562–\$32,674	0	1 non-ongoing	1 non-ongoing
APS2 \$33,456–\$37,100	1 non-ongoing	0	1 non-ongoing
APS3 \$38,108–\$41,130	2 (incl 1 non-ongoing)	4 (incl 2 non-ongoing)	6 (incl 3 non-ongoing)
APS4 \$42,472–\$46,114	7 (incl 1 non-ongoing)	20 (incl 2 non-ongoing)	27 (incl 3 non-ongoing)
APS5 \$47,371–\$50,232	1 non-ongoing	4	5 (incl 1 non-ongoing)
APS6 \$51,165–\$58,774	2	9 (incl 1 non-ongoing)	11 (incl 1 non-ongoing)
EL1 \$65,591–\$70,827	10 (incl 3 non-ongoing)	8	18 (incl 3 non-ongoing)
EL2 \$75,625–\$85,767	8 (incl 1 non-ongoing)	9	17 (incl 1 non-ongoing)
SES and statutory officers— above \$94,943	4*	2	6*
TOTAL	35* (incl 8 non-ongoing)	57 (incl 6 non-ongoing)	92* (incl 14 non-ongoing)

* Includes two statutory officers.

TABLE 10.3 Staffing profile, by location, 2003–04

Location	Men	Women	Total
ACT	21*	35	56*
NSW	3	8	11
NT	0	1	1
QLD	1	6	7
SA	1	2	3
TAS	1	0	1
VIC	6	4	10
WA	2	1	3
TOTAL	35*	57	92*

* Includes two statutory officers.

FEATURE

corporate support

EXECUTIVE TEAM

The Ombudsman and Deputy Ombudsman discharge a large number of managerial and statutory responsibilities imposed by the Ombudsman Act and other legislation and executive directives. Together with their Executive Assistants, they constitute an Executive Team that provides direction and assistance to the office as a whole on matters such as drafting, presentation and preparation of reports and correspondence, managing the flow of correspondence, providing national coordination of meetings and telephone conference discussions between our eight offices, and liaising with State and International Ombudsman offices and key agencies.



LEGAL AND POLICY TEAM

The Director of Legal and Policy and a part-time Freedom of Information officer provide the Ombudsman's legal and policy advice. The expertise of Ombudsman investigation staff with legal qualifications is also drawn upon.

The Director provides in-house legal advice to investigators and managers, handles the office's responsibilities under the *Freedom of Information Act 1982*, the *Privacy Act 1988* and other administrative law and information access legislation, and provides or arranges representation in tribunals and courts.

Legal and Policy supports the Ombudsman, investigation and corporate staff by providing research and guidance. The team is also the



first point of contact on policy and legislation issues affecting the Ombudsman, deals with FOI and external review, and advises on proposals affecting the office's work.

freedom of information statement

Statement in accordance with section 8 of the *Freedom of Information Act 1982*.

This statement is correct to 30 June 2004.

ESTABLISHMENT

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976*. The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman (DFO).

ORGANISATION

The National Office of the Commonwealth Ombudsman and the office of the Australian Capital Territory Ombudsman are co-located in Canberra. Other offices are located in Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

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

FUNCTIONS

Investigation of administrative actions

Following a complaint from a member of the public, or using 'own motion' powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and some private contractors delivering government services.

The Ombudsman cannot investigate:

- the action of government Ministers or judges
- employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide not to investigate complaints that are 'stale', or frivolous, where the complainant has not first sought redress from the agency, or where some other form of review or appeal is more appropriate in all the circumstances.

The Ombudsman may conduct a complaint investigation as he or she thinks fit. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and to examine witnesses under oath.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the *Freedom of Information Act 1982* and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or authority were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, he or she may report that view to the agency and may recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report such to the Prime Minister and the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force complaints

The DFO can investigate complaints about administrative actions and Defence Force employment matters. The DFO cannot investigate actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

Taxation complaints

The Ombudsman has a specialist group to investigate complaints about the Australian Taxation Office (ATO), headed by the Special Tax Adviser. Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman is also the Taxation Ombudsman when dealing with complaints about the ATO.

Complaints about Freedom of Information (FOI)

The *Freedom of Information Act 1982* (the FOI Act) enables the Ombudsman to investigate complaints about actions and decisions by departments and agencies relating to requests for access to documents under FOI. Details of these complaints are included in the Ombudsman's annual reports and in any additional reports made to Parliament under s 19 of the Ombudsman Act. These reports may include observations about the operation of the FOI Act and recommendations on ways to improve public access to documents.

Complaints about the Australian Federal Police

The Ombudsman has specific functions in relation to complaints about the Australian Federal Police (AFP) under the *Complaints (Australian Federal Police) Act 1981*. Complaints about the AFP usually focus on its practices and procedures or the conduct of individual AFP appointees. Complaints about its practices and procedures are dealt with in a similar way to complaints made under the Ombudsman Act.

Where the conduct of an AFP appointee is in question, the AFP Professional Standards and Internal Investigation division normally undertakes the initial investigation. There are occasions where Internal Investigation is not involved; for example, when the complaint is about actions of a member of Internal Investigation. The Ombudsman examines reports of all AFP investigations, whether the originating complaint was made to the Ombudsman or to the AFP, and decides whether further action is necessary. If action is required, the case may be referred back to the AFP for further investigation. Alternatively, the Ombudsman can decide to investigate the matter independently.

Following an investigation by either the Ombudsman or the AFP, the Ombudsman

can recommend remedial action to the AFP Commissioner. Recommendations may include that an appointee be charged with a criminal offence or a breach of discipline, or some other course of action.

The Ombudsman's intercept audit

Under the *Telecommunications (Interception) Amendment Act 1987*, the Ombudsman can inspect certain records of the AFP and the Australian Crime Commission (ACC) to ascertain whether the agencies have complied with specified record-keeping requirements of the Act.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP and the ACC.

Australian Capital Territory (ACT) Ombudsman

By arrangement between the Australian and ACT Governments, the Commonwealth Ombudsman is also the Ombudsman for the ACT. A more detailed explanation of the role of the ACT Ombudsman appears in a separate annual report made to the ACT Government.

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate disclosures by whistleblowers in relation to the actions of ACT agencies.

CATEGORIES OF DOCUMENTS HELD BY THE OMBUDSMAN

Broadly speaking, the Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation

- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

FOI ACCESS AND INITIAL CONTACT POINTS

General inquiries and requests for access to documents or other matters relating to Freedom of Information may be made in person, by telephone or in writing at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. For the cost of a local call, people can contact their nearest Commonwealth Ombudsman's office by calling the National Complaints Line on 1300 362 072.

Pursuant to s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsman, all Senior Assistant Ombudsmen, and some executive-level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant.

FOI REQUESTS TO THE OMBUDSMAN'S OFFICE

The Ombudsman's office deals with a moderate number of requests every year (23 in 2003–04 compared to 37 in 2002–03), mostly for documents related to investigations. Following are some observations about how these requests are handled.

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:
 - documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
 - records of telephone conversations involving the complainant
 - most database entries relating to the complainant.

In the course of investigation, we may provide an agency response to a complainant

so that he or she can better understand the agency's position.

- It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about a document's context, in light of their experience in dealing with requests for similar documents.

A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office is involved as little as possible.

- It is possible to detect that some FOI requests to the Ombudsman are made with a view to causing extra work for an investigator who made, in the view of a complainant, the 'wrong' decision. As a matter of practice, staff who have had little or no involvement with the investigation often perform the tasks of processing and decision making on FOI requests. The question of motive is, of course, irrelevant to rights under the FOI Act.

The Ombudsman is currently considering whether much would be lost if the office, like some of its State counterparts, were excluded from the FOI Act for documents relating to its investigative functions. Discussions related to the review of the Ombudsman legislation (dealt with in the 'Year in review' chapter of this report) and a review conducted at the Ombudsman's request by Prof. Ian Freckelton (on policy and administrative issues dealing with unusually persistent complainants) raised questions about the value of FOI access to the Ombudsman's records. Of course, the final decision rests with the Australian Government and Parliament.

CHAPTER 12

statistics

TABLE 1—Complaints received, and complaints and issues finalised, 2003–04, *Ombudsman Act 1976* (including Freedom of Information)

TABLE 2—AFP complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981*

TABLE 3—AFP method of handling complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981*

LEGEND FOR TABLES

Advised to pursue elsewhere—complainant advised to pursue complaint directly with agency, court or tribunal, industry or subject specialist, Member of Parliament or Minister.

AFP investigation—AFP investigation of complaints against AFP members and review by the Ombudsman.

AFP workplace resolution—complaints managed by the AFP in the workplace.

Agency defect—defective administration determined where an agency has not acted fairly, reasonably or in accordance with its legislation, policies and procedures.

Complaint not pursued—withdrawn by complainant, or written complaint requested but not received.

Complaints finalised—complaints finalised in 2003–04, including some complaints carried over from previous years.

Complaints received—complaints received in 2003–04.

Conciliated—complaint conciliated through the AFP’s workplace resolution process.

Incapable of determination—sufficient evidence was not available to support a clear conclusion.

Issues—complaints can contain a number of issues, each requiring a separate decision as to whether to investigate. Each issue may result in a separate outcome.

Ombudsman decision not to investigate—the Ombudsman may decide not to investigate where a person has not tried to resolve their problem directly with the relevant agency or there is a more appropriate avenue of review available.

Ombudsman investigation—further investigation, following preliminary inquiries stage, asking more questions and reviewing the agency’s files, policies and procedures.

Ombudsman investigation not warranted—complaint not warranted for one of the following reasons: over 12 months old, frivolous or not in good faith, insufficient interest, related to commercial activity, or ‘not warranted’ having regard to all the circumstances.

Ombudsman preliminary inquiries—initial inquiry to determine whether a complaint is within jurisdiction, an investigation is required or the complaint can be resolved by informal inquiries.

Out of jurisdiction—lacks legal authority to investigate complaint.

Resolved without determination—complaint issues resolved before the office reached a view as to whether or not there was any defective administration.

Special investigation—investigations conducted under s 46 of Complaints Act may be conducted solely by the Ombudsman or jointly with the AFP.

Substantiated/unsubstantiated—complaint issue established to Ombudsman’s satisfaction/was insufficient evidence to support complaint.

TABLE 1 Complaints received, and complaints and issues finalised, 2003–04, *Ombudsman Act 1976* (including Freedom of Information)

Agency	Complaints		Outcomes of issues finalised							Total issues finalised	
	Received	Finalised	Agency defect	No agency defect	Resolved without determination	Ombudsman investigation not warranted	Advised to pursue elsewhere	Complaint not pursued	Out of jurisdiction		
Agriculture, Fisheries and Forestry											
Australian Fisheries Management Authority	5	5				1	2	1	1		5
Australian Quarantine and Inspection Service	23	24	2	4	3	5	11	1			26
Australian Wine and Brandy Corporation	1	1					1				1
Department of Agriculture, Fisheries and Forestry	9	9	1			2	6		1		10
Murray Darling Basin Commission	1	1							1		1
Attorney-General's											
Administrative Appeals Tribunal	11	10		1		2	3		4		10
Attorney-General's Department	24	20	1	4	2	5	6		3		21
Australian Crime Commission	6	7				7	5				12
Australian Customs Service	73	73	3	6	3	9	51	5	6		83
Australian Protective Service	7	10				7	1	2	2		12
Director of Public Prosecutions	11	12		2		1	8		1		12
Family Court of Australia	90	91	1	4	2	17	33	10	28		95
Federal Court of Australia	8	7	1				4		2		7
Federal Magistrates Court	1	1	1								1
High Court of Australia	6	5				2	1	1	1		5
Insolvency and Trustee Service, Australia	78	78	4	15	7	13	36	14	1		90
Privacy Commissioner	8	8		1		5	2				8
Commonwealth Parliamentary											
Senate	2	2	1						1		2
Communications, Information Technology and the Arts											
Australian Broadcasting Authority	11	10		1		3	5	1	1		11
Australian Broadcasting Corporation	9	9				1	5	3			9
Australian Communications Authority	12	10		3	1	3	2	1			10
Australian Film, Television and Radio School	1	1							1		1
Australian Postal Corporation	1,079	1,082	143	161	149	175	457	50	15		1,150
Australian Sports Commission	3	4				1	1	2			4
Department of Communications, Information Technology and the Arts	5	6			2	1	2	1			6
National Archives of Australia	1	1	1								1
National Gallery of Australia	1	1							1		1
Special Broadcasting Service Corporation	1	1				1					1
Telstra Corporation	101	105		4	1	11	76	5	13		110

Agency	Complaints		Outcomes of issues finalised							Total issues finalised	
	Received	Finalised	Agency defect	No agency defect	Resolved without determination	Ombudsman investigation not warranted	Advised to pursue elsewhere	Complaint not pursued	Out of jurisdiction		
Defence											
Australian Army	205	202	14	9	16	49	105	30	6	229	
Australian Defence Force Academy	2	1	1							1	
Defence Force Retirement and Death Benefits Authority	5	5	4					1		5	
Defence Housing Authority	23	21	2			3	12	4	1	22	
Defence Service Homes	1	1	1							1	
Department of Defence	135	128	11	7	6	21	63	16	15	139	
Department of Veterans' Affairs	172	171	12	26	16	44	73	15	9	195	
Frontline Defence Services		1	1	2						3	
Royal Australian Air Force	79	74	4	10	7	17	37	8	4	87	
Royal Australian Navy	68	68	9		4	17	30	8	2	70	
Education, Science and Training											
Australian National Training Authority	3	2	1						1	2	
Australian National University	11	14	1	3	2	5	2	4	2	19	
Australian Nuclear Science and Technology Organisation	3	2	1					1		2	
Commonwealth Scientific and Industrial Research Organisation	1	1	1							1	
Department of Education, Science and Training	22	23	6		1	5	5	5	2	24	
Employment and Workplace Relations											
Australian Industrial Registry	3	3	1			1	3			5	
Comcare	116	107	5	14	12	34	53	11	4	133	
Department of Employment and Workplace Relations	295	283	11	56	26	37	134	33	9	306	
Office of the Employment Advocate		1	1								1
Environment and Heritage											
Australian Antarctic Division	1	1	1							1	
Australian Heritage Council	1	1	1							1	
Bureau of Meteorology	1	1	1								1
Department of the Environment and Heritage	15	13	1			2	9		4	16	
Great Barrier Reef Marine Park Authority	5	3	1			2	1	4			
Family and Community Services											
Centrelink	8,084	8,075	620	1,045	674	890	5,352	198	58	8,837	
Child Support Agency	1,951	1,931	164	463	216	355	1,014	85	14	2,311	
Department of Family and Community Services	16	13	1	4					7	2	14
Social Security Appeals Tribunal	15	15	6					7	2		15

Agency	Complaints		Outcomes of issues finalised							Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Resolved without determination	Ombudsman investigation not warranted	Advised to pursue elsewhere	Complaint not pursued	Out of jurisdiction	
Finance and Administration										
Australian Electoral Commission	8	7	1	1		2	3	1		8
Commissioner for Superannuation (ComSuper)	39	41	2	4	4	12	19	2		43
Department of Finance and Administration	4	4	1				3			4
Foreign Affairs and Trade										
Australian Agency for International Development (AusAID)	3	2		1			1			2
Australian Trade Commission	4	4		1			1	2		4
Department of Foreign Affairs and Trade	99	101	4	21	12	31	40	7	3	118
Export Finance and Insurance Corporation		1				1				1
Health and Ageing										
Department of Health and Ageing	101	97	3	14	5	17	46	8	9	102
Health Insurance Commission	137	131	3	28	20	28	52	7	7	145
Health Services Australia	3	4		1		1	2			4
Office of Hearing Services	4	4	1	1	1	2				5
National Health and Medical Research Council		3		1		2				3
Immigration and Multicultural and Indigenous Affairs										
Aboriginal and Torres Strait Islander Commission	44	42	1		5	7	21	8	1	43
Aboriginal and Torres Strait Islander Services	24	17	4	1	2		7	4		18
Aboriginal Hostels Limited	1	1					1			1
ATSIC Regional Council Zones	2	2					1	1		2
Australian Institute of Aboriginal and Torres Strait Islander Studies	1	1				1				1
Central Land Council	2	3					1	2		3
Department of Immigration and Multicultural and Indigenous Affairs	865	908	76	176	181	265	269	73	11	1,051
Indigenous Land Corporation	2	2			1		1			2
Migration Review Tribunal	20	18	1	2		7	4	2	2	18
Northern Land Council	2	2			1		1			2
Refugee Review Tribunal	6	4					4			4
Registrar of Aboriginal Corporations	2	2		1				1		2
Torres Strait Regional Authority		1						1		1

Agency	Complaints		Outcomes of issues finalised							Total issues finalised	
	Received	Finalised	Agency defect	No agency defect	Resolved without determination	Ombudsman investigation not warranted	Advised to pursue elsewhere	Complaint not pursued	Out of jurisdiction		
Industry, Tourism and Resources											
Australian Tourist Commission	1	1					1				1
Department of Industry, Tourism and Resources	10	8		1		1	4	1	1		8
IP Australia	8	8				1	6	1			8
Prime Minister and Cabinet											
Australian Public Service Commission	1	2				6	1				7
Department of the Prime Minister and Cabinet	6	6				2		3	1		6
Governor-General and Commander-in-Chief		1				1					1
National Australia Day Council	1	1					1				1
Transport and Regional Services											
Airservices Australia	7	7		2		3	2		2		9
Australian Maritime Safety Authority	3	3		1		1	2				4
Civil Aviation Safety Authority	13	10	1			3	5	1	1		11
Department of Transport and Regional Services	104	107	3	14	7	64	15	10	2		115
National Capital Authority	5	2		1	1	1					3
Sydney Airports Corporation Limited	1	1							1		1
Treasury											
Australian Bureau of Statistics	58	58	1	4	2	14	38	1	1		61
Australian Competition and Consumer Commission	22	20	1	4	2	6	6	6			25
Australian Prudential Regulation Authority	52	51	2	2	1	22	17	5	2		51
Australian Securities and Investments Commission	114	104		26	3	37	33	17	2		118
Australian Taxation Office	1,711	1,730	76	256	80	309	1,024	122	37		1,904
Department of the Treasury	4	4				1	1	2			4
Superannuation Complaints Tribunal	17	16	2	4	2	1	4	3	1		17
TOTAL	16,332	16,297	1,187	2,429	1,483	2,613	9,268	808	304		18,092

TABLE 2 AFP complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981*

Complaints	Received	712
	Finalised	664
Outcome of complaint issues finalised	Conciliated	331
	Incapable of determination	11
	Substantiated	16
	Unsubstantiated	86
	Ombudsman investigation not warranted	357
	Advised to pursue elsewhere	17
	Complaint not pursued	76
	Out of jurisdiction	14
	Total issues finalised	908

TABLE 3 AFP method of handling complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981*

Method of handling complaints	Ombudsman decision not to investigate	138
	Ombudsman preliminary inquiries	84
	Ombudsman investigation	8
	AFP workplace resolution	539
	AFP investigation	136
	Special investigation	3
	Total issues finalised	908

Note: The office continually reviews and audits its statistical data. Minor adjustments to statistics used in this report may occur as a result of such reviews.

financial statements



INDEPENDENT AUDIT REPORT

To the Prime Minister

Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Office of the Commonwealth Ombudsman for the year ended 30 June 2004. The Commonwealth Ombudsman is responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Office of the Commonwealth Ombudsman's annual report.

Scope

The financial statements comprise:

- Statement by the Commonwealth Ombudsman
- Statements of Financial Position, Financial Performance and Cash Flows;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the Office of the Commonwealth Ombudsman for the year ended 30 June 2004.

The Commonwealth Ombudsman is responsible for the preparation and true and fair presentation of the financial statements in accordance with the Finance Minister's Orders. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

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BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

Audit approach

I have conducted an independent audit in order to express an opinion to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

The audit did not involve an analysis of the prudence of business decisions made by the Chief Executive or management.

Procedures were performed to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Office of the Commonwealth Ombudsman's performance as represented by the statements of financial performance, financial position and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Chief Executive.

Independence

In conducting the audit, I have followed the independence requirements of the ANAO, which incorporate Australian professional ethical pronouncements.

Audit Opinion

In my opinion, the financial statements:

- (i) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and applicable Accounting Standards; and
- (ii) give a true and fair view, of the matters required by applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and the Finance Minister's Orders, of the financial position of the Office of the Commonwealth Ombudsman as at 30 June 2004, and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Richard Rundle
Executive Director

Delegate of the Auditor-General
Canberra
6 September 2004

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2004

	Notes	2003-04 \$	2002-03 \$
Revenues from ordinary activities			
Revenues from government	5A	9,461,675	8,466,675
Goods and services	5B	1,000,379	888,171
Revenue from sale of assets	5C	2,877	2,012
Interest	5D	-	11,823
Other revenues	5E	55,376	31,956
Revenues from ordinary activities		10,520,307	9,400,637
Expenses from ordinary activities (excluding borrowing cost expense)			
Employees	6A	6,882,664	6,145,709
Suppliers	6B	3,199,116	2,709,072
Depreciation and amortisation	6C	274,145	268,822
Value of assets sold	5C	12,310	2,195
Write-down of assets	6D	195,000	-
Expenses from ordinary activities (excluding borrowing cost expense)		10,563,235	9,125,798
Borrowing costs expense	7	-	-
Net surplus/(deficit)		(42,928)	274,839
Net credit to asset revaluation reserve	9C	-	-
Total revenues, expenses and valuation adjustments attributable recognised directly in equity		(42,928)	274,839
Total changes in equity other than those resulting from transactions with the Australian Government as owner		(42,928)	274,839

The above statement should be read in conjunction with the accompanying notes.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF FINANCIAL POSITION

as at 30 June 2004

	Notes	2003-04 \$	2002-03 \$
ASSETS			
Financial assets			
Cash	8A	2,477,239	1,050,604
Receivables	8B	<u>384,141</u>	<u>125,259</u>
Total financial assets		2,861,380	1,175,863
Non-financial assets			
Infrastructure, plant and equipment	9A	641,254	582,475
Intangibles	9B	192,495	395,987
Other non-financial assets	9D	<u>36,121</u>	<u>38,910</u>
Total non-financial assets		869,870	1,017,372
Total assets		3,731,250	2,193,235
LIABILITIES			
Provisions			
Employees	11A	<u>2,294,559</u>	<u>1,952,369</u>
Total provisions		2,294,559	1,952,369
Payables			
Suppliers	10A	703,432	251,496
Other payables	10B	<u>479,484</u>	<u>122,667</u>
Total payables		1,182,916	374,163
Total liabilities		3,477,475	2,326,532
NET ASSETS		253,775	(133,297)
EQUITY			
Contributed equity		848,000	418,000
Reserves		116,930	116,930
Accumulated deficits		<u>(711,155)</u>	<u>(668,227)</u>
Total equity	12	253,775	(133,297)
Current liabilities		2,011,566	1,052,636
Non-current liabilities		1,465,909	1,273,896
Current assets		2,897,501	1,214,773
Non-current assets		833,749	978,462

The above statement should be read in conjunction with the accompanying notes.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF CASH FLOWS

for the year ended 30 June 2004

	Notes	2003-04 \$	2002-03 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations		9,071,000	8,450,000
Goods and services		1,315,331	1,022,574
Interest		-	11,823
GST received from ATO		215,509	167,941
Total cash received		10,601,840	9,652,338
Cash used			
Employees		(6,540,474)	(6,564,011)
Suppliers		(2,714,219)	(2,824,880)
GST paid to the ATO		(16,647)	(36,291)
Total cash used		(9,271,340)	(9,425,182)
Net cash from/(used by) operating activities	13	1,330,500	227,156
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		2,877	2,012
Total cash received		2,877	2,012
Cash used			
Purchase of property, plant and equipment		(336,742)	(163,869)
Total cash used		(336,742)	(163,869)
Net cash from/(used by) investing activities		(333,865)	(161,857)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		430,000	-
Total cash received		430,000	-
Net cash from financing activities		430,000	-
Net increase in cash held		1,426,635	65,299
Cash at the beginning of the reporting period		1,050,604	985,305
Cash at the end of the reporting period	8A	2,477,239	1,050,604

The above statement should be read in conjunction with the accompanying notes.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF COMMITMENTS

as at 30 June 2004

	2003-04 \$	2002-03 \$
BY TYPE		
Capital commitments	-	-
Total capital commitments	-	-
Other commitments		
Operating leases	4,641,233	2,057,544
Total other commitments	4,641,233	2,057,544
Commitments receivable	(513,720)	(1,118,017)
Net commitments	<u>4,127,513</u>	<u>939,527</u>
BY MATURITY		
All net commitments		
One year or less	359,843	(292,802)
From one to five years	2,622,237	1,200,819
Over five years	1,145,433	31,510
Net commitments	<u>4,127,513</u>	<u>939,527</u>
Operating lease commitments		
One year or less	873,563	825,215
From one year to five years	2,622,237	1,200,819
Over five years	1,145,433	31,510
Total operating lease commitments	<u>4,641,233</u>	<u>2,057,544</u>

NB: Commitments are GST inclusive where relevant.

Operating leases included are effectively non-cancellable and comprise:

- leases for office accommodation;
- agreements for the provision of motor vehicles to senior executive officers; and
- leases for computer equipment.

The above statement should be read in conjunction with the accompanying notes.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF CONTINGENCIES

as at 30 June 2004

	2003-04 \$	2002-03 \$
CONTINGENT LIABILITIES	-	-
CONTINGENT ASSETS	-	-
Net contingent liabilities	-	-

The Ombudsman has no contingent liabilities.

The Office has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable, and all are considered remote. There are no existing or likely claims of which the Office is aware.

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 1 - Ombudsman Objectives

The Office of the Commonwealth Ombudsman seeks to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the Office contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Office is structured to meet one outcome:

Outcome 1: To achieve equitable outcomes for complaints from the public and foster improved and fair administration by Commonwealth agencies.

Office activities contributing towards these outcomes are classified as departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Office in its own right. The Office has no administered activities.

Departmental activities are identified under two headings for Outcome 1: Output 1 is Provision of a complaint management service for government and Output 2 is Provision of advice to government to improve public administration.

Note 2 - Summary of Significant Accounting Policies

2.1 Basis of Accounting

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO's, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 30 June 2004) Orders*);
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Board; and
- Consensus Views of the Urgent Issues Group.

The Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.1 Basis of Accounting (Cont'd)

Assets and liabilities are recognised in the Ombudsman's Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Ombudsman Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The continued existence of the Ombudsman in its present form, and with its present programs, is dependent on Government policy and legislation and on continuing appropriations by Parliament for the Ombudsman's administration and programs.

The Ombudsman has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2004 or in the comparative financial year.

2.2 Changes in Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2002-2003, except in respect of:

Property plant and equipment assets are being revalued progressively as explained in Note 2.10. Revaluations up to 30 June 2002 were done on a 'deprival' basis; since that date, revaluations will be performed on a fair value basis. Revaluation increments and decrements in each year of transition to fair value that would otherwise be accounted for as revenue or expenses will be taken directly to accumulated results in accordance with transitional provisions of AASB 1041 *Revaluation of Non-current Assets*.

In 2002-2003, the Finance Minister's Orders introduced an impairment test for non-current assets which were carried at cost and not subject to AAS 10 *Recoverable Amount of Non-current Assets*. In 2003-2004, under this policy a write-down of \$195,000 (2002-03: \$nil) has been recorded against software which will be replaced earlier than previously expected.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.3 Revenue

(a) Revenues from Government

Amounts appropriated for departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Savings are amounts offered up in Portfolio Additional Estimates Statements. Reductions are amounts by which appropriations have been legally reduced by the Finance Minister under Appropriation Act No 3 of 2003-04.

Appropriations received are recognised at their nominal amounts.

(b) Resources Received Free of Charge

Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of these resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements.

(c) Other Revenue

Revenue from the sale of goods is recognised upon the delivery of goods to customers.

Revenue from the rendering of services is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is judged to be less rather than more likely.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.4 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity in that year.

Restructuring of Administered Arrangements

Net assets received from or relinquished to another Commonwealth agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2003-2004, no amounts were returned to the Official Public Account.

2.5 Employee Benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits), annual leave and sick leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

(a) Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Ombudsman is estimated to be less than the annual entitlement for sick leave.

The liability for annual leave reflects the value of total annual leave entitlements of all employees at 30 June 2004 and is recognised at the nominal amount.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.5 Employee Benefits (Cont'd)

The non-current portion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2004. In determining the present value of the liability, the Ombudsman has taken into account attrition rates and pay increases through promotion and inflation.

(b) Separation and redundancy

Provision is also made for separation and redundancy payments in circumstances where the Ombudsman has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

(c) Superannuation

Staff of the Ombudsman are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Ombudsman makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Ombudsman's employees.

The liability for superannuation recognised at 30 June represents outstanding contributions for the final fortnight of the year.

2.6 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the beginning of the lease and a liability recognised at the same time for the same amount. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a basis which is representative of the pattern of benefits derived from the leased assets. The net present value of the future net outlays in respect of surplus space under non-cancellable lease agreements is expensed in the period in which the space becomes surplus.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.6 Leases (Cont'd)

Lease incentives taking the form of 'free' leasehold improvements and rent-free holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

2.7 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

2.8 Other Financial Instruments

Accounting policies for financial instruments are stated at note 18.

2.9 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

2.10 Property, Plant and Equipment

Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Revaluations

Basis

Land, buildings, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis; revaluations since that date are at fair value. This change in accounting policy is required by Australian Accounting Standard AASB 1041 *Revaluation of Non-Current Assets*. Valuations undertaken in any year are as at 30 June.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.10 Property, Plant and Equipment (Cont'd)

Fair and deprival values for each class of asset will be determined as shown below:

Asset class

Fair value measured at:

Deprival value measured at:

Leasehold improvements

Depreciated replacement cost

Depreciated replacement cost

Plant and equipment

Market selling price

Depreciated replacement cost

Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value. At 30 June 2004, the Ombudsman had no assets surplus to requirements.

The financial effect for 2003-04 is nil as no assets have been recognised at fair value at 30 June 2004.

Frequency

Land, buildings, plant and equipment are revalued progressively in successive three-year cycles. All current cycles commenced on 1 July 2002 and finish on 30 June 2005.

Freehold land, buildings on freehold land and leasehold improvements are each revalued progressively on a geographical basis.

Plant and equipment (P&E) assets were revalued as at 30 June 2002. All valuations were completed by an independent valuer, Hyman Valuations Pty Limited.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Ombudsman using, in most cases, the straight line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease taking into consideration options available at the end of lease.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.10 Property, Plant and Equipment (Cont'd)

Depreciation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 6C.

The useful lives of plant and equipment are 3 to 8 years (2002-03: 3 to 8 years).

2.11 Intangibles

The Ombudsman's intangibles comprise purchased software.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the software is 5 to 8 years (2002-03: 5 to 8 years).

2.12 Taxation

The Ombudsman is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- Except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- Except for receivables and payables.

2.13 Insurance

The Ombudsman has insured for risks through the Government's insurable risk managed fund, called 'Comcover'. Workers compensation is insured through the Government's Comcare Australia.

2.14 Borrowing Costs

All borrowing costs are expensed as incurred except to the extent that they are directly attributable to qualifying assets, in which case they are capitalised. The Ombudsman does not have any qualifying assets.

2.15 Comparative Figures

Comparative figures have been adjusted to conform to changes in presentation in these financial statements where required.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 2 - Summary of Significant Accounting Policies (Cont'd)

2.16 Reporting of Administered Activities

The Ombudsman has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2004 or in the comparative financial year.

Note 3 - Adoption of AASB Equivalents to International Financial Standards from 2005-2006

The Australian Accounting Standards Board has issued replacement Australian Accounting standards to apply from 2005-06. The new standards are the AASB Equivalents to International Financial Standards (IFRSs) which are issued by the International Accounting Standards Board. The new standards cannot be adopted early. The Standards being replaced are to be withdrawn with effect from 2005-06, but continue to apply in the meantime.

The purpose of issuing AASB Equivalents to IFRSs is to enable Australian entities reporting under the *Corporations Act 2001* to be able to more readily access overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.

For profit entities complying fully with the AASB Equivalents will be able to make an explicit and unreserved statement of compliance with IFRSs as well as with the AASB Equivalents.

It is expected the Finance Minister will continue to require compliance with the Accounting Standards issued by the AASB, including the AASB Equivalents to IFRSs, in his Orders for the Preparation of Agency financial statements for 2005-06 and beyond.

The AASB Equivalents contain certain additional provisions which will apply to not-for-profit entities, including Australian Government agencies. Some of these provisions are in conflict with the IFRSs and therefore the Ombudsman will only be able to assert compliance with the AASB Equivalents to the IFRSs.

Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 *Financial Reporting by Government Departments*.

Accounting Standard AASB 1047 *Disclosing the impact of Adopting Australian Equivalents to IFRSs* requires that the financial statements for 2003-04 disclose:

- An explanation of how the transition to the AASB Equivalents is being managed, and
- A narrative explanation of the key differences in accounting policies arising from the transition.

The purpose of this Note is to make these disclosures.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 3 - Adoption of AASB Equivalents to International Financial Standards from 2005-2006 (Cont'd)

Management of the transition to AASB Equivalents to IFRSs

The Ombudsman has taken the following steps for the preparation towards the implementation of AASB Equivalents:

- The Agency's Audit Committee is tasked with oversight of the transition to and implementation of the AASB Equivalents to IFRSs. The Chief Finance Officer is responsible for the project and reports regularly to the Audit Committee on progress.
- The following key steps will be undertaken as part of implementing the AASB Equivalents
 - Identification of all major accounting policy differences between current AASB standards and the AASB Equivalents to IFRSs progressively to 30 June 2004.
 - Identification of systems changes necessary to be able to report under the AASB Equivalents, including those necessary to enable capture of data under both sets of rules for 2004-05, and the testing and implementation of those changes.
 - Preparation of a transitional balance sheet as at 1 July 2004, under AASB Equivalents.
 - Preparation of an AASB Equivalent balance sheet at the same time as the 30 June 2005 statements are prepared.
 - Meeting reporting deadlines set by Finance for 2005-06 balance sheet under AASB Equivalent Standards.
- The Ombudsman has addressed the risks to successful achievement of the above objectives and continues to monitor the implementation.
- To date, all major accounting and disclosure differences and system changes have been identified.
- External assistance has been engaged where necessary to assist with each of the above steps.

Major changes in accounting policy

Changes in accounting policies under AASB Equivalents are applied retrospectively i.e. as if the new policy had always applied. This rule means that a balance sheet prepared under the AASB Equivalents must be made as at 1 July 2004, except as permitted in particular circumstances by AASB 1 *First-time Adoption of Australian Equivalents to International Financial Reporting Standards*. This will enable the 2005-06 financial statements to report comparatives under the AASB Equivalents also.

Changes to major accounting policies are discussed in the following paragraphs.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 3 - Adoption of AASB Equivalents to International Financial Standards from 2005-2006 (Cont'd)

Property plant and equipment

It is expected that the Finance Minister's Orders will require property plant and equipment assets carried at valuation in 2003-04 to be measured at up-to-date fair value from 2005-06. This differs from the accounting policies currently in place for these assets which, up to and including 2003-04, have been revalued progressively over a 3-year cycle and which currently include assets at cost (for purchases since the commencement of a cycle) and at deprival value (which will differ from their fair value to the extent that they have been measured at depreciated replacement cost when a relevant market selling price is available).

However, it is important to note that the Finance Minister requires these assets to be measured at up-to-date fair values as at 30 June 2005. Further, the transitional provisions in AASB 1 will mean that the values at which assets are carried as at 30 June 2004 under existing standards will stand in the transitional balance sheet as at 1 July 2004.

Impairment of Non-Current Assets

The Ombudsman's policy on impairment of non-current assets is at note 2.10.

Under the new AASB Equivalent Standard, these assets will be subject to assessment for impairment and, if there are indications of impairment, measurement of any impairment. (Impairment measurement must also be done, irrespective of any indications of impairment, for intangible assets not yet available for use). The impairment test is that the carrying amount of an asset must not exceed the greater of (a) its fair value less costs to sell and (b) its value in use. "Value in use" is the depreciated replacement cost for other assets which would be replaced if the Ombudsman were deprived of them.

The most significant change is that assets carried at up-to-date fair value, may be required to be written down if costs to sell are significant.

Employee Benefits

The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as at the reporting date on national government bonds.

Under the new AASB Equivalent standard, the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 4 - Events Occurring after Balance Date

No significant events occurred after balance date.

	2003-04 \$	2002-03 \$
Note 5 – Operating Revenues		
<u>Note 5A – Revenues from Government</u>		
Appropriations for outputs	9,445,000	8,450,000
Resources received free of charge		
Australian National Audit Office		
Provision of audit services	16,675	16,675
Total revenues from government	9,461,675	8,466,675
<u>Note 5B – Goods and Services</u>		
Goods	-	-
Services	1,000,379	888,171
Total sales of goods and services	1,000,379	888,171
Provision of goods to:		
Related entities	-	-
External entities	-	-
Total sales of goods	-	-
Rendering of services to:		
Related entities	202,000	107,742
External entities	798,379	780,429
Total rendering of services	1,000,379	888,171
Costs of sales of goods	-	-
<u>Note 5C – Net Gain/(Loss) From Sales of Assets</u>		
Infrastructure, plant and equipment		
Proceeds from disposal	2,877	2,012
Net book value of assets disposed	(12,310)	(2,195)
Net gain/(loss) from disposal of infrastructure, plant and equipment	(9,433)	(183)

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04 \$	2002-03 \$
Note 5 – Operating Revenues (Cont'd)		
<u>Note 5D – Interest Revenue</u>		
Interest on deposits	-	11,823
<u>Note 5E – Other Revenue</u>		
Other	55,376	31,956
Note 6 – Operating Expenses		
<u>Note 6A – Employee Expenses</u>		
Wages and salary	5,562,986	5,668,300
Superannuation	967,414	748,788
Leave and other entitlements	69,519	(474,496)
Separation and redundancy	-	-
Other employee expenses	245,850	187,436
Total employee benefits expense	6,845,769	6,130,028
Worker compensation premiums	36,895	15,681
Total employee expenses	6,882,664	6,145,709
<u>Note 6B – Supplier Expenses</u>		
Goods from related entities	-	-
Goods from external entities	293,586	144,214
Services from related entities	386,137	296,166
Services from external entities	1,771,447	1,571,328
Operating lease rentals ¹	747,946	697,364
Total supplier expenses	3,199,116	2,709,072

¹ These comprise minimum base payments only.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04 \$	2002-03 \$
Note 6 – Operating Expenses (Cont'd)		
<u>Note 6C – Depreciation and Amortisation</u>		
Depreciation		
Other infrastructure, plant and equipment	166,355	157,268
Total depreciation	166,355	157,268
Amortisation		
Intangibles – Computer Software	107,790	111,554
Total depreciation and amortisation	274,145	268,822
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable assets are as follows:		
Leasehold improvements	72,105	68,483
Plant and equipment	94,250	88,785
Computer software	107,790	111,554
Total depreciation and amortisation	274,145	268,822
No depreciation or amortisation was allocated to the carrying amounts of other assets.		
<u>Note 6D – Write down of assets</u>		
Financial assets		
Bad and doubtful debts expense	-	-
Non-financial assets		
Net write off of intangibles	195,000	-
Total write-down of assets	195,000	-
Note 7 – Borrowing Cost Expenses		
Overdraft	-	-

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04	2002-03
	\$	\$
Note 8 – Financial Assets		
<u>Note 8A – Cash</u>		
Cash on hand:		
Cash at bank and on hand	2,477,239	1,050,604
Total cash	<u>2,477,239</u>	<u>1,050,604</u>

Under banking arrangements in place up to 1 July 2003, monies in the Agency's bank accounts were swept into the Official Public Account nightly and earned interest on the daily balance at rates based on money market call rates. Since 1 July 2003, no interest is earned on the Ombudsman's bank balances.

<u>Note 8B – Receivables</u>		
Goods and services	-	104,557
GST receivable from ATO	10,141	20,702
Appropriation receivable – undrawn	374,000	-
Total receivables	<u>384,141</u>	<u>125,259</u>

All receivables are current assets. There is no requirement for a provision for doubtful debts.

All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2003: 30 days)

Appropriations receivable undrawn are appropriations controlled by the Agency but held in the Official Public Account under the Government's just-in-time drawdown arrangements.

Receivables (gross) are aged as follows:

Not overdue	384,141	125,044
Overdue by:		
less than 30 days	-	-
30 to 60 days	-	-
60 to 90 days	-	-
more than 90 days	-	215
	<u>384,141</u>	<u>125,259</u>

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04 \$	2002-03 \$
Note 9 – Non-Financial Assets		
<u>Note 9A – Infrastructure, Plant and Equipment</u>		
Leasehold improvements		
- at 2002 independent revaluation (deprival)	255,031	255,031
Accumulated amortisation	(122,630)	(61,399)
	<u>132,401</u>	<u>193,632</u>
Leasehold improvements – at cost	69,402	39,920
Accumulated amortisation	(17,958)	(7,084)
	<u>51,444</u>	<u>32,836</u>
Plant and equipment		
- at 2002 independent revaluation (deprival)	141,104	141,104
- at 2002 Ombudsman's revaluation (deprival)	407,520	419,325
Accumulated depreciation	(291,116)	(244,149)
	<u>257,508</u>	<u>316,280</u>
Plant and equipment – at cost	227,952	44,963
Accumulated depreciation	(28,051)	(5,236)
	<u>199,901</u>	<u>39,727</u>
Total Infrastructure, Plant and Equipment	<u><u>641,254</u></u>	<u><u>582,475</u></u>
<u>Note 9B - Intangibles</u>		
Computer software – at deemed cost	451,585	672,514
Accumulated amortisation	(259,090)	(276,527)
Total Intangibles	<u><u>192,495</u></u>	<u><u>395,987</u></u>

The independent revaluations in 2002 were completed by an independent valuer, Hyman Valuations Pty Limited, for all tangible non-financial assets with a carrying value in excess of \$20,000. The Ombudsman's revaluations were performed by the Commonwealth Ombudsman for all other tangible non-financial assets. All revaluations were in accordance with the revaluation policy stated in Note 2.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 9C - Analysis of Infrastructure, Plant, Equipment and Intangibles

TABLE A

Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

Item	Infrastructure, plant and equipment \$	Intangibles \$	Total \$
Gross value as at 1 July 2003	900,343	672,514	1,572,857
Additions: purchase of assets	237,444	99,298	336,742
Revaluations: increment/(decrement)	-	-	-
Write back on accumulated depreciation on revaluation	-	-	-
Write-offs	-	(195,000)	(195,000)
Disposals	(36,778)	(125,227)	(162,005)
Gross value as at 30 June 2004	1,101,009	451,585	1,552,594
Accumulated Depreciation/Amortisation as at 1 July 2003	317,868	276,527	594,395
Depreciation/ amortisation charge for the year	166,355	107,790	274,145
Write back on accumulated depreciation on revaluation	-	-	-
Write-offs	-	-	-
Disposals	(24,468)	(125,227)	(149,695)
Accumulated Depreciation/Amortisation as at 30 June 2004	459,755	259,090	718,845
Net book value as at 30 June 2004	641,254	192,495	833,749
Net book value as at 1 July 2003	582,475	395,987	978,462

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 9C - (cont)

TABLE B
Summary of balances of assets at valuation as at 30 June 2004

Item	Infrastructure, plant and equipment \$
As at 30 June 2004	
Gross value	803,655
Accumulated Depreciation/Amortisation	(413,746)
Net book value	389,909
As at 30 June 2003	
Gross value	815,460
Accumulated Depreciation/Amortisation	(305,548)
Net book value	509,912

	2003-04 \$	2002-03 \$
<u>Note 9D – Other Non-Financial Assets</u>		
Prepayments	<u>36,121</u>	<u>38,910</u>

All other non-financial assets are current assets.

Note 10 – Payables

Note 10A – Supplier Payables

Trade creditors and accruals (including GST payable)	<u>703,432</u>	<u>251,496</u>
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All supplier payables are current liabilities

Note 10B – Other Payables

Prepaid income	450,400	85,000
Lease incentives	29,084	37,667
Total other payables	<u>479,484</u>	<u>122,667</u>
Current	458,983	93,583
Non Current	20,501	29,084

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04 \$	2002-03 \$
Note 11 - Provisions		
<u>Note 11A – Employee Provisions</u>		
Salaries and wages	270,060	195,826
Leave	1,840,505	1,599,611
Superannuation	183,994	156,932
Separation and redundancy	-	-
Aggregate employee entitlement liability	2,294,559	1,952,369
Workers' compensation	-	-
Aggregate employee benefit liability and related on-costs	2,294,559	1,952,369
Current	849,151	707,557
Non-current	1,445,408	1,244,812

OFFICE OF THE COMMONWEALTH OMBUDSMAN
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2004

Note 12 - Equity

Note 12A – Analysis of Equity

Item	Accumulated results		Asset revaluation reserves		Contributed Equity		TOTAL EQUITY	
	2004	2003	2004	2003	2004	2003	2004	2003
	\$	\$	\$	\$	\$	\$	\$	\$
Balance 1 July	(668,227)	(943,066)	116,930	116,930	418,000	418,000	(133,297)	(408,136)
Net surplus/deficit	(42,928)	274,839	-	-	-	-	(42,928)	274,839
Net revaluation increments/(decrements)	-	-	-	-	-	-	-	-
Contributions by owner:								
Appropriations (equity injection)	-	-	-	-	430,000	-	430,000	-
Closing Balance as at 30 June	(711,155)	(668,227)	116,930	116,930	848,000	418,000	253,775	(133,297)

The Ombudsman has no Administered equity.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04 \$	2002-03 \$
Note 13 - Cash Flow Reconciliation		
Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows		
Cash at year end per Statement of Cash Flows	2,477,239	1,050,604
Statement of Financial Position items comprising above cash: "Financial Asset – Cash"	2,477,239	1,050,604
Reconciliation of net surplus to net cash from operating activities:		
Net surplus/(deficit)	(42,928)	274,839
Depreciation/Amortisation	274,145	268,822
Net loss/(gain) on disposal of assets	9,433	183
Net write down of assets	195,000	-
(Increase)/Decrease in receivables	(269,443)	(4,882)
(Increase)/Decrease in prepayments	2,789	40,071
Increase/(Decrease) in employee provisions	342,190	(418,302)
Increase/(Decrease) in supplier and other payables	808,753	66,425
Increase/(Decrease) in GST receivable	10,561	-
Net cash from/(used by) operating activities	<u>1,330,500</u>	<u>227,156</u>

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

	2003-04	2002-03
Note 14 - Executive Remuneration		
The number of executives who received or were due to receive total remuneration of \$100,000 or more:		
	Number	Number
\$140,001 to \$150,000	-	2
\$150,001 to \$160,000	-	1
\$160,001 to \$170,000	3	1
\$210,001 to \$220,000	1	1
\$280,001 to \$290,000	1	-
The aggregate amount of total remuneration of executives shown above	\$ 988,972	\$ 825,132
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above	\$ -	\$ -
Note 15 - Remuneration of Auditors		
Financial statement audit services are provided free of charge to the Ombudsman.		
The fair value of the services provided was:	<u>\$ 16,675</u>	<u>\$ 16,675</u>
No other services were provided by the Auditor-General.		
Note 16 - Act of Grace Payments, Waivers and Defective Administration Scheme		
No Act of Grace payments were made during the reporting period.		
No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> .		
Note 17 - Average Staffing Levels	Number	Number
The average staffing levels for the Ombudsman during the year were :	85	81

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2004

Note 18 - Financial Instruments

Note 18A - Terms, Conditions and Accounting Policies

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash	8A	Cash is recognised at their nominal amounts. Interest is credited to revenue as it accrues.	The Ombudsman holds bank accounts with a commercial bank. Monies in the Ombudsman's bank accounts are swept into the Official Public Account nightly and interest is earned on the daily balance at rates based on money market call rates. Interest is paid at month end.
Receivables for goods and services	8B	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2003: 30 days).

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2004

Note 18 Financial Instruments (cont)

Note 18A - Terms, Conditions and Accounting Policies (cont)

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Liabilities		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Trade creditors and accruals	10A	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

OFFICE OF THE COMMONWEALTH OMBUDSMAN
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2004

Note 18 Financial Instruments (cont.)

Note 18B - Interest Rate Risk

Financial Instrument	Notes	Floating Interest Rate	Fixed Interest Rate						Non- Interest Bearing		Total		Weighted Average Effective Interest Rate		
			1 year or less			1 to 5 years									> 5 years
			03-04	02-03	03-04	02-03	03-04	02-03	03-04	02-03	03-04	02-03	03-04	02-03	%
Financial Assets															
Cash at Bank	8A	2,474,538	1,047,903	-	-	-	-	-	2,701	2,701	2,477,239	1,050,604	0.0	2.0	
Receivables for goods and services	8B	-	-	-	-	-	-	-	-	1,240	-	1,240	n/a	n/a	
Appropriation Receivable	8B	-	-	-	-	-	-	-	374,000	-	374,000	-	n/a	n/a	
Total		2,474,538	1,047,903	-	-	-	-	-	376,701	3,941	2,851,239	1,051,844			
Total Assets											3,731,250	2,193,235			
Financial Liabilities															
Trade creditors	10A	-	-	-	-	-	-	-	703,432	114,444	703,432	114,444	n/a	n/a	
Total		-	-	-	-	-	-	-	703,432	114,444	703,432	114,444			
Total liabilities											3,477,475	2,326,532			

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 18 Financial Instruments (cont.)

Note 18C - Net Fair Values of Financial Assets and Liabilities

	Note	2003-04		2002-03	
		Total carrying amount	Aggregate net fair value	Total carrying amount	Aggregate net fair value
		\$	\$	\$	\$
Financial Assets					
Cash at Bank	8A	2,477,239	2,477,239	1,050,604	1,050,604
Receivables for Goods and Services	8B	-	-	1,240	125,259
Appropriation Receivable	8B	374,000	374,000	-	-
Total Financial Assets		2,851,239	2,851,239	1,051,844	1,175,863
Financial Liabilities					
Trade creditors	10A	703,432	703,432	114,444	237,892
Total Financial Liabilities		703,432	703,432	114,444	237,892

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

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

Note 18D – Credit Risk Exposures

The Ombudsman's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Performance.

The Ombudsman has no significant exposures to or concentrations of credit risk.

All figures for credit risk do not take into account the value of any collateral or other security.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 19 Appropriations

Note 19A – Acquittal of Authority to Draw cash from the Consolidated Revenue Fund (Appropriations) from Acts 1 and 3.

Particulars	Departmental Outputs
Year ended 30 June 2004	\$
Balance carried from previous year	1,058,485
Appropriation for reporting period (Act 1)	9,376,000
Appropriation for reporting period (Act 3)	69,000
Adjustments by the Finance Minister	-
Advance to the Finance Minister	-
Refunds credited (FMAAs30)	-
GST credited (FMAAs30A)	320,057
Annotations to 'net appropriations' (FMA s31)	1,162,380
Transfer to/from other agencies (FMA s32)	-
Available for payments	11,985,922
Payments made	9,178,082
Balance carried to next year	2,807,840
Represented by:	
Cash at bank and on hand	2,477,239
Add: Appropriations receivable	374,000
Add: Receivables – Goods and Services – GST receivable from customers	10,141
Add: Return of contributed equity	-
Less: Other payables – Net GST payable to the ATO	-
Less: Payable – Supplies – GST portion	(53,540)
Add: Savings in Portfolio Additional Estimates Statement	-
Total	2,807,840
<i>Reconciliation for Appropriation Acts (Nos. 1 and 3)</i>	
Paid to the entity from the OPA	9,071,000
Add: Finance Minister reduction of Appropriations in the current year	-
Add: Administered Appropriation lapsed in current year	-
Not Drawn from the OPA	374,000
Total Appropriation Acts	9,445,000
Year ended 30 June 2003	
Balance carried from previous year	985,305
Total annual appropriation – basic appropriations	8,734,123
Adjustments and annotations to appropriations	891,817
Transfers to/from other agencies (FMAAs32)	-
Estimated Administered appropriation to be lapsed	-

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 19 Appropriations (cont.)

Available for payments	10,611,245
Payments made during the year	9,552,760
Appropriations credited to special accounts	-
Balance carried to next year	1,058,485
Represented by:	
Cash	1,050,604
Add: Appropriations not drawn from OPA	-
Add: Receivables – Goods and Services – GST receivable from customers	20,702
Add: Return of contributed Equity	-
Add: Receivables – Net GST receivable from the ATO	-
Less: Payable – Suppliers – GST portion	(12,821)
Total	1,058,485

There was no savings offered up during the year and there have been no savings offered up in previous years that are still ongoing.

Note 19B – Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund (Appropriations) from Acts 2 and 4

Particulars	Non-Operating: Equity
Year ended 30 June 2004	\$
Balance carried from previous year	-
Appropriation Act (No. 2) 2003-2004	430,000
Appropriation Act (No. 4) 2003-2004	-
Available for payments	430,000
Payments made (GST inclusive)	430,000
Balance carried to next year	-
Represented by:	-
Cash	-
Total	-
<i>Reconciliation for Appropriation Acts (Nos. 2 and 4)</i>	
Paid to the entity from the OPA	430,000
Not drawn from the OPA	-
Total Appropriation Acts	430,000

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2004

Note 20 – Reporting of Outcomes

Note 20A – Net Cost of Outcome Delivery

	Outcome 1	
	2004	2003
	\$	\$
Administered expenses	-	-
Departmental expenses	10,563,235	9,125,798
Total expenses	10,563,235	9,125,798
<i>Costs recovered from provision of goods and services to the non-government sector</i>		
Administered	-	-
Departmental	798,379	780,429
Total costs recovered	798,379	780,429
<i>Other external revenues</i>		
Administered	-	-
<i>Total Administered</i>	<i>-</i>	<i>-</i>
Departmental		
Interest on cash deposits	-	11,823
Revenue from disposal of assets	2,877	2,012
Reversals previous asset write-downs	-	-
Other	55,376	31,956
Goods and Services Revenue from Related Entities	202,000	107,742
<i>Total Departmental</i>	<i>260,253</i>	<i>153,533</i>
Total other external revenues	260,253	153,533
Net cost/(contribution) of outcome	9,504,603	8,191,836

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2004**Note 20 – Reporting of Outcomes (cont.)****Note 20B – Major Classes of Departmental Revenues and Expenses by Output**

	Output Group 1		Output Group 2		Outcome 1 Total	
	2004	2003	2004	2003	2004	2003
	\$	\$	\$	\$	\$	\$
Departmental expenses						
Employees	5,506,131	4,916,567	1,376,533	1,229,142	6,882,664	6,145,709
Suppliers	2,559,293	2,167,258	639,823	541,814	3,199,116	2,709,072
Depreciation and amortisation	219,316	215,058	54,829	53,764	274,145	268,822
Other	165,848	1,756	41,462	439	207,310	2,195
Total departmental expenses	8,450,588	7,300,639	2,112,647	1,825,159	10,563,235	9,125,798
Funded by:						
Revenues from government	7,569,340	6,773,340	1,892,335	1,693,335	9,461,675	8,466,675
Sales of goods and services	800,303	710,537	200,076	177,634	1,000,379	888,171
Other non-taxation revenues	46,602	36,633	11,651	9,158	58,253	45,791
Total departmental revenues	8,416,245	7,520,510	2,104,062	1,880,127	10,520,307	9,400,637

Direct costs for Outputs 1 and 2 are allocated primarily on staff numbers.

Indirect costs, such as corporate support expenses, are allocated on staff numbers and square metres occupied. The provision of services by corporate support areas is predominantly driven by staff demands. Some exceptions exist, but testing has shown that other, more complex allocation methods do not produce a materially different result from that produced by this simple allocation method.

presentations and papers by staff

McMillan, J. 2003, *Dispute Resolution Mechanisms in Complex Industries*, paper presented to the National Alternative Dispute Resolution Advisory Council conference, Sydney.

McMillan, J. 2003, *How Can an Ombudsman Make a Difference?*, paper presented to the Australian Institute of Administrative Law (Qld) Annual General Meeting, Brisbane.

McMillan, J. 2003, *Future Directions for Australian Administrative Law—the Ombudsman*, paper presented to the National Administrative Law Forum, hosted by the Australian Institute of Administrative Law, Canberra.

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McMillan, J. 2004, *Launch of the ACT Public Service Integrity Policy*, Canberra.

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McMillan, J. 2004, *Problem Areas in Administrative Law*, paper presented to an Australian Public Service Commission seminar, Sydney and Melbourne.

McMillan, J. 2004, *Reflections—From Academia to Practitioner*, paper presented to an Australian Public Service Commission seminar, Sydney.

McMillan, J. 2004, *The Ombudsman—New Challenges*, paper presented to the Australian Corporate Lawyers' Association, Canberra.

McMillan, J. 2003–04, various presentations on administrative law, the Ombudsman and complaint handling to seminars and classes organised by the Australian National University Law Faculty, University of Tasmania Law Faculty, Australian Human Resources Institute, Centre for Democratic Institutions, Spark Helmore, Australian Federal Police, Centrelink, Department of Finance and Administration, and Department of Immigration and Multicultural and Indigenous Affairs.

Moss, P. 2003, paper presented to Certificate IV in Government (Fraud Control Investigation Program) courses conducted by the ATO and KPS and Associates, Sydney (and in Canberra in 2004).

Moss, P. 2004, *Towards Community Ownership of the Tax System: The Taxation Ombudsman's Perspective*, keynote address paper presented to the ATAX 6th International Conference, Sydney.

Taylor, J. 2003, *The Role of Mediation in Complaints Handling*, paper presented to the Annual General Meeting of LEADR, Melbourne.

REFERENCES

abbreviations and acronyms

AAT Administrative Appeals Tribunal

ACC Australian Crime Commission

ACS Australian Customs Service

ACT Australian Capital Territory

ADF Australian Defence Force

AEC Australian Electoral Commission

AFP Australian Federal Police

ANAO Australian National Audit Office

AO Officer of the Order of Australia

APMC Australian Police Ministers' Council

APS Australian Protective Service

APS Australian Public Service

ARO Authorised Review Officer

ASIO Australian Security Intelligence Organisation

ASIO Act *Australian Security Intelligence Act 1979*

ATO Australian Taxation Office

AusAID Australian Agency for International Development

AWA Australian Workplace Agreement

CD compact disc

CDDA Compensation for Detriment Caused by Defective Administration

COMBi Commonwealth Ombudsman Information System

Complaints Act *Complaints (Australian Federal Police) Act 1981 (Cth)*

Crimes Act *Crimes Act 1914*

CSA Child Support Agency

Cth Commonwealth

DEWR Department of Employment and Workplace Relations

DFAT Department of Foreign Affairs and Trade

DFO Defence Force Ombudsman

DIMIA Department of Immigration and Multicultural and Indigenous Affairs

DOFA Department of Finance and Administration

DOTARS Department of Transport and Regional Services

DPP Director of Public Prosecutions

DVA Department of Veterans' Affairs

EL Executive Level

FACS Department of Family and Community Services

FOI Freedom of Information

FOI Act *Freedom of Information Act 1982*

GEERS General Employee Entitlements and Redundancy Scheme

GIC General Interest Charge

GSL Global Solutions Limited

GST Goods and Services Tax

Hon. The Honourable

IDF Immigration Detention Facility

IGT Inspector-General of Taxation

MCRS Military Compensation Rehabilitation Scheme

MP Member of Parliament

MRT Migration Review Tribunal

NSW New South Wales

NT Northern Territory

NWPP National Witness Protection Program

OH&S Occupational Health and Safety

Ombudsman Act *Ombudsman Act 1976* (Cth)

PABX private automatic branch exchange

PAYG pay as you go

PIO Postal Industry Ombudsman

Prof. Professor

QLD Queensland

ROG Redress of Grievance

s section of Act

SA South Australia

SES Senior Executive Service

TAS Tasmania

TI telecommunications interception

TI Act *Telecommunications (Interception) Act 1979*

TIO Telecommunications Industry Ombudsman

VHC Veterans' Home Care

VIC Victoria

WA Western Australia

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