



Commonwealth

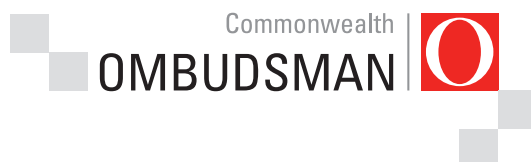
OMBUDSMAN



annual report



2004–2005



annual report



2004–2005

5 October 2005

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

Dear Prime Minister

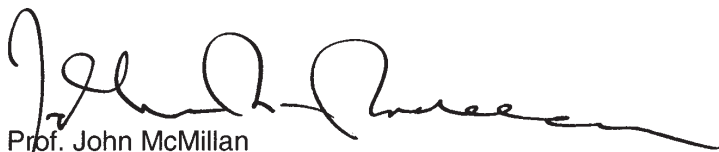
I have pleasure in submitting the twenty-eighth Commonwealth Ombudsman Annual Report for the year ended 30 June 2005, as required by s 19(1) of the *Ombudsman Act 1976*.

In accordance with s 19F(3) of the Act, the report also contains the twenty-first 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 2005.

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

CONTACTING THE COMMONWEALTH OMBUDSMAN

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Complaints: 1300 362 072 (local call charge)
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The Commonwealth Ombudsman Annual Report 2004–2005 is available on our website.

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foreword

This has been a year of change in the Ombudsman's office. New functions, new programs and new work practices have been key activities during the year. Each of those changes tells a larger story about the developing role of the Ombudsman.

One of the new functions conferred by the *Surveillance Devices Act 2004* is to conduct a periodic inspection of the records that law enforcement authorities are required to compile when using surveillance devices in criminal investigations and in other specifically defined circumstances. A similar new function conferred by the *Workplace Relations Act 1996* is to conduct an annual inspection of the records of the Building Industry Taskforce, concerning its exercise of coercive powers to inspect building and industrial activity in Australia.

These functions add to an existing role of the office in inspecting law enforcement records relating to telecommunications interceptions and controlled operations. Compliance auditing has now developed as a distinct third function of the office, in addition to its traditional functions of complaint investigation and own motion investigations. The record inspection function of the office is an important mechanism for ensuring compliance with statutory procedures that exist as a safeguard for members of the public. The office has responded to this new responsibility by establishing an inspections team, developing manuals and guidelines for the inspection function, and holding an annual symposium of Commonwealth and State agencies performing a similar function.

Another new function of the office is to assess the situation of long-term immigration detainees and to report to the Parliament. The heightened new role of the office in overseeing immigration administration was formalised by a government announcement that legislation would be introduced late in 2005 to confer upon the office the title of

'Immigration Ombudsman'. This is now one of several special titles held by the Commonwealth Ombudsman—Taxation Ombudsman, Defence Force Ombudsman, Australian Capital Territory Ombudsman, and (foreshadowed) Postal Industry Ombudsman.

This trend portrays an intricacy now required of a modern ombudsman's office. There is, on the one hand, a public expectation that in selected areas of government that fall under the spotlight of public accountability, an oversight body will bring to that role a distinctive profile and a specialised understanding of the area being monitored. On the other hand, an established oversight body with a generalist function has much else to offer: in the case of my own office, an office



Image by seventyeight.com.au

Commonwealth Ombudsman, Prof. John McMillan

in each State and Territory, an outreach program, experience in complaint investigation, a large staff with a diversity of skills, sufficient resources to deal with fluctuations in complaint work, statutory powers, and tradition and visibility. In short, a modern ombudsman's office can be a generalist agency, hosting a cluster of specialties.

The specialised role of the office in immigration, defence, taxation and other areas of government has been significant in the past year in another way. It has required us to address a difficult and important question. If it is expected of an ombudsman's office that it can make a difference—assisting people to resolve complaints, correcting defective administration, and fostering good public administration—how can that best be done in a system of government that is large, complex, geographically dispersed, and that far overshadows in size and resources the body oversighting it?

Our response, after a year of reflection and planning, will be a sweeping change to the way that complaints are handled and investigated. One aspect of that change is the formation of a Public Contact Team in Canberra that will receive and evaluate the tens of thousands of complaints and inquiries that come to the office each year. The investigation staff located in eight separate offices around Australia will then be able to focus in a more targeted way on two important dimensions of each complaint: the practical remedy needed to resolve a grievance, and

systemic problems in public administration that require more attention. To accommodate these and other work practice changes, the office is currently changing its computerised complaints management system, its investigation procedures, and its recording systems.

Two other programs for which special funding was received in the past year also point to a new direction in the office. One is an outreach program to rural and regional Australia, with a particular emphasis on making the Ombudsman's office better known to community support groups and parliamentary electorate offices. The other program is an international regional support network being developed among ombudsman offices in Australia, Asia and the Pacific. Both programs illustrate larger themes in the work of the office: that the right to complain should be enjoyed locally, nationally and internationally; and that principles of good government are universal in character.

These and other changes described in this report exemplify an adaptability and flexibility in the Ombudsman model that are a key to its continued relevance and success. The cover to this report has been chosen to capture that spirit and illustrate in a pictorial manner that change can be perceptible yet seamless.

Prof. John McMillan

Commonwealth Ombudsman

year in review

The core activity of the Ombudsman's office is to handle complaints and inquiries from members of the public about government administrative action. The immediate concern of the office is to assist people in resolving their complaints. In doing so, the office is committed to fostering good public administration that is accountable, lawful, fair, transparent and responsive. This objective is captured in the office's Portfolio Budget Statement outcome—to achieve equitable outcomes for complaints from the public and foster improved and fair administration by Australian Government agencies.

During 2004–05, the Ombudsman and staff investigated complaints made about 105 Australian Government departments and agencies. The complaints ranged across the spectrum of government activity. Remedies and assistance were provided to thousands of people around the country. Submissions were also made by the office to parliamentary and government inquiries, to contribute to the improvement of Australian 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 beneficially improved are the quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, and sensitivity to individual needs.

'Remedies and assistance were provided to thousands of people around the country.'

A constant challenge for the office is to maintain a high 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 development of an enhanced outreach program to rural and regional

Australia. Raising public awareness is a vital aspect of our work, and visibility is a key component of our relationship with the public. The office's outreach program signifies the continuing commitment of the office to be active in the community in dealing with problems that people encounter with government.

COMPLAINT WORKLOAD

During 2004–05, the Ombudsman received a total of 17,310 complaints, compared to 17,496 in the previous year. The pattern of complaints was similar to the pattern in the previous year, with a decrease in complaints about the Australian Taxation Office (ATO), the Australian Federal Police (AFP) and Centrelink, and an increase in the number of complaints about Australia Post, the Child Support Agency and the Department of Employment and Workplace Relations.

The decrease in total complaints received in both 2004–05 and 2003–04 is against the trend of the previous few years, during which the number of complaints to the Ombudsman was fairly stable. There has, however, been a steady increase in the number of more complex matters brought to the office and in complaints that alleged systemic problems in public administration (see agency-specific sections on pages 25 to 65). There was an increase of 33% in the number of other approaches to the office, such as out of jurisdiction matters and requests for information (see page 17 in 'Performance' section of report).

This year, the Ombudsman investigated 33% (6,198 issues) of all complaint issues finalised, compared to 30% last year. Of those complaint issues investigated by the office, agency error or deficiency was identified in 14% (compared to 20% last year), while there was no error or deficiency identified in 43% (the same as last year). In the remaining 43% of cases the matter was resolved without need to determine whether there was a deficiency.

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 to help foster improvements in systemic issues, 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. We see it as a distinct role of the Ombudsman—as stated in our Strategic Plan—to 'contribute to public discussion on administrative law and public administration' and to 'foster good public administration that is accountable, lawful, fair, transparent and responsive'.

'An important role of the Ombudsman is to foster good public administration.'

The Ombudsman published reports on seven own motion and major investigations. Two of the investigations (which related to the Tax Agents' Board of NSW and the Australian Taxation Office) were completed and provided to the agency in 2003–04, and were reported in last year's annual report. Of the five own motion and major investigations finalised and released publicly in 2004–05, two related to the Australian Defence Force, two to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), and one to the Australian Crime Commission.

Reports are nearing completion on two own motion investigations concluded during 2004–05. One investigation looked at administrative matters relating to the Department of Defence's dealings with young people: a draft report was provided to the Chief of the Defence Force in June 2005 for comment. The other 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 at www.ombudsman.gov.au.

Under powers conferred by the *Complaints (Australian Federal Police) Complaints Act 1981*

(Complaints Act), Ombudsman staff worked on four special investigations relating to the AFP. Two of those investigations are still underway and will be completed in 2005–06.

During the year, the Ombudsman commenced own motion investigations into the policy underpinning the administration of marriage-like relationships under the social security law and into DIMIA's administration of visa cancellations under s 501 of the *Migration Act 1958* in relation to long-term Australian residents.

The Ombudsman made submissions to, or commented on, a range of administrative practice matters and legislative proposals during the year. One such submission was to the Department of Finance and Administration review on the Compensation for Detriment Caused by Defective Administration Scheme. As required by the *Crimes Act 1914*, the Ombudsman also appeared before the Parliamentary Joint Committee on the Australian Crime Commission to report on the Ombudsman's oversight of controlled operations by the commission.

Jack Richardson prize

To mark the twenty-fifth anniversary of the establishment of the Ombudsman's office, in July 2002 the Ombudsman endowed the Australian National University for the provision of an annual prize for the best essay by an undergraduate in Administrative Law. The prize has been established as the Jack Richardson Prize in Administrative Law in recognition of the contributions made by the first Commonwealth Ombudsman, who was also a former Professor of Law at the ANU. This year's Jack Richardson Prize was awarded to Katherine Cook and Joel Phibbs.



Jack Richardson Prize winners Katherine Cook and Joel Phibbs with Deputy Ombudsman, Ron Brent

DEVELOPING ROLE OF THE OMBUDSMAN

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 2004–05.

Review of Commonwealth Ombudsman legislation

A review of the legislation establishing the office of the Commonwealth Ombudsman commenced in 2003–04 and continued during 2004–05. The review aims 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. Two specific issues being addressed in the review are, first, to extend the jurisdiction of the Ombudsman, in line with an earlier government announcement, to cover the actions of certain Australian Government contractors; and, second, to bring the AFP jurisdiction under the Ombudsman Act, with provisions to take account of special issues that arise in external oversight and accountability of police actions.

New immigration function

In June 2005, Parliament enacted amendments to the *Migration Act 1958*. These changes give the Ombudsman a statutory role in reviewing the cases of detainees who have been held in immigration detention for more than two years (cumulative), with follow-up reviews every six months if the person remains in detention. This statutory monitoring role will substantially enhance our capacity to oversight the administration of important and sensitive legislation that can have a major impact on people's lives.

Shortly after the end of the reporting year, in July 2005, a report from an independent inquiry conducted by Mr Mick Palmer into the immigration detention of Ms Cornelia Rau was followed by an intense public and political focus on immigration issues. Arising from this report, the government proposed enhancing the role of the Commonwealth Ombudsman in immigration matters by designating the office as the Immigration Ombudsman and

providing additional funding. The development of these new functions will be reported on in our 2005–06 annual report.

Postal Industry Ombudsman

Legislation to create a separate office of Postal Industry Ombudsman (PIO) was introduced into Parliament in August 2004. Under the proposed legislation, the Commonwealth Ombudsman will undertake the role of PIO. The jurisdiction of the PIO will extend to private sector postal operators who register to participate 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.

It is anticipated that Parliament will further debate the Bill during 2005–06. Pending enactment of the legislation, we have been working on establishing a framework of operations for the Postal Industry Ombudsman scheme.

Norfolk Island Ombudsman

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 Australian Capital Territory 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. A further visit by a representative of the Ombudsman was undertaken in late 2004, to discuss the arrangements that could be made for handling complaints from Norfolk Island residents.

INTERNATIONAL COOPERATION

Over the past four years, the Ombudsman's office has been steadily increasing its international program. In 2004–05, funding from various Australian Agency for International Development programs supported our international activities to facilitate the exchange of specialist advice, training, technical assistance and support to the National Ombudsman Commission of Indonesia,



The Commonwealth and New South Wales Ombudsmen and staff working with Pacific Island Ombudsmen on ideas for sharing of skills and knowledge prior to the APOR Conference in Wellington in February 2005

the Thailand Ombudsman, and the Ombudsmen in the Cook Islands, Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

These activities have confirmed that the Office of the Commonwealth Ombudsman is well placed to play a key supporting role in the development and enhancement of ombudsman offices throughout the Asia-Pacific region.

KEY ACTIVITIES FOR 2004–05

- We finalised 17,441 complaints and 18,939 complaint issues, and handled 12,013 other approaches.
- We completed five own motion and major investigations, with all Ombudsman recommendations being accepted by agencies.
- The Australian Government allocated increased funding in the 2004–05 budget for the Ombudsman to handle complaints arising under the new Free Trade Agreement with the United States of America and to provide the office with secure access to Fedlink.
- We completed a comprehensive review of the office's complaints management system and internal work practices. Improvements are to be initiated in the coming year to achieve better integrated and streamlined work practices.
- The office's internal complaint investigation guidelines were restructured and adapted for online use.
- We conducted two five-day Integrity Investigation Programs jointly with the AFP in May and June 2005.

- We co-sponsored a three-year study, entitled 'Whistling while they work', on whistleblowing protection laws across Australia.
- Ombudsman staff and representatives from a number of other agencies, and AusAID sponsored participants, attended the office's five-day Introductory Investigation Training Course in September 2004.
- We conducted 65 outreach activities, which together covered all States and Territories.
- The office hosted several senior-level delegations from foreign offices, including from China, Indonesia, Korea, the Republic of Maldives and the United Kingdom.
- We replaced the office's ageing desktop equipment.
- We hosted the first meeting of nearly all public sector and industry ombudsmen from Australia and New Zealand, with 17 participants.
- The Ombudsman and staff delivered over 30 papers and presentations at conferences and seminars held around Australia.

The office faced major challenges, some of a continuing nature.

- The small total number of staff in the office (102 full-time equivalent) is spread over eight separate offices, with as few as one staff member in two offices; maintaining an effective national office structure that integrates the work of all staff is a key plank in the Strategic Plan.
- The office has increased markedly in size and functions over the past two years; responding to this growth, while maintaining the traditions and stability of the office, is important.

- The office strives to balance the urgent and immediate pressures of resolving individual complaints with the broader gains achievable by careful targeting of major and systemic issues in own motion and major investigations.
- The continued pressure on staff, particularly from the volume of more complex complaint issues, has had to be addressed through a review of work practices and quality control.
- establish improved oversight of the use of surveillance devices
- establish improved oversight of compliance powers of the Building Industry Taskforce
- establish the Postal Industry Ombudsman scheme
- implement a new complaints management system with integrated work practices and complaint investigation guidelines
- enhance the capability of online complaint lodgment
- implement redeveloped internet and intranet sites for the office
- reduce delay in complaint handling, especially through implementation of the new complaints management system
- build on the office's outreach program to regional and rural Australia
- negotiate a new three-year Certified Agreement.

OUTLOOK FOR 2005–06

In the coming year, the Ombudsman aims to:

- establish a Public Contact Team in Canberra to receive and assess all telephone approaches to the office to enhance performance and consistency at a national level
- develop the office's enhanced role in immigration matters



Inaugural meeting of public sector and industry ombudsmen from Australia and New Zealand in Canberra, June 2005

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 the establishment of a Commonwealth Ombudsman. The committee proposed a new and distinctive system of administrative law in Australia. It envisaged 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 the 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) telecommunications intercept records—1988, with added responsibilities of monitoring controlled operations in 2001 and auditing of surveillance device records in 2004
- Australian Capital Territory Ombudsman—1989
- Special Tax Adviser function created—1995
- responsibility for auditing the use of compliance powers by members of the Building Industry Taskforce—2004
- responsibility for assessing and reporting on the detention of long-term (two years or more) immigration detainees—2005
- Postal Industry Ombudsman responsibilities to be added in 2005–06.

ROLE AND FUNCTIONS

The office of the Commonwealth Ombudsman exists to safeguard the community in its dealings with government agencies. The office has three major statutory roles:

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

The complaint and own motion investigation roles of the Ombudsman are the more traditional ombudsman roles that constitute the bulk of the work of the office. The guiding principle in an Ombudsman investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or otherwise wrong. At the conclusion of the investigation, the Ombudsman can recommend that corrective action be taken by an agency. This 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, 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 also 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.

The different roles and functions of the Ombudsman are depicted in feature pages in this annual report.

Australian Federal Police

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 and 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:

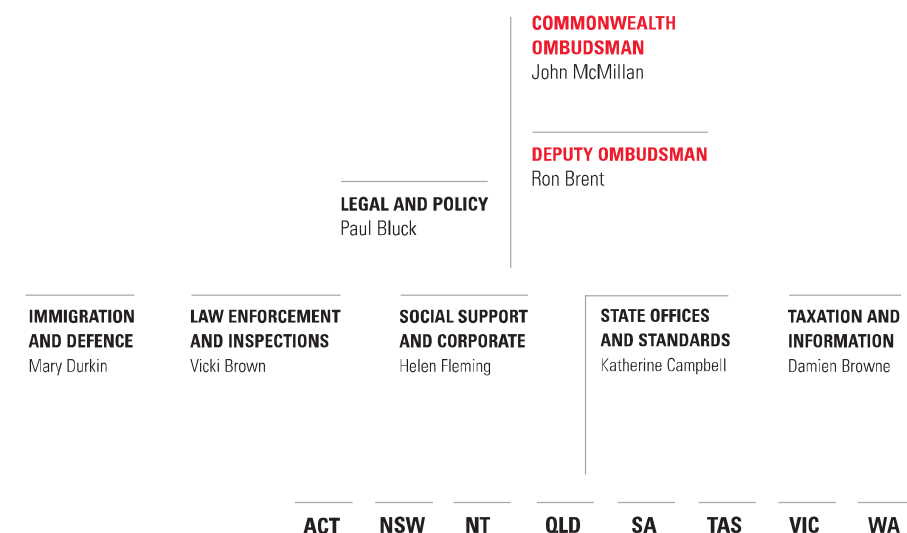
- Central office functions and responsibilities (including human resources, information technology, financial services, records management and public relations) and the principal specialist teams are based in the national office in Canberra.
- Offices throughout Australia handle complaints and undertake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

Five Senior Assistant Ombudsmen manage the specialist teams located in the national office, one of whom also provides general oversight for our State offices. The specialist teams are:

- **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, the Defence Housing Authority and the Department of Veterans' Affairs
- **Immigration Team**—specialised advice and complaint handling relating to the Department of Immigration and Multicultural and Indigenous Affairs
- **Law Enforcement and Inspections 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 Human Services (including Centrelink and the Child Support Agency) and relevant policy departments
- **Taxation Team**—specialised advice and complaint handling relating to the Australian Taxation Office, under the supervision of the Ombudsman's Special Tax Adviser.

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

FIGURE 2.1 COMMONWEALTH OMBUDSMAN ORGANISATIONAL STRUCTURE 2004–05



OUTCOME AND OUTPUT STRUCTURE

Our 2004–05 Strategic Plan provides broad direction for our work, and the 2004–05 Portfolio Budget Statements define one central outcome for the office, supported by two outputs.

The central outcome is to achieve equitable outcomes for 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
- the provision of advice to government to improve public administration.

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

See the 'Accountability and management' chapter in this report for information about the office's Strategic Plan and business plans.



Executive team (standing from left): Katherine Campbell, Helen Fleming, Damien Browne, Vicki Brown; and (seated from left) Ron Brent (Deputy Ombudsman), John McMillan (Commonwealth Ombudsman) and Mary Durkin.

commonwealth ombudsman— keeping pace with public sector change

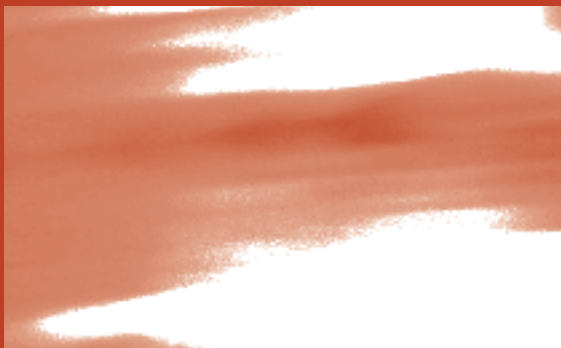
The core role of the Commonwealth Ombudsman has been unchanged for nearly thirty years. It is to receive and investigate complaints from members of the public about government administrative action occurring in any Australian Government agency, anywhere in Australia.

That stability and tradition has been matched by adaptation and evolution over nearly thirty years in the structure and procedures of the office. One illustration of that change is that the office now hosts a range of specialist functions that sit alongside its generalist role and jurisdiction. The Commonwealth Ombudsman also holds the separately titled roles of ACT Ombudsman, Defence Force Ombudsman and Taxation Ombudsman. Legislation to add the roles of Immigration Ombudsman and Postal Industry Ombudsman has been proposed. More is said about those and other specialist roles on other feature pages of this report.

The creation of the specialist Ombudsman roles is in response to a growing trend in government and society to call for specialist review mechanisms in designated areas of government. The Ombudsman's office has followed through on that development by creating specialist teams within the office, and by targeted recruitment, training and outreach activities.

The way that complaints are handled and investigations are undertaken within the office has also undergone great change. A major activity of the office now is to monitor complaint handling by Australian Government agencies. The office has learned over time that complaints against government are often best resolved informally, quickly and knowledgeably in the area in which a complaint arises. Direct agency handling of complaints also promotes greater accountability and responsiveness in service delivery.

A related development is that the Ombudsman's office now gives comparatively more emphasis to finding a practical solution and remedy to a problem than to passing judgment on whether the complaint arose from the fault of the agency or the misapprehension of the complainant. Accompanying that change in focus has been the development of a new complaints management system (being implemented in 2005–06) to better manage complaint data and statistical recording in the office.



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

The performance framework summarised in the outcome and outputs price and achievements tables (Table 3.1 and Table 3.2) do not cover all of the office's diverse range of activities. A summary of achievements follows the outcome and outputs tables 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 Australian Government departments and 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.

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 Australian Capital Territory 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 as part of 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 Annual Report 2004–05 to the ACT Legislative Assembly. This annual report is available at www.ombudsman.act.gov.au.

PERFORMANCE AT A GLANCE

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PRICE

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

Budgeted price of outputs	\$13.062 m
Actual price of outputs	\$12.762 m
Budgeted departmental appropriations	\$11.463 m
Actual departmental appropriations	\$11.482 m
Budgeted revenue from other sources	\$1.599 m
Actual revenue from other sources	\$1.280 m

[Full details of the total price of agency outputs of the Ombudsman's office are provided in Note 20 of the Financial Statements of this report.]



Prof. John McMillan, Commonwealth Ombudsman, opening the Ombudsman's Introductory Investigation Training Course, September 2004

TABLE 3.2 SUMMARY OF OUTCOME AND OUTPUTS ACHIEVEMENTS

OUTPUT 1 PROVISION OF A COMPLAINT MANAGEMENT SERVICE FOR GOVERNMENT

PERFORMANCE INDICATORS	ACHIEVEMENTS
Quality Analysis of feedback from clients and stakeholders on satisfaction with service delivery, timeliness and outcomes, and assessment of quantitative data.	Achievement 81% of all complaints were finalised within one month, with 65% of investigated complaints finalised within one month.
Quantity Number of complaints received in accordance with long-term trends is expected to be around 20,000, and the number of other approaches from the public is expected to be around 10,000.	Achievement We received 17,310 complaints nationally (down 1% from the previous year) and 12,013 other approaches (up 33% from the previous year).
Quantity Number of complaint issues finalised is expected to be approximately 20,000, and number of complaint issues investigated and finalised is expected to be around 6,500.	Achievement We finalised 18,939 complaint issues nationally, and investigated and finalised 6,198 complaint issues.

OUTPUT 2 PROVISION OF ADVICE TO GOVERNMENT TO IMPROVE PUBLIC ADMINISTRATION

PERFORMANCE INDICATORS	ACHIEVEMENTS
Quality Assessment of responses from departments and agencies on advice received from the Ombudsman and the extent to which the Ombudsman's recommendations have been implemented, and the effectiveness of the inspection of records and monitoring activities relating to law enforcement.	Achievement A high proportion of recommendations for systemic and administrative improvements were accepted by agencies during the year, suggesting a satisfactory level of performance by Ombudsman staff in identifying weaknesses in administrative practices and procedures. Feedback from the Attorney-General and the Minister for Customs and Justice has indicated their satisfaction with the performance of the office's monitoring and inspections function.
Quantity Number of own motion and major investigations completed that make recommendations aimed at improving administration and service delivery in departments and agencies.	Achievement Five own motion and major investigations were conducted and reports publicly released. All 89 recommendations resulting from the investigations were accepted by agencies.
Quantity Completion of biannual audits of telecommunications intercept and surveillance device records, biannual inspections of law enforcement agency controlled operations records, and provision of timely reports.	Achievement Six inspections of telecommunications intercept records and four inspections of controlled operations records were conducted during the year. Reports on telecommunications intercept inspections were provided to the Attorney-General, and the 2003–04 monitoring controlled operations report was tabled in Parliament in November 2004. Inspection methodologies and checklists were developed in preparation for the first inspections of the use of surveillance devices by the AFP and the Australian Crime Commission, to be conducted in 2005–06.

OUTPUT 1—PROVISION OF A COMPLAINT MANAGEMENT SERVICE FOR GOVERNMENT

Output 1.1: Feedback and assessment

Performance indicator *Feedback from clients and stakeholders on satisfaction with service delivery, timeliness and outcomes, and assessment of quantitative data.*

Satisfaction

A client satisfaction survey was conducted in May–June 2004 of 2,000 complainants across all jurisdictions of the Ombudsman's office. Results from client satisfaction surveys conducted in 2000 and 2004 showed a similar satisfaction rate among complainants: 58% of complainants were satisfied with service delivery and 65% were satisfied that the Ombudsman staff did as much as they should have when investigating complaints. When taking into consideration that only 33% of complaint issues are investigated, the latter satisfaction rate of 65% reflects favourably on the work of Ombudsman staff.

The survey results 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. During 2004–05, we reviewed our training requirements and conducted programs for all investigation staff in mediation and alternative dispute resolution, dealing with difficult people, preventing bullying and harassment, and general investigation training.

We also reviewed our procedures for receiving complaints and allocating those complaints to investigation officers. Changes to our work practices and improvements to our computer-based complaints management system will be implemented in the first half of 2005–06.

Timeliness in complaint handling

In 2004–05, 81% of all complaints were finalised within one month of receipt—marginally below previous years and the office's target of 85% for the year.

The percentage of investigated complaints finalised within one month was 65%, compared to 69% in the previous year.

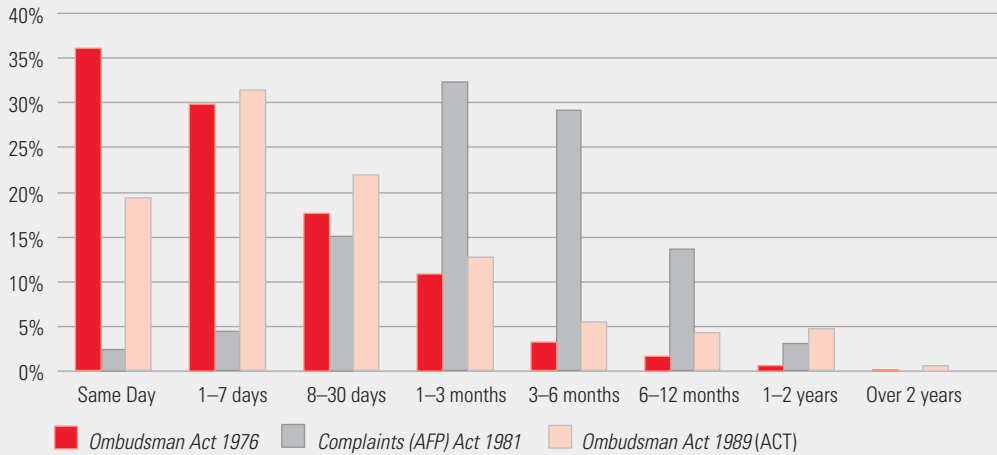
Data from our complaints management system is used to monitor response times by the office and to identify delays in complaint investigation. With many of the complaints we investigate, we need to factor in the time it takes for agencies to provide us with information. Quality assurance is conducted regularly on complaints investigated, with checks conducted for one in four straightforward investigations and for all of the more complex complaints. Monthly statistical reports enable senior management to monitor current issues and trends.

Timeliness in the handling of complaints relating to the Australian Federal Police (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 Ombudsman Act complaints. A total of 83% of all AFP complaints were finalised within six months of receipt (compared to 89% last year).

This year we encountered difficulty in maintaining staffing numbers within the office's Law Enforcement Team, leading to delays in the review and finalisation of some matters. This led to an increase in the percentage of complaints taking three to six months to complete. The filling of staff positions and a workload management strategy implemented in June 2005 will see the backlog of cases reduced by August 2005. We are also continuing to work with the AFP to ensure that delays in AFP responses to complaints are minimised.

The Ombudsman has reported in detail about timeliness in the handling of complaints about Australian Capital Territory agencies and community policing 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 2004–05.

FIGURE 3.1 TIME TAKEN TO FINALISE COMPLAINTS, BY ACT, 2004–05**TABLE 3.3** REMEDIES PROVIDED, BY ACT, 2004–05

Remedy	Ombudsman Act 1976	Complaints (AFP) Act 1981	Ombudsman Act 1989 (ACT)	Total
Act of Grace payment	6			6
Action expedited	1,326	2	34	1,362
Apology/error	688	6	20	714
Compensation	26			26
Decision changed	377		12	389
Disciplinary	83	9	2	94
Explanation	3,304	9	72	3,385
Other financial	312	1		313
Other non-financial	616		4	620
Other system change	118	2	17	137
Penalty waived	41		4	45
Policy law change	124	2	14	140
Reduced payment	56			56
Refund given	161		2	163
Settlement	1			1
Total	7,239	31	181	7,451

Note: Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies.

Remedies

In 2004–05, 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 investigated and finalised. A breakdown of remedies by Act is provided in Table 3.3 (on page 15).

Service quality

We use both positive and negative feedback from complainants to improve our services and to identify areas needing improvement. We also apply the same principle to our own operations that we espouse for other Australian Government agencies: specifically, if a person is not satisfied with the way in which an investigation has been

handled there is a clear-cut procedure by which they 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 2004–05, the office received 129 requests for review, a 20% increase on the number of requests received last year. The total figure is less than 1% of all complaints finalised.

Of the 129 review requests received this year, 91% 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 and misunderstood issue.

TABLE 3.4 REQUESTS FOR INTERNAL REVIEW OF OMBUDSMAN ACTION, 2004–05

Complainant's reason for seeking review		<i>Ombudsman Act 1976</i>	<i>Complaints (AFP) Act 1981</i>	<i>Ombudsman Act 1989 (ACT)</i>	Total
Decision/action	Failed to address issue	20		3	23
	Misunderstood issue	5	2	2	9
	Other	4	1		5
	Wrong	79	2	5	86
Advice	Failed to provide	1			1
Behaviour	Attitude	1			1
	Rudeness	1			1
Practice and procedures	Failed to comply	1			1
Other		2			2
Total		114	5	10	129

TABLE 3.5 DECISIONS BY OMBUDSMAN'S OFFICE ON INTERNAL REVIEW, 2004–05

Review decision	<i>Ombudsman Act 1976</i>	<i>Complaints (AFP) Act 1981</i>	<i>Ombudsman Act 1989 (ACT)</i>	Total
Outcome affirmed	112	3	4	119
Outcome varied	6			6
Further investigation	18		3	21
Total	136	3	6	146

Note: Of the 146 reviews finalised in 2004–05, 37 requests were from 2003–04.

Table 3.4 sets out the reasons expressed by complainants who sought review this year.

During the year, 146 reviews were finalised, including 37 review requests received in 2003–04. Of those reviews finalised, the original outcome was affirmed in 119 cases (or almost 81% of reviews). We agreed to conduct additional investigation in 21 reviews, and in six reviews we agreed to change our decision on the original complaint. These review outcomes are summarised in Table 3.5.

Output 1.2: Complaints received

Performance indicator *Number of complaints received in accordance with long-term trends is expected to be around 20,000, and the number of other approaches from the public is expected to be around 10,000.*

During 2004–05, we received a total of 17,310 complaints, compared to 17,496 in the previous year. This was 13% below the estimated figure. The decrease in total complaints received in both 2004–05 and 2003–04 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 an increase of 33% to 12,013 in ‘other approaches’ to the office in 2004–05 compared with the previous year. This was 20% above the estimated

performance indicator of 10,000. While it is difficult to attribute this increase to a specific reason, increased awareness of the office in the community through outreach activities and the raised profile of the Ombudsman in relation to immigration detention and ADF matters may have been factors.

The decrease in total complaints received in 2004–05 reflected decreases in a number of areas. There were decreases in complaints received about the Department of Transport and Regional Services (down 66%, albeit off a relatively small base), the Australian Taxation Office (down 5%), Centrelink (down 5%), and the AFP (down 2%).

This decrease was offset by an increase in complaints received about the Department of Employment and Workplace Relations (up 19% from a small base), Australia Post (up 10%) and the Child Support Agency (up 7%).

The decrease in the total number of complaints received during 2004–05 (and 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 12% in the number of complaints lodged electronically, with 1,146 complaints being received by this method; and an increase of 18% in the number of complaints lodged in person. Opportunities for better collection of electronic complaints were evaluated in 2004–05 as part of the office’s website redevelopment, which is due to be completed by November 2005.

TABLE 3.6 COMPLAINTS AND APPROACHES RECEIVED, BY ACT AND OFFICE, 2004–05

Legislation	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
<i>Ombudsman Act 1976</i>	1,334	4,340	248	3,194	1,348	412	3,686	1,593	16,155
<i>Complaints (AFP) Act 1981</i>	654	12	4	2	3	1	13	7	696
<i>Ombudsman Act 1989 (ACT)</i>	458				1				459
Total Complaints	2,446	4,352	252	3,196	1,352	413	3,699	1,600	17,310
Other Approaches	1,081	3,210	505	2,610	671	44	3,245	647	12,013
Overall Total	3,527	7,562	757	5,806	2,023	457	6,944	2,247	29,323

Table 3.6 (on page 17) details complaints and approaches received in 2004–05 by Act and office receiving, and Table 3.7 details complaints by method received.

National complaints line

In 2004–05, the office received a total of 39,130 telephone calls to its 1300 national complaints number, an increase of 21% on last year. The number of telephone calls received reported in our 2003–04 annual report (27,160) was incorrect—the correct number was 32,389. We receive this information from a third-party data source and found the discrepancy when checking trend information for this year's report.

The number of telephone calls received equates to an average of 155 calls per day. On average, 70% of calls were from regional areas of Australia and 30% from inside the capital city zones. Table 3.8 provides detail.

Complaints by agency

In 2004–05, complaints about the Australian Taxation Office (ATO), Centrelink and the Child Support Agency accounted for 66% (11,426 complaints) of the total number of complaints received, down 2% from last year.

There was a decrease of 5% in complaints received about the ATO, as mentioned above. This is the fifth consecutive year that numbers

of complaints 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 the 'Looking at the agencies' chapter of this report.

We received 873 complaints about the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), compared to 865 in the previous year.

There was an increase of 10% in complaints received about Australia Post. While the high volume of successful postal transactions completed by Australia Post needs to be acknowledged, this is a notable increase in complaints.

Charts comparing complaint trends over the past six years for those agencies against which the most complaints to the Ombudsman are made are included in the 'Looking at the agencies' chapter of this report.

Output 1.3: Complaints finalised and investigated

Performance indicator *Number of complaint issues finalised is expected to be approximately 20,000, and number of complaint issues investigated and finalised is expected to be around 6,500.*

This year, the Ombudsman's office finalised 17,441 complaints nationally, compared to 17,418 in 2003–04.

TABLE 3.7 COMPLAINTS, BY METHOD RECEIVED, 2004–05

Office	Telephone	Written	In person	Electronic	AFP	Total
ACT	1,175	479	147	259	386	2,446
NSW	3,543	453	90	266		4,352
NT	189	22	27	14		252
QLD	2,710	252	44	190		3,196
SA	1,128	104	49	71		1,352
TAS	368	29	9	7		413
VIC	3,007	387	69	235	1	3,699
WA	1,242	229	25	104		1,600
Total	13,362	1,955	460	1,146	387	17,310

Note: The AFP's Professional Standards team notifies the Ombudsman about complaints it receives for Ombudsman staff to oversee the AFP's complaint-handling process.

TABLE 3.8 CALLS RECEIVED THROUGH NATIONAL COMPLAINTS LINE, 2004–05

Office	Capital city zones	Regional zones	Total
ACT	1,592		1,592
NSW	1,965	9,528	11,493
NT	193	182	375
QLD	1,682	6,341	8,023
SA	1,173	1,581	2,754
TAS	290	664	954
VIC	3,749	7,810	11,559
WA	1,109	1,271	2,380
Total	11,753	27,377	39,130

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 on complainant issues finalised.

In 2004–05, 18,939 issues were finalised, arising from the 17,441 complaints finalised. Of the issues finalised, the Ombudsman's office investigated 33%, compared to 30% in the previous year. The remaining 67% of complaint issues were finalised usually by the complainant being referred to the internal complaint processes of the agency or investigation of the complaint being found not to be warranted.

Of the complaint issues investigated and finalised, some agency error or deficiency was identified in 14% of complaints (compared to 20% last year). No error or deficiency was identified in 43% of instances (the same as last year). In the remaining 43% of issues investigated, complaints were resolved without the need to determine whether or not the cause of the problem related to administrative deficiency, and no determination about the agency's performance was made. Full details of investigation

outcomes may be found in the 'Statistics' appendix of this report.

Causes of complaint

Following an established trend, the majority (58%) of the complaint issues finalised by the Ombudsman's office under the *Ombudsman Act 1976* this year 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 four years. Only 5% of complaints were about the conduct of officers in agencies.

There is a different pattern in the complaints about the AFP (see Figure 3.2 on page 20). Of the complaint issues finalised this year, 36% arose from the conduct of AFP members, including complaints about attitude, assault and incivility. A further 36% arose from police decisions or actions.

Decisions not to investigate

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

The legislation administered by the Ombudsman confers upon the office a range of discretionary powers not to investigate matters in particular circumstances. Examples of cases where the Ombudsman can decline to investigate a matter include where it 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 first raised the complaint with the agency; or 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 2004–05, 40% of issues raised in complaints to the Ombudsman were dealt with in this way, compared to 43% in the previous year.

Complaints carried forward

The total number of complaints carried forward (past 30 June 2005) was 1,137, compared to 1,207 at the end of the reporting period in the previous year, a decrease of 6% for this year. This backlog can generally be attributed to the complexity of the

complaints and the correspondingly longer period of time required to investigate those complaints.

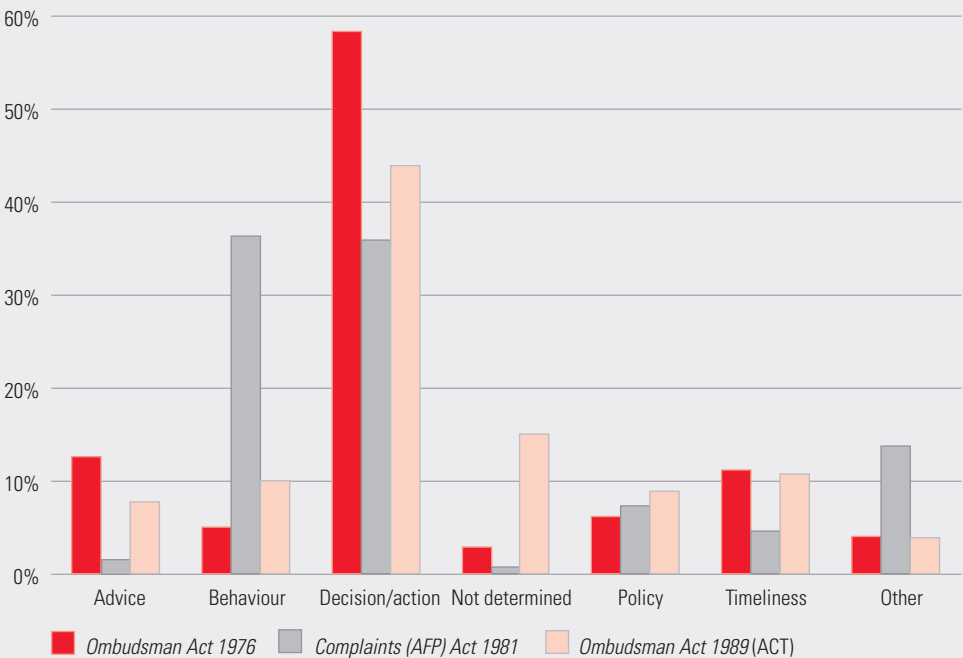
OUTPUT 2—PROVISION OF ADVICE TO GOVERNMENT TO IMPROVE PUBLIC ADMINISTRATION

Output 2.1: Improvements to government administration and recommendations implemented

Performance indicator *Assessment of responses from departments and agencies on advice received from the Ombudsman and the extent to which the Ombudsman’s recommendations have been implemented, and the effectiveness of the inspection of records and monitoring activities relating to law enforcement.*

A high proportion of recommendations for systemic and administrative improvements were accepted by agencies during the year, suggesting a satisfactory level of performance by Ombudsman

FIGURE 3.2 CAUSE OF COMPLAINT (INCLUDING FOI) BY ACT, 2004–05



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

staff in identifying weaknesses in administrative practices and procedures.

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. During 2004–05, we continued a review into the complaint-handling mechanisms employed by the Department of Transport and Regional Services. The department developed new complaint procedures within its Vehicle Standards Safety Branch and initiated a review of internal complaint-handling procedures in other areas during the year.

In 2005, we commenced a pilot project to test the effectiveness of our complaint referral process to the ATO. We are surveying a sample of complainants whom we referred back through the ATO complaints system to obtain feedback on whether the advice we provided was useful in progressing their complaints. The results of the survey will assist us to improve the effectiveness of our complaint referral process. Further targeted sample studies will be conducted in 2005–06 to gauge the effectiveness of this referral activity.

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 that are ordinarily investigated in the first instance by AFP Professional Standards; and complainants in the Defence jurisdiction, who must first pursue the formal Redress of Grievance processes under the *Defence Act 1903*, other than in exceptional circumstances.

Most of the investigation work of the Ombudsman's office occurs where there is no alternative avenue of resolution available to a person, because of either their circumstances or those of the particular complaint; there is an indication of a systemic problem in government administration, likely to affect a number of people; or where a complainant remains dissatisfied with the outcome of their treatment, despite

a review having already been undertaken by an agency.

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* (the Crimes Act). A report of our activities in inspecting controlled operations was tabled in Parliament in November 2004. Feedback from the Attorney-General and the Minister for Customs and Justice has indicated satisfaction with the performance of the office in relation to the inspection of records and monitoring activities relating to law enforcement.

Output 2.2: Formal recommendations arising from investigations

Performance indicator *Number of own motion and major investigations completed that make recommendations aimed at improving administration and service delivery in departments and agencies.*

During the year, the Ombudsman publicly released reports on seven own motion and major investigations. Two of the investigations (which related to the Tax Agents' Board of NSW and the ATO) were completed and provided to the agency in 2003–04, and were reported in last year's annual report. These reports are available at www.ombudsman.gov.au.

Of the five own motion and major investigations finalised and released publicly in 2004–05, all of the 89 recommendations in the investigation reports were accepted by agencies. The investigations comprised:

- October 2004—Complaint against the Australian Defence Force by a young person (under the age of 18 years) about an incident involving unacceptable behaviour at a Navy training establishment in mid-1996
- November 2004—The Australian Crime Commission's implementation of recommendations arising from a review of the corporate and operational implications for the commission arising from alleged criminal activity by two former secondees. (This publication by the Commonwealth Ombudsman is different

from other reports. It does not contain any recommendations to correct deficient administrative action but is thought worthy of inclusion in this report series.)

- December 2004—Complaint against DIMIA about delay in the processing of an application for a bridging visa
- April 2005—Review of the Australian Defence Force Redress of Grievance System (a joint report by the Department of Defence and the Commonwealth Ombudsman)
- May 2005—Complaint against DIMIA by Mr Z about his immigration detention.

Several own motion investigations are currently being conducted and will be completed in 2005–06.

Under powers conferred by the Complaints Act, Ombudsman staff worked on four special investigations relating to the AFP. Two investigations were completed, with the other two investigations to be completed in 2005–06.

The high incidence of departments and agencies accepting Ombudsman formal recommendations for systemic and administrative improvements suggests a highly satisfactory level of performance in identifying opportunities for improvement in administrative practices and procedures during 2004–05.

The most significant constraint on performance in this area is the high level and volume of resources that major investigations require. The challenge is to manage the balance between the urgent and immediate pressures of individual complaints and the broader gains achievable by careful targeting of major issues.

Output 2.3: Feedback on auditing and monitoring activities

Performance indicator *Completion of biannual audits of telecommunications intercept and surveillance device records, biannual inspections of law enforcement agency controlled operations records, and provision of timely reports.*

Telecommunications intercept records

Under the TI Act, the Ombudsman is required to inspect the records of the AFP and the ACC to ensure that they conduct telecommunications

interception activities in accordance with the provisions of the Act.

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 telecommunication interception warrants.

Ordinarily, two inspections of each agency are carried out each year, but in 2004–05 three inspections were conducted because of a change in practice within the office concerning the inspection period covered by a report. Three inspections were conducted at the AFP (including a regional inspection) and three at the ACC.

These inspections continue to form a core element of the work of the Ombudsman's Inspections 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.

Surveillance device and compliance powers records

The Ombudsman's monitoring role expanded during 2004–05 with passage of the *Surveillance Devices Act 2004* and amendments to the *Workplace Relations Act 1996*.

The initial inspections of the use of surveillance devices by members of the AFP and ACC, and the use of compliance powers by members of the Building Industry Taskforce, will be conducted in the first half of 2005–06. Inspection methodologies and checklists were developed during 2004–05 in preparation for the first inspections of surveillance device records.

Controlled operations records

During the year, Ombudsman staff conducted a total of four inspections of controlled operations records. 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, and the presentation of a report to Parliament in December 2004. The reports concluded that the agencies are generally complying with the requirements of the Crimes Act and providing comprehensive information in formal reports.

Following a briefing by the Ombudsman to the Parliamentary Joint Committee on the ACC in October 2003, an own motion investigation was initiated into record keeping related to ACC controlled operations authorised under State or Territory legislation.

Ombudsman staff reviewed the application, authorisation and record-keeping practices of the ACC for all jurisdictions in which ACC controlled operations occurred. There was no basis to criticise the ACC for the way in which it was handling controlled operations under State laws.

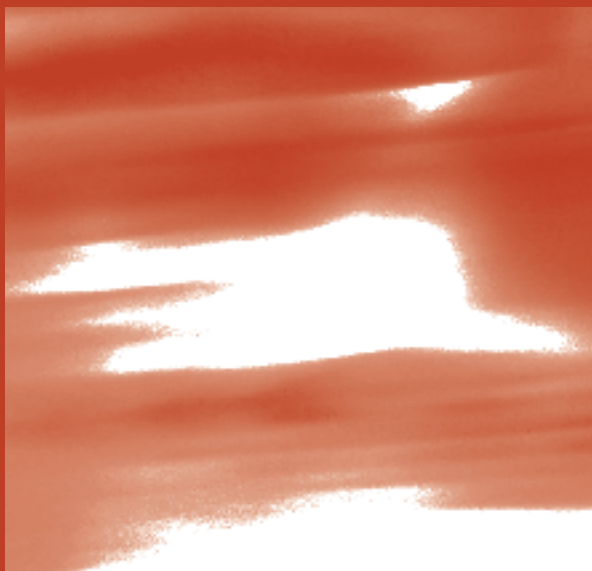
australian capital territory ombudsman— resolving local issues through local knowledge

A separate office of ACT Ombudsman was established when the ACT obtained self-government in 1989. The Commonwealth Ombudsman presently holds the office, under an arrangement between the ACT and Australian governments. The complaint investigation role of the ACT Ombudsman is managed under separate Territory legislation, the *Ombudsman Act 1989*. The Ombudsman also has a special role under other Territory legislation, of receiving and investigating whistleblower disclosures under the *Public Interest Disclosure Act 1994* and issues arising under the *Freedom of Information Act 1989*.

The ACT Ombudsman deals with the diversity of issues that arise in territory jurisdiction, such as community policing, corrective services, public housing, parking fines, public utilities, and the location of public libraries. The combined Commonwealth and ACT Ombudsman role means that the oversight of ACT government administration is undertaken by an office with greater resources, experience, research capacity and tradition than a separate ACT office could offer. The combined office is also uniquely placed to handle complaints across all layers of Australian government, and to bring a cross-jurisdictional focus to problems in government administration.

The ACT Ombudsman office is located on the ground floor of the national office in Canberra, and was opened in June 2004 by the ACT Chief Minister. There has since been a marked increase in people attending in person to discuss or lodge complaints and to make general inquiries. For many complainants who don't know where else to go for information and advice, the office is a 'last stop shop'.

The ACT Ombudsman also covers the Jervis Bay territory, which is part of the Australian Capital Territory. The office has met with indigenous leaders and elders in that region to discuss the barriers they may face in obtaining fair and equitable access to government services, arising from the area's status as an enclave within NSW but serviced by both the State and Territory governments.



looking at the agencies

During 2004–05, the majority of complaints received by the Ombudsman (78%) concerned the five Australian Government departments and agencies listed below. This chapter focuses on particular issues that arose during the year in investigating complaints about these agencies:

- Centrelink—7,699 complaints
- Child Support Agency—2,094 complaints
- Australian Taxation Office—1,633 complaints
- Australia Post—1,190 complaints
- Department of Immigration and Multicultural and Indigenous Affairs—873 complaints.

As well, this 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*
- complaints about the handling by agencies of freedom of information requests.

The 'Other agencies' section of this chapter provides examples of complaints received about some other agencies, such as the Department of Family and Community Services and the Department of Employment and Workplace Relations.

While the discussion and analysis of complaints arising in specific areas of government illustrates the role 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.

Examples of difficulties that commonly arise are delay in decision making, inadequate explanation of decisions, and deficient record keeping. 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').

'... analysis of complaints arising ... does not fully portray the work of the office.'

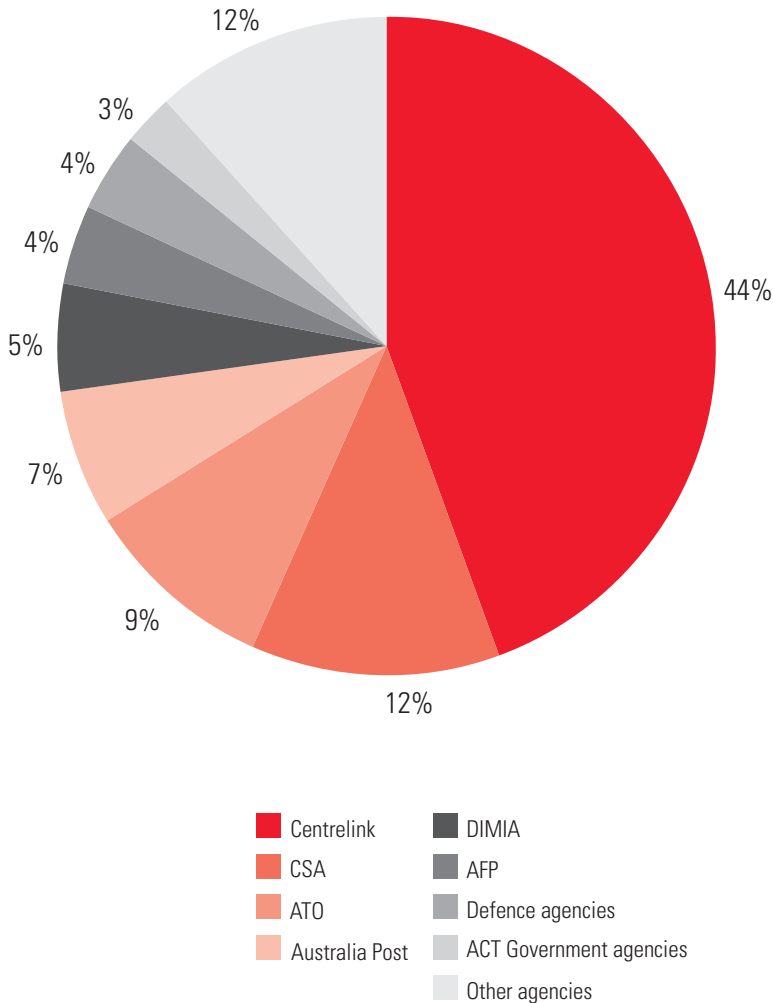
Something should also be said of the agencies about which most complaints are received. A common feature is that each of those agencies engages daily in a high number of direct transactions with members of the public, on matters such as providing benefits, assessing taxation, granting visas, calculating child support liability, and providing postal services. The complaints received by the Ombudsman are a small fraction of the total number of transactions undertaken by the agencies.

Complaints sometimes arise from the service provided by any agency, but at other times complaints are more about a perceived difficulty in the law being administered by an agency. The complaints to the Ombudsman illustrate the difficulties that people face in dealing with government, but not necessarily the standard of administration in those agencies. This point is captured in another way in the 'Performance report' chapter, which gives more emphasis to the remedies and assistance that the Ombudsman's office can provide to the public than to whether in the Ombudsman's view there was an agency defect.

Figure 4.1 shows the proportion of complaints received by the Ombudsman from agencies about which most complaints are received.

A detailed breakdown of complaints by portfolio and agency is in the 'Statistics' appendix.

FIGURE 4.1 COMPLAINTS RECEIVED, BY AGENCY, 2004–05



LOOKING AT THE AGENCIES

australia post

Australia Post is an incorporated government business enterprise wholly owned by the Australian Government. It operates under the *Australian Postal Corporation Act 1989* (the Postal Act) and Australia Post Terms and Conditions (which are approved by its Board).

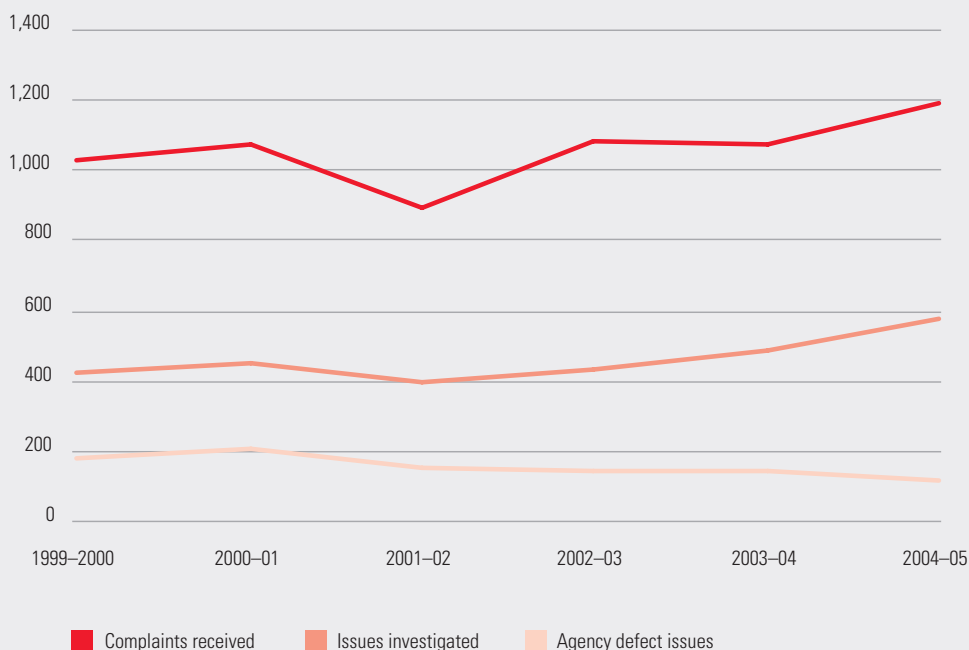
Legislation to create a separate office of Postal Industry Ombudsman was introduced into Parliament in August 2004. Under the proposed legislation, the Commonwealth Ombudsman will undertake the role of Postal Industry Ombudsman. The jurisdiction of the Postal Industry Ombudsman will extend to private sector postal operators who register to participate in the scheme. It is anticipated that Parliament will further debate the Bill during 2005–06. Pending enactment of the legislation, we have been working

on establishing a framework of operations for the Postal Industry Ombudsman scheme.

In 2004–05, we received 1,190 complaints about Australia Post, compared to 1,079 last year, an increase of 10%. See Figure 4.2 for Australia Post complaint trends from 1999–2000 to 2004–05.

Australia Post's Customer Contact Centres handle most complaints about postal services, and we usually ask complainants to raise their concerns with a contact centre in the first instance. In many cases we are satisfied that Australia Post has handled complaints appropriately. In some cases, however, we may form an opinion that the complaint could have been handled differently. We may suggest a different outcome or broader changes to Australia Post's systems or operations.

FIGURE 4.2 AUSTRALIA POST COMPLAINT TRENDS, 1999–2000 TO 2004–05



As in previous years, the complaints to the Ombudsman were mostly about domestic, international or parcel post mail deliveries. Some of the issues are covered below.

MAIL SERVICES

Australia Post has placed particular emphasis on, and committed resources to, maintaining the integrity of its mail services and improving and expanding its operations.

'... complaints to the Ombudsman were mostly about domestic, international or parcel post mail deliveries.'

Although Australia Post has diversified into areas such as logistics, retail sales and agency work, mail still forms the core of its operation. Equally, mail remains a vital mode of communication for many people, notwithstanding the growth of electronic means of communication, such as email and SMS. During the year, we received a number of complaints from people who were not receiving regular mail deliveries from Australia Post.

Irregular delivery

In one case we investigated, Australia Post had ceased mail deliveries to a residential address without notifying the person. No mail was delivered for over three weeks because an old car parked near the mail box was considered by the postal delivery officer to be a health hazard. The complainant claimed that the car had been parked on the verge intermittently for four years, and had not previously impeded access to the letterbox.

We discussed the complaint with Australia Post and found that the postal delivery officer had taken the mail with him each day, decided not to deliver it because of the car, and had returned it to the delivery centre. The delivery officer had made a notation in Australia Post's hazard report book, but had not brought the hazard to his supervisor's attention or waited for the matter to be investigated prior to ceasing the mail delivery. Australia Post reminded all delivery officers of the proper procedures in these instances.

Business addresses in residential areas

Other complaints, which raised the issue of mail delivery to individuals who conduct business from residential areas, illustrated the importance that many businesses and individuals place upon efficient mail delivery. In one complaint, a business owner complained that he did not receive mail until mid-afternoon, which was too late for business purposes. He had complained previously to Australia Post, who had remedied matters, but a few months later the same problem had recurred.

After we raised the matter with Australia Post, the relevant Australia Post delivery manager undertook to discuss the problem with the complainant, and subsequently arranged for his mail to be included in the nearby business delivery round to ensure that he received his mail earlier in the day.

Registered mail

We received a complaint that a registered parcel containing war medals had been collected by a person who signed for the parcel in the addressee's name. The allegation raised a concern about a possible crime and about the integrity of the registered mail service. Following our request, Australia Post investigated the allegation and concluded that the person who collected the parcel had no legal authority to do so, and considered that the addressee's signature may have been forged.

The matter was referred to the Director of Public Prosecutions. Australia Post also took internal action, as staff had not followed the proper identity check for a registered parcel. The addressee's family was given a statement to enable them to obtain a reissue of the war medals.

Community service obligations

Australia Post has some community service obligations imposed by the Postal Act. Under this Act, Australia Post must provide a universal letter service for standard postal articles that is reasonably accessible to all Australians, wherever they reside. The Act also provides for performance standards relating to matters such as frequency and speed of mail delivery and availability of post boxes. These obligations define a minimum

standard, and the issue can arise of whether Australia Post should go further.

There is, for example, a community service obligation on Australia Post to provide a minimum of 10,000 street post boxes across Australia; currently there are over 15,000 street post boxes. In metropolitan areas, Australia Post aims to have a street post box within two kilometres of each resident.

We investigated a complaint from a person who had moved into a new residential development and was concerned because there was no street box nearby. Australia Post informed us that in fact there were three street post boxes approximately one kilometre from the person's residence. In these circumstances, we did not consider Australia Post's position was unreasonable.

Compensation delay

Each year we receive complaints about delays by Australia Post in dealing with claims for compensation. Sometimes, despite a person being well organised in keeping relevant receipts and records, things may go awry.

We investigated a complaint about delay by Australia Post in compensating a customer for items broken in transit. Australia Post had notified the customer that compensation was approved based on the claim information, including receipts, evidence of the breakage and demonstrated adequate packaging. Australia Post had still not posted a compensation cheque two months later, despite repeated phone calls from the customer. We contacted Australia Post, who quickly forwarded the cheque and apologised for the delay.

Access to information

One important outcome our office can achieve for the community is an improvement in the amount of information an agency makes publicly available. A complaint investigated by the office raised the issue of how postcodes are allocated by Australia Post. In response to our inquiries, Australia Post agreed that information regarding the assignment of postcodes would be made publicly available. This information is now available on Australia Post's website.

australian taxation office

The Australian Taxation Office (ATO) is primarily responsible for administering Australian Government taxation legislation and collecting Commonwealth revenue. Under Australia's self-assessment system of taxation—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*.

Section 4(3) of the *Ombudsman Act 1976* provides that the Commonwealth Ombudsman is also the Taxation Ombudsman when dealing with complaints about the ATO. This designation, introduced in 1995, recognised the need for the Ombudsman to be able to bring a specialist focus to complaints about the ATO. Additional funding for a Special Adviser on Taxation was a part of this change.

Since this change in the role of the Ombudsman ten years ago, we have seen a marked improvement in the relationship between the Ombudsman's office and the ATO. The volume and complexity of tax law and the extensive powers of the ATO with respect to individuals continue to generate complaints about the administrative actions of the ATO.

The greatest challenge for those working in the tax field is the ever-increasing complexity of tax law and the tax system. The Taxation Ombudsman plays an important role in assisting taxpayers to find their way through this complexity, as well as pointing out to the ATO ways in which processes and information might usefully be simplified. The underlying approach to the Taxation Ombudsman role is to find practical solutions to administrative problems.

IMPROVEMENTS IN ATO COMPLAINT HANDLING

In July 2003, the Ombudsman released an own motion investigation report into ATO complaint handling.

In 2003–04, we reported that the Commissioner of Taxation had accepted all of the report's recommendations. The main recommendations were that the ATO develop a strategy for implementing best practice 'relationship management' within complaint handling across the ATO, and that it adopt a consistent single complaint-recording system as soon as practicable.

'... the Taxation Ombudsman role is to find practical solutions to administrative problems.'

Since that time, we have been working closely with the ATO on the implementation of the report's recommendations. In April 2005, the Commissioner wrote to the Ombudsman providing a detailed report on the measures the ATO had taken since July 2003 in response to our report; the Commissioner advised that the ATO had fully implemented all recommendations.

The centralised complaint-recording system in the ATO commenced in November 2004. This has resulted in improvements in both the timeliness and quality of ATO complaint handling. We will continue to keep abreast of the system's further development and effectiveness. We were also provided with a comprehensive ATO Practice Statement outlining procedures and minimum standards expected in the handling of ATO complaints.

The Commissioner also outlined other issues addressed by the ATO in response to our report, such as implementing a comprehensive quality assurance regime for complaints, identifying and managing systemic issues at a high level, and making a continuing commitment to the Taxpayer's Charter.

For some years, the Ombudsman's office has encouraged agencies to develop their own internal complaint-handling mechanisms. We are pleased that the ATO has given priority to this issue, and the result may well be a model for other agencies.

LIAISON WITH THE ATO

During the year, the Special Tax Adviser and Tax Team staff continued their efforts to maintain the effective working relationship that the Ombudsman's office has established with the ATO and its officers over the past few years. Apart from the usual contact in the course of handling individual complaints, we met regularly with ATO staff involved with handling Ombudsman inquiries about matters such as legal issues and mass-marketed schemes. The focus of the meetings is to make the complaint processes work more effectively through an exchange of views and information on a range of issues.

'The focus ... is to make the complaint processes work more effectively ...'

We also met with ATO staff to address specific tax issues as they arose during the year. When the ATO becomes aware of an emerging

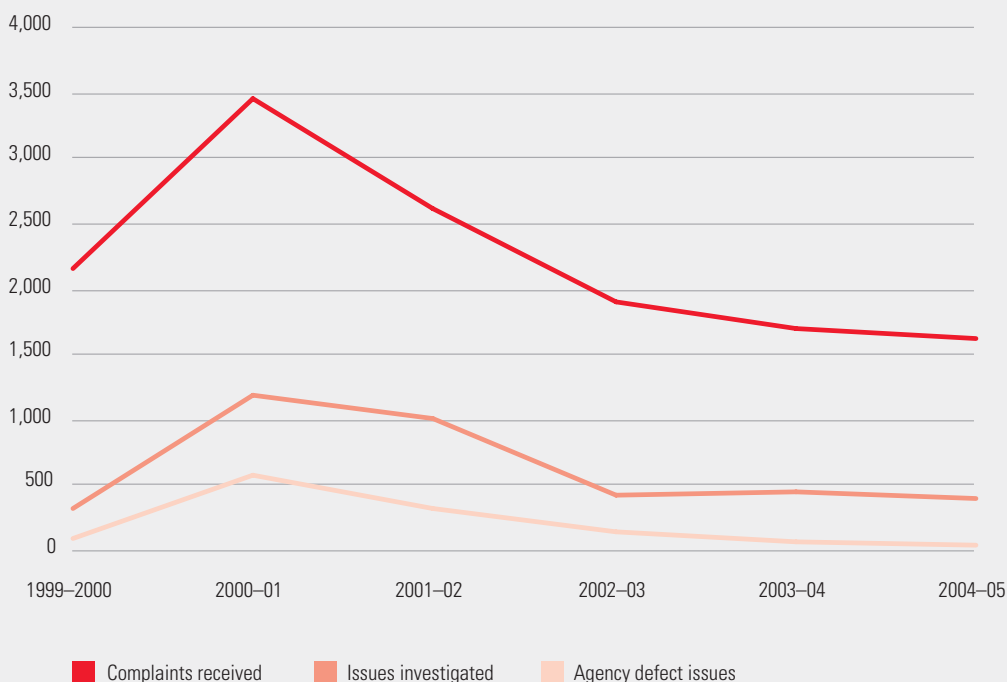
administrative problem that could lead to increased complaints, it provides advice to the Special Tax Adviser on what action the ATO is taking to address the problem. One example is delays in processing the superannuation guarantee payment, where the ATO was quick to provide a briefing about the actions it was taking to address the problem.

At other times, we specifically requested that the ATO provide us with a more general briefing on matters which arose out of individual complaints we investigated: an example this year was a request for advice on ATO action on old debts. The aim of such briefing is to better inform ourselves about ATO processes, and to collect information against which we can measure ATO action when investigating current and future complaints.

COMPLAINTS OVERVIEW

In 2004–05, the Ombudsman received 1,633 complaints about the ATO, compared with 1,711

FIGURE 4.3 AUSTRALIAN TAXATION OFFICE COMPLAINT TRENDS, 1999–2000 TO 2004–05



the previous year. This was a decrease of 5% (see Figure 4.3 for ATO complaint trends from 1999–2000 to 2004–05). This suggests a return to greater stability in ATO complaint numbers, comparable with the period prior to the introduction of the new tax system and the difficulties over the tax treatment of mass-marketed investment schemes. The office finalised 1,591 complaints, of which 364 (or 23%) were investigated, a similar proportion to last year.

We received complaints across the full range of ATO activities and products, including excise, superannuation, debt recovery, the goods and services tax (GST) and aggressive tax planning. Complaints about ATO debt recovery action and the accuracy, clarity and timeliness of ATO advice continue to dominate.

Our specialist Tax Team continues to monitor complaints to identify emerging complaint trends that may warrant direct intervention by the Special Tax Adviser or Taxation Ombudsman. In 2004–05, we identified an increase in complaints about superannuation co-contributions, allowing the office to look at whether these were due to a systemic issue or other reason. This assessment is ongoing.

REFERRAL SURVEY PROJECT

We will usually suggest to complainants that they first try to resolve their concerns directly with the ATO, as we consider that the agency should first have the opportunity to correct any perceived problems. We suggest that the complainant contact the ATO directly, and provide advice about making a complaint and information on specific issues such as remission of interest guidelines. In some circumstances, we will offer to transfer the complaint directly to the ATO, with the understanding that the complainant can contact us if dissatisfied with the outcome.

Towards the end of 2004–05, we commenced a pilot project to test the effectiveness of our complaint referral process. We are surveying a sample of complainants who we referred back through the ATO complaints system to obtain feedback on whether the advice we provided was useful in progressing their

complaints. The results of the survey will assist us to improve the effectiveness of our complaint referral process.

SUPERANNUATION ISSUES

In 2004–05, we received a significant increase in the number and range of superannuation complaints and issues.

Superannuation guarantee

The move from annual to quarterly superannuation guarantee reporting created problems for the ATO in aligning aspects of its accounting system, which in turn caused delays in processing assessments and making payments to superannuation funds. The ATO briefed the Special Tax Adviser on the issue and the course of action being taken to address the backlog of cases. The Commissioner also put in place a compensation scheme to ensure that neither employers nor employees affected by the processing delays will be out of pocket.

We continued to receive a small number of complaints from employers caught by what the ATO has called the ‘double jeopardy’ effect of the superannuation guarantee legislation. The current legislative scheme does not allow any discretion where an employer makes a late payment to an employee’s superannuation fund or mistakenly pays the contribution directly to the employee. The employer is liable to pay a ‘superannuation guarantee charge’ (SGC) to the ATO on top of the amount already outlaid.

Recognising the burden this creates for employers who genuinely attempt to meet their obligations, the 2005 Budget included an initiative aimed at reducing the incidence of double payment. An employer’s payments will be used to offset any part of the SGC relating to that quarter when payments are made to a superannuation fund within 30 days of the due date for quarterly contributions. The budget initiative will not assist all complainants, but will go some way to ameliorating the potential for, and impact of, employer double payments. We expect that this will lead to a reduction in the number of complaints about this issue.

Superannuation surcharge

There was also an increase in the number of complaints relating to the superannuation surcharge. In nearly all cases, the complainant's concerns and confusion were exacerbated by the complexity of the surcharge system. This was particularly true for those complainants facing a one-off surcharge liability, generally following their retirement. For this reason, we welcomed the government's abolition of the surcharge in the 2005 Budget. We anticipate that complaints about the administration of the superannuation surcharge will gradually decrease.

Superannuation co-contribution scheme

Towards the end of 2004–05, we received a number of complaints about the Superannuation Co-contribution Scheme. The scheme operates to provide eligible taxpayers with a matching superannuation contribution made by the Australian Government up to a maximum of \$1,500 per annum. The complaints received related to eligibility, retrospective legislative amendments and the quality of ATO advice and publications. We will continue to monitor these complaints and provide feedback about the administration of the scheme to the ATO towards the end of 2005.

SETTLEMENTS

The settlement of disputes between taxpayers and the ATO about taxation liabilities is one area where difficulties occasionally arise. For some complaints, we have been able to help simply by encouraging discussion between the parties, or suggesting a different perspective for consideration. Other problems have been more complex.

During the year, we discussed a range of issues relating to settlements with the ATO, including the need for senior-level involvement in settlement decisions, the nature and breadth of the Commissioner's power to settle disputes, and perceived technical difficulties with specific settlements. For example, in one case we were able to facilitate finalisation of a complex settlement involving a trust and some of its beneficiaries and the difficulties arising from the rescission of an earlier distribution of trust income outside of the timeframe for amending ordinary assessments.

In November 2004, the Commissioner established a panel of senior officers to consider proposed settlement of widely based disputes and to provide guidance to ATO staff. The Ombudsman is providing input to the panel for the preparation of the guidelines.

COMPENSATION CHANGES

We continue to see fewer complaints about decisions made by the ATO on whether to pay compensation to a taxpayer who claims to have been wrongly damaged by ATO action. The reduction in complaints stems from the ATO's introduction in 2003–04 of a more pragmatic approach to handling compensation claims. The changes include clear service standards on timeliness, against which we can consider complaints about delay. The changes also involved the Minister delegating to some senior taxation officers the power to handle all claims, where previously there had been a \$50,000 cap. This meant that decisions formerly made by the Minister and beyond the Ombudsman's jurisdiction can now be made by the ATO and so fall within the office's jurisdiction.

LOOKING AT THE AGENCIES

centrelink

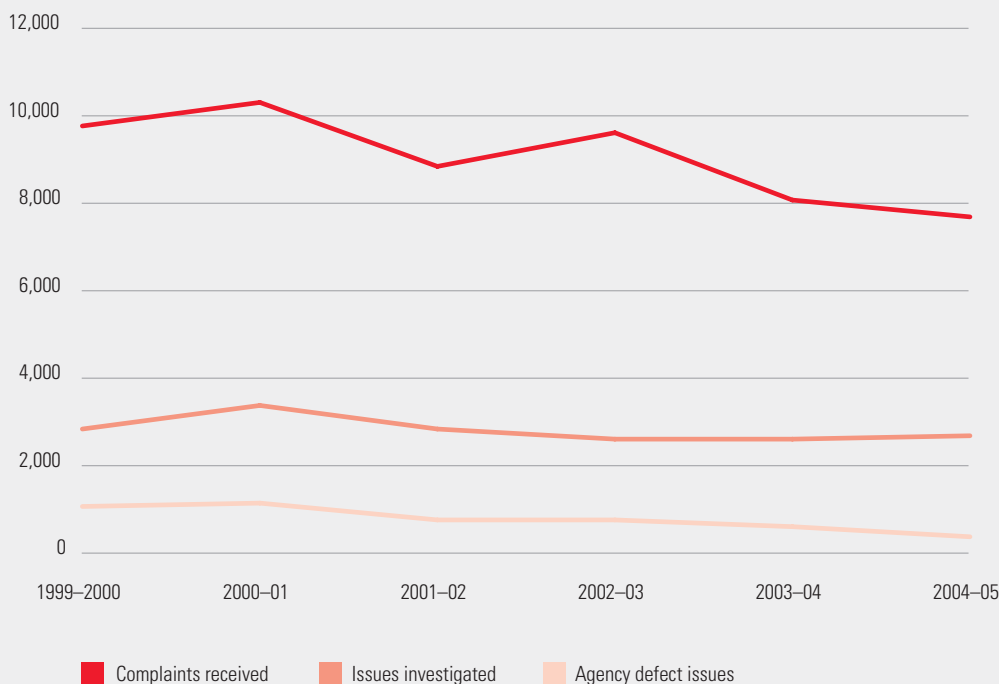
During 2004–05, Centrelink was affected by a number of changes made to Australian Government agency structures and responsibilities. The biggest change was the creation of the Department of Human Services, which was established to direct, coordinate and broker improvements to government service delivery. Centrelink was one of six Australian Government agencies brought within the responsibility of the new Department of Human Services.

Centrelink retains responsibility for delivery of a wide range of programs and payments on behalf of Australian Government agencies. The majority of complaints that the Ombudsman receives about Centrelink relate to income support payments, family payments and other programs that Centrelink administers.

In 2004–05, Centrelink complaints accounted for 44% of all complaints to the Ombudsman. We received 7,699 complaints about Centrelink, compared with 8,084 complaints in the previous year. This was a decrease of 5%. See Figure 4.4 for Centrelink complaint trends from 1999–2000 to 2004–05.

We investigated 32% of complaints received about Centrelink. The majority of complaints received were about the Family Tax Benefit (20%), Newstart Allowance (20%), Disability Support Pension (13%), and Parenting Payment (13%). Complaints were received about a large range of complaint issues. Some of the more prominent topics were the internal review process, nominees, compensation, and

FIGURE 4.4 CENTRELINK COMPLAINT TRENDS, 1999–2000 TO 2004–05



controlling contact with certain customers. These issues are covered below.

INTERNAL REVIEW PROCESS

The internal review process in Centrelink generally comprises two stages: reconsideration by the original decision maker, and review by an Authorised Review Officer.

If customers are dissatisfied and want a decision reviewed, the issue is generally referred back to the original decision maker to reconsider the decision. The original decision maker may decide either to affirm, set aside or vary the original decision. If a customer still remains dissatisfied, they can ask that an Authorised Review Officer review the decision.

Delay

Delay can occur at one or both stages of Centrelink's internal review process. There can be delay where the original decision maker is reconsidering the decision and/or where the Authorised Review Officer is reviewing the original decision. Delay can have a significant consequence for a customer, particularly if the decision being reviewed was a denial of income support.

A number of complaints this year involved delays in Centrelink's internal review process. For example, in several cases a complainant waited approximately six months for the Authorised Review Officer to review the original decision. During this time the customer's payments were cancelled.

Delays by the original decision maker in reconsidering the decision are of particular concern. This is intended to be a quick process to give the original decision maker the opportunity to see if there has been an error or misunderstanding between the customer and Centrelink. Excessive delay calls into question the value of a decision being reviewed both by the original decision maker and the Authorised Review Officer.

Review by original decision maker

The social security law does not require that the original decision maker review a decision before it can proceed to an Authorised Review Officer for review. However, under the current review system, the original decision maker will initially treat

a customer's request for review as a request for reconsideration. Even if the original decision is not changed after this process, the customer must again request review by the Authorised Review Officer, rather than the decision being automatically referred for review. The Ombudsman is concerned that this review process sometimes leads to customers experiencing appeal fatigue.

As a result of a report by the Australian National Audit Office in March 2005, *Centrelink's Review and Appeals System*, Centrelink agreed to consider options for the future role of the original decision maker. One option being considered by Centrelink is to restrict the role and functions of the original decision maker to that of an administrative check before an appeal progresses to an Authorised Review Officer.

'The Ombudsman is concerned that this review process sometimes leads to customers experiencing appeal fatigue.'

Given our concerns about unnecessary delay and appeal fatigue, we have agreed to participate in a Centrelink steering committee, which is considering the future of the review process.

NOMINEES

A Centrelink customer can authorise a person or organisation to act and make changes on their behalf and/or to receive payments on their behalf. This person or organisation is called a nominee. Given the importance of income support for a customer, Centrelink must be careful in accepting and administering nominee arrangements.

A number of complaints received during 2004–05 raised issues that resulted in the Ombudsman's office enquiring about Centrelink's practices and procedures for handling nominees.

Correspondence with customers and nominees

Complaints this year raised the question of whether Centrelink should send correspondence about a customer's payments to the nominee as well as to the customer.

There may be an adverse consequence if a nominee is not informed about Centrelink correspondence,

particularly if the correspondence potentially affects the customer's eligibility or payment. For example, a customer complained to our office this year because his payments had been suspended. That customer had a nominee handling his Centrelink affairs. When we investigated, we found that Centrelink had written to the customer about his payments, requiring that he provide information about income. Unfortunately, the nominee was unaware of this correspondence. When the customer did not respond to Centrelink's notice, his payments were suspended, causing much concern to the customer. As a result of our inquiries, the customer's payments were reinstated.

Although Centrelink may not be required to send a copy of correspondence to nominees, we have suggested that it seems preferable that nominees in the situation described above be aware of any Centrelink correspondence concerning the customer. Centrelink has advised that current procedures now specify that both parties should be notified in such circumstances.

Investigating requests to appoint nominees

Although a customer may choose to change their nominee, there may be circumstances in which Centrelink should investigate the appropriateness of allowing the customer to do so.

This issue was highlighted by a complaint from a person who was the nominee for an intellectually impaired customer. The complainant had expressed concern to Centrelink about another person who might seek to become a nominee. The other person later attended a Centrelink office with the customer and lodged a form seeking to change the nominee arrangement. Centrelink processed this request without first contacting the current nominee to discuss the situation. The complainant subsequently obtained guardianship and was reinstated as the customer's nominee.

Centrelink has provided advice that procedures have been revised to better ensure that the interests of its customers are fully considered in such circumstances.

CUSTOMER COMPENSATION

If a customer considers that Centrelink's actions have caused them to suffer loss, the customer may apply for compensation from Centrelink. In recent

years, Centrelink implemented changes to improve handling of customer compensation claims. These included:

- reviewing its Customer Compensation Guidelines
- installing a national database to monitor the progress of compensation claims
- conducting training for relevant Centrelink staff.

Despite this, complaints continued to highlight deficiencies with Centrelink's administration of customer compensation claims, including considerable delay.

In September 2004, Centrelink implemented a new system for handling customer compensation claims, which involved centralising all decision making about customer compensation. It is intended that the new system will improve the consistency and quality of decisions as a result of claims being investigated and handled by specific customer compensation caseworkers. The new database will allow Centrelink to better monitor the progress of compensation claims to ensure that they are processed in a timely fashion and are of a satisfactory and consistent quality.

The Ombudsman's office will continue to raise with Centrelink any issues resulting from complaints about customer compensation.

BANNING CUSTOMERS

We received a number of complaints from customers who had been banned from either attending Centrelink offices or having telephone contact with staff. These decisions stemmed from the behaviour of the customers, usually of an abusive or threatening kind.

Although we found that the decisions to ban the individuals concerned were not unreasonable, these complaints highlighted that Centrelink has no national guidelines for the process of banning customers. Instead, different areas had developed guidelines specific to their particular area.

Centrelink examined this issue and decided to develop national guidelines for banning customers with the aim of improving consistency. These guidelines are expected to be implemented in the first half of 2005–06.

LOOKING AT THE AGENCIES

child support agency

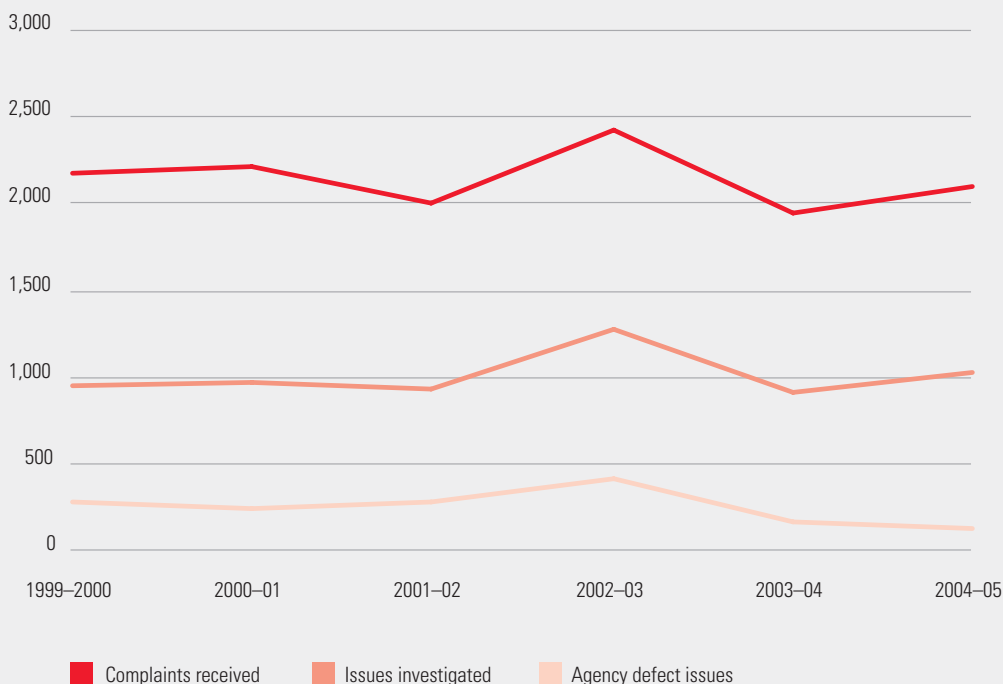
The Child Support Agency (CSA) was set up in the late 1980s to administer the Child Support Scheme, which provides for the assessment, collection and disbursement of child support. The scheme paved the way for compulsory payment of child support based on the income and earning capacity of both parents.

The Child Support Scheme operates under two statutes—the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*. Together, these Acts provide for the registration of child support cases, the calculation of a child support assessment, and the recovery and disbursement of child support payments. Payers are those paying child support and payees are those receiving child support.

Following a recommendation from the House of Representatives Standing Committee, a ministerial taskforce was convened during the year to examine the Child Support Scheme. The taskforce's report was released in June 2005. It recommended a number of significant legislative changes to the scheme, which are being considered by the government.

In 2004–05, the Ombudsman received 2,094 complaints about the CSA, compared with 1,951 last year, an increase of 7%. Complaints about the CSA account for 12% of all complaints received by the Ombudsman. See Figure 4.5 for CSA complaint trends from 1999–2000 to 2004–05.

FIGURE 4.5 CHILD SUPPORT AGENCY COMPLAINT TRENDS, 1999–2000 TO 2004–05



The main areas of complaint related to assessments, and collection and recovery of child support. Complaints about assessments focused on three matters: the application of the basic formula; decisions made under the 'change of assessment' process; and income processing. Complaints about collection and child support recovery activities included failure to collect, the method of collection, and calculation of arrears.

A complaint theme that featured this year was the registration of child support agreements and court orders. Other themes included privacy breaches in change of assessment decisions, the accuracy of income information, and compensation decisions. A brief description of the scope of our investigations in these areas follows.

REGISTRATION OF COURT ORDERS AND AGREEMENTS

Although most child support amounts are set by the CSA according to formulas contained in the child support legislation, some people independently enter into child support agreements or obtain court orders that set the amount of child support payable. A payee may register a child support agreement or court order with the CSA and may request the CSA to collect child support on their behalf. At the end of June 2004, 4.6% of child support assessments were based on agreements or court orders.

The Ombudsman received a number of complaints about the registration and enforcement of child support agreements and court orders. Two examples of the issues raised in these complaints (discussed below) related to registration errors and to unemployment clauses.

Registration errors

The Ombudsman received complaints about errors that had occurred in registering child support agreements and court orders. Often complaints did not come to light until several months, or in some cases several years, after the child support agreement or court order was registered.

In one complaint we examined, the parents had entered into a child support agreement for their two children that ended when each child turned 15 years old. Unfortunately, the incorrect end

date for the agreement was registered by the CSA. This had the effect of continuing the child support liability of one child for three years past the agreed date. The payer was subsequently assessed as having to pay child support beyond the child's fifteenth birthday, yet the complaint nevertheless raised questions about the quality controls in place to prevent simple errors from occurring. Discussions with the CSA are continuing on this issue.

Unemployment clauses

Child support agreements may contain clauses reducing the child support payable by the payer during periods of unemployment. Such clauses can state that the payer must be in receipt of income support from the government for the unemployment clause to operate. This means that even if the payer is unemployed, the child support liability will not reduce unless the payer is receiving income support from the government.

This year we investigated a complaint where the CSA incorrectly advised a payer that the unemployment clause applied. The payer advised the CSA that he was unemployed, but not entitled to income support payments from Centrelink because his partner's income was too high. The CSA said that it would activate the unemployment clause in the agreement if he provided a letter from Centrelink confirming that he was unemployed, but not eligible for an income tested payment due to his partner's income. When the payer provided the letter, the CSA accepted it and reduced the child support payable from \$184 to \$5 per week.

This application of an unemployment clause was incorrect, as the agreement clearly stated that the payer must be in receipt of income support payments to effect a reduction in his child support payments during a period of unemployment. The error was not identified until almost 12 months later when the payee questioned the payer's employment status. As a result, the CSA reviewed its decision to activate the clause and reverted the child support payable to \$184 per week effective from the date the unemployment clause was incorrectly activated. This action raised a significant debt against the payer.

The CSA has taken action to ensure that all staff are aware of the meaning of unemployment clauses in child support agreements. The CSA has also

advised that the topic will receive additional attention in future training programs.

ACCURACY OF INCOME INFORMATION

The accuracy of income information is vital to properly assess the rate of child support payable. In the absence of the last relevant year of taxable income, the CSA may seek information about a person's taxable income and supplementary income from sources such as Centrelink, the ATO, employers, and change of assessment and estimate information. The CSA has a range of investigative powers available to seek information about a client's income and financial resources.

In some circumstances, the CSA can retrospectively increase or decrease a child support assessment if it later discovers new income information. This can result either in an overpayment of child support that the payee has to repay, or a child support debt raised against the payer.

'The accuracy of income information is vital to properly assess the rate of child support payable.'

If the CSA has been responsible for collection of child support during the period over which the overpayment or debt is raised, it may take action to collect the money owed. This option may not be possible where payees have elected to collect child support privately. This was highlighted in a complaint this year where a child support debt was raised as a result of a retrospective child support assessment for the previous three to four years. The payee changed the method of collection and asked the CSA to collect the child support debt. Under the child support law, where a person transfers from private collection to agency collection, the CSA can only seek to collect a maximum of nine months in arrears. Unless the payer agrees to pay the remaining arrears privately, the payee's only recourse involves pursuing civil legal action.

Parents are encouraged to collect child support privately, and currently more than 50% of child support payments are collected this way. We are particularly concerned that the CSA take appropriate steps to ensure that income information is accurate,

given the limited options these parents have in pursuing any arrears or overpayments that may arise through correction of inaccurate incomes.

When we raised this matter, the CSA advised that there was scope for improving its procedures to identify incomes that may warrant further investigation.

PRIVACY BREACHES

The CSA holds sensitive and personal information about its clients, including other dependent children being cared for by a parent. Although this information can affect the amount of child support payable, the names of other dependent children are private and should not be released to the other party.

The Ombudsman received complaints this year about the inappropriate inclusion of the names of dependent children in documents provided by the CSA to the other party. Ombudsman staff examined two complaints in which the CSA acknowledged that it inappropriately disclosed information about these children, despite advising that the information would not be accessed by or released to the other party.

In response to our inquiries, the CSA advised that it has instituted a quality assurance process that requires all notices of decisions to be checked for accuracy and relevance of material. It is hoped that tightening this process will prevent similar breaches of privacy in the future.

COMPENSATION DECISIONS— FUTURE RECOVERY OPPORTUNITIES

A CSA client who has suffered financial loss due to the wrongful action of the agency can apply for compensation under the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme. While our investigations generally find that the CSA's client compensation decisions made under the CDDA scheme are reasonably based, we are of the view that in some instances the CSA has been too strict in its application of the scheme.

We have received complaints where the CSA admitted that it failed to collect child support owed by a payer (for example, it failed to garnishee

a bank account), but declined to pay compensation on the ground that the loss incurred by the claimant was not permanent. In other words, the CSA argued that there might be an opportunity for it to collect the arrears of child support at some time in the future.

Compensation can be paid under the Department of Finance and Administration CDDA guidelines when there has been a detriment, which is defined to mean quantifiable financial loss as opposed to financial disappointment. Accordingly, it may be reasonable to deny payment under the CDDA scheme where, for example, there has been a failure to collect child support but significant collection action is now occurring or can reasonably be expected to occur in the foreseeable future.

On the other hand, it will sometimes be speculative whether a child support debt can be realised by

future collection. For example, a payer's health may have resulted in a drastic reduction in income with few employment opportunities in the future. Consequently, there may be instances in which it may be more realistic to classify a debt that has arisen from CSA default as a permanent loss rather than as a financial disappointment that is liable to be repaid. We consider that a claimant may be disadvantaged if CDDA is denied by regarding this as a case where the payee has simply suffered financial disappointment rather than a permanent loss.

The CSA has agreed to review such cases after a reasonable time to determine if in fact a collection opportunity is likely to arise. In the event the CSA determines it is unlikely, the agency has agreed to review the decision not to pay compensation.

LOOKING AT THE AGENCIES

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.

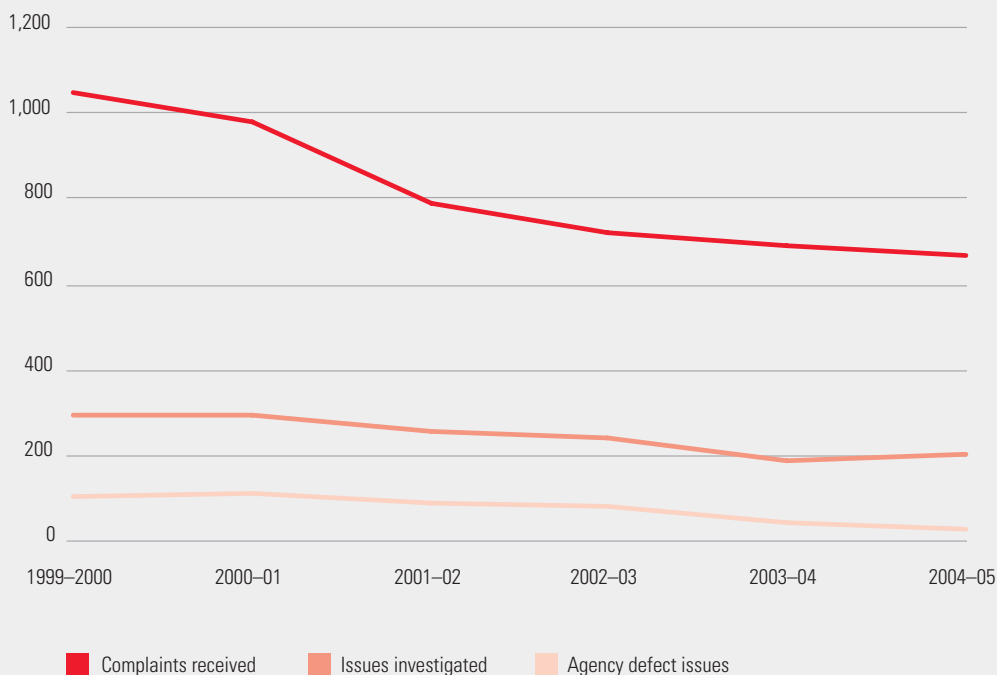
The combined DFO and Commonwealth Ombudsman jurisdiction also encompasses complaints about the Department of Veterans' Affairs (DVA), the Defence Housing Authority (DHA), Defence Service Homes and the Defence Force Retirement and Death Benefits Authority.

There has been a steady decline in the number of Defence complaints, dropping to 662 in 2004–05, compared to 690 in the previous year. See Figure 4.6 for Defence complaint trends from 1999–2000 to 2004–05.

DEPARTMENT OF DEFENCE

We received 125 complaints about the Department of Defence in 2004–05, compared to 135 in 2003–04, down 7%. Complaints included concerns from individuals who had been unsuccessful in their application to join the ADF (accounting for 12% of complaints received), and from successful and unsuccessful

FIGURE 4.6 DEFENCE COMPLAINT TRENDS, 1999–2000 TO 2004–05



applicants for contracts and tenders (accounting for 8% of complaints received).

The Department of Defence spends significant public funds each year acquiring goods and services from the commercial market through a contracting and tendering process. Given the commercial value of the contracts and tenders involved, it is not surprising that from time to time complaints are made about the way the department has managed the tenders and contracts.

Issues raised in complaints included disagreement about whether the termination of a contract was warranted, and criticism of a decision to deny a previous contractor the opportunity to tender. Our investigation of such complaints examined the level of the department's compliance with government procurement guidelines, as well as issues such as procedural fairness. The department has, in some cases, shown a commendable willingness to have its tendering processes reviewed by an external consultant, without the Ombudsman needing to suggest such an approach.

AUSTRALIAN DEFENCE FORCE

During the year, 298 complaints were received from serving and former members of the Australian Army, the Royal Australian Navy (RAN) and the Royal Australian Air Force (RAAF), a decrease of 15% on the previous year. Complaints received about the actions of the RAAF fell by 23%; the Army by 17%; and the RAN by 1.4%.

The ADF's campaign to extend measures to prevent and detect the use of prohibited substances was reflected in complaints received by the Ombudsman throughout the year. Approximately 13% of complaints finalised in the Ombudsman role were about dissatisfaction with the processes undertaken by the ADF that resulted in decisions to involuntarily discharge members.

In most of these cases, discharge action initiated by the ADF related to a finding that the member had been involved in the use of a prohibited substance. In none of the cases investigated was a recommendation made that discharge action be reconsidered. The Ombudsman instead raised with the Chief of the Defence Force (CDF) the

need for detailed documentation of termination decisions and for a quality control mechanism to ensure that briefs prepared for the decision makers are consistent with natural justice principles. It is pleasing to note that recently released Defence Instructions relating to these processes reflect a number of issues raised by our office.

It was interesting to observe throughout the year that very few complaints were received about matters such as payment of allowances (accounting for only 1% of complaints finalised) and that no complaints were received from members involved in operations overseas.

In October 2004, the Ombudsman publicly released an abridged version of a report into the investigation of a complaint by a young person (under the age of 18) of an incident involving unacceptable behaviour at a Navy training establishment in mid-1996. The complaint alleged a failure of the RAN to adequately investigate and address issues arising from an incident of an alleged sexual assault of a young woman by other RAN members.

The jurisdiction of the Ombudsman did not extend to investigating whether the complainant had been sexually assaulted; this was more properly a matter for the courts. The Ombudsman's investigation focused instead on whether appropriate action had been taken in response to her allegation, given the nature of the allegation, her age and circumstances; whether the Chief of Navy should consider taking further action; and whether RAN practices and procedures are sufficient to address any similar situation that might arise in the future.

After a detailed investigation of those matters the Ombudsman formed the view that the complaint had been substantiated. As a result of the investigation, the RAN accepted our recommendation to provide an apology to the complainant; provide appropriate investigative training for relevant RAN personnel; revise instructions to require alleged sexual assault cases to be referred to the civilian police at an early stage; reinforce the importance of accurate record keeping; and equip divisional officers to provide proper support to any person making an allegation of sexual assault. (An abridged report is available at www.ombudsman.gov.au)

Reviews

In 2004–05, two significant reviews relating to complaint management in the ADF, which will affect the DFO role in the immediate future, were completed.

Review of effectiveness of Redress of Grievance process

The former CDF, General Peter Cosgrove AC MC, and the Ombudsman sponsored a joint review of the Redress of Grievance (ROG) process in the ADF. A joint report was released in April 2005 and is available online at www.ombudsman.gov.au. Dissatisfaction with the process used and/or time taken by the ADF to investigate complaints from members has been a major source of complaint for many years. In 2004–05, this accounted for approximately 17% of complaints finalised by the DFO. Many of the issues identified in the complaint investigations were addressed in the context of the joint review of the ROG process.

It is encouraging to report that a number of the recommendations in the report have been implemented, which is having a positive impact on the timeliness and quality of ROG investigations within the ADF. The Ombudsman has met with the new CDF, Air Chief Marshal Angus Houston AO AFC, to discuss strategies for continuing the improvement process. (More detail on this review is contained in the 'Promoting good administration' chapter of this report.)

'It is encouraging to report that a number of the review recommendations in the report have been implemented ...'

Senate Inquiry Report on the Effectiveness of the Military Justice System

In last year's annual report, we summarised the concerns raised in our submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into the Effectiveness of Australia's Military Justice System. In June 2005, the committee released its report, which recommends extensive changes to the framework for the investigation of complaints about military justice issues (disciplinary and administrative action against members of

the ADF). The implications of the recommendations in the report have been the subject of discussion between the Ombudsman and the CDF.

Meetings between the Ombudsman and the CDF also provided an opportunity to discuss the DFO role in complaint resolution within the ADF more generally and to inform the CDF of issues of concern which have arisen during the investigation of complaints. The CDF has indicated that complaint management within the ADF will benefit from a closer working relationship between our two agencies.

DEPARTMENT OF VETERANS' AFFAIRS

Services administered by the Department of Veterans' Affairs (including service pension, age pension, income support supplement and allowances, disability and war widows' and widowers' pensions, allowances, special purpose assistance, Defence Service Homes Loans Scheme assistance and concession cards) impact on the daily lives of almost a half a million veterans and their dependants. During 2004–05, the Ombudsman received 203 complaints about the DVA's decisions and actions (up from 172 in 2003–04).

It was pleasing that, for complaints about delays in processing claims for compensation under the Military Rehabilitation and Compensation Scheme, we have generally been able to quickly resolve the matter by contacting the processing area and discussing any reason for delay. In some cases where such a resolution was not possible, DVA staff agreed to contact the complainant personally to explain documentation required to progress the application or to provide details of action being taken.

The Ombudsman was also able to assist complainants to understand and accept that the DVA had in fact applied the current, often complex, legislation and policy correctly. This applied particularly in regard to compensation offsetting arrangements, where a disability pension can be reduced if a lump sum payment of compensation is received for the same injury or illness from another source.

Legislative changes

During 2004–05, a number of legislative changes impacted on the administration of veterans' entitlements by the DVA.

Military Rehabilitation and Compensation Act 2004 (enacted 1 July 2004)

All claims relating to injury, disease or death due to service in the ADF will be dealt with under the provisions of the new Act, rather than requiring consideration under two separate schemes (the *Veterans' Entitlements Act 1986* and the Military Compensation and Rehabilitation Scheme). The transition to the new scheme has not generated any substantial change to the number or nature of complaints referred to us for consideration.

Administrative Appeals Tribunal Amendment Act 2005 (enacted 16 May 2005)

The Act introduces what are considered to be significant reforms to the practices and procedures of the Administrative Appeals Tribunal, which will affect individuals who progress their claims with the DVA through the appeals process. Among the changes is an expansion of alternative dispute resolution processes available to the tribunal and greater flexibility for the tribunal in allocating resources so that panels can be constituted by members with the expertise and experience required to resolve the matter. The Ombudsman's office will monitor how the changes contribute to the timely resolution of disputes about decisions made by the DVA.

Delay in decision making

In 2005–06, the Ombudsman will liaise with the DVA about the strategies the department has put in place to facilitate more timely decision making in relation to requests, and applications for review of decisions, under the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme provisions.

The Ombudsman has investigated a range of such complaints about the DVA in recent years. Some matters have gone on for some years before the complainant approaches our office for assistance.

Unfortunately, our investigation of such complaints has often also become protracted. One factor that can extend the time taken to resolve such complaints is the nature of the administrative deficiency being claimed by the individual, which can require

detailed research of complex pension-processing arrangements. In a number of instances, the issues involved have necessitated the involvement of senior officers within both agencies, rather than a more informal approach.

During the year, we discussed the issue of delays in the resolution of matters being investigated by the Ombudsman and involving the DVA. An observation of this office for many years is that legalistic approaches to complaints can often contribute to delays and detract from finding simple administrative solutions to them. As with some other agencies, this has been a feature in a number of the cases we have discussed with the DVA during the year. We have begun productive discussions with the DVA about this issue and will continue to liaise with the department about ways in which to seek speedier resolution of matters.

'An observation of this office is that legalistic approaches to complaints can often contribute to delays and detract from finding simple administrative solutions to them.'

DEFENCE HOUSING AUTHORITY

The Defence Housing Authority (DHA) is responsible for providing housing and relocation services for entitled members of the ADF. The role includes providing property maintenance as required. DHA staff also calculate all allowances and entitlements for ADF personnel who are moving to a new posting as part of the relocation process.

We received 24 complaints about the actions and decisions of the DHA in 2004–05, compared to 23 in the previous year. The majority of the complaints considered related to the suitability of housing provided. In most cases we were able to resolve the matter quickly through informal liaison with DHA representatives.

LOOKING AT THE AGENCIES

immigration

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) continued to be a significant source of complaints to the Ombudsman during 2004–05. Overall, we received 873 complaints about DIMIA, compared with 865 complaints in 2003–04. See Figure 4.7 for DIMIA complaint trends from 1999–2000 to 2004–05.

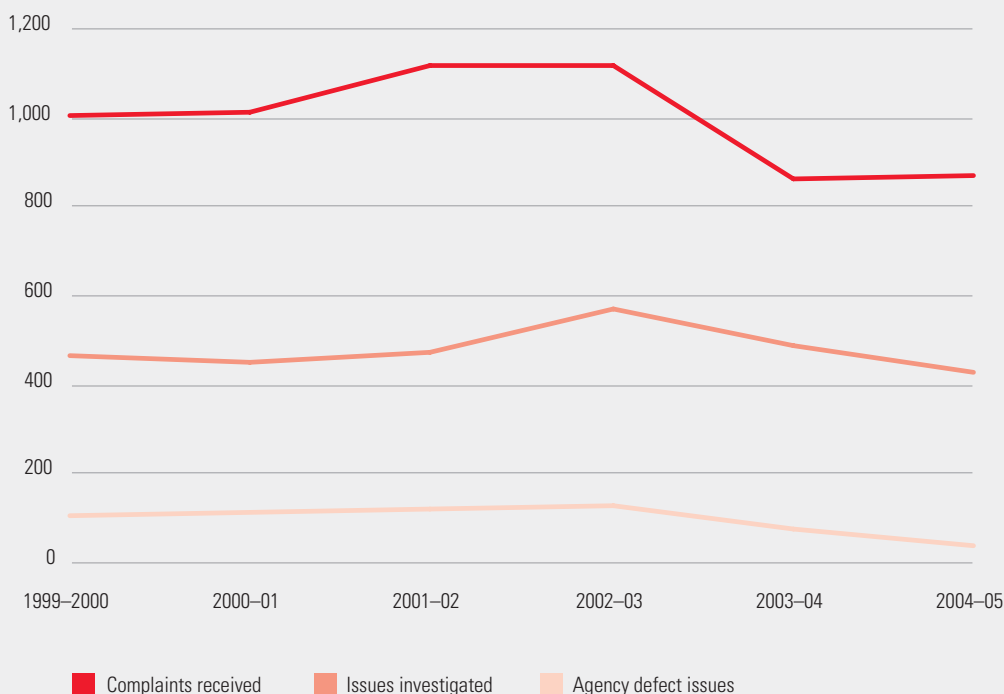
Complaints about DIMIA can be categorised into three distinct areas: migration issues, which are usually about decisions on visa applications; immigration detention issues raised by or on behalf of detainees; and other issues such as freedom of information (FOI) applications

and citizenship processes. Complaints about migration issues continue to form the largest category.

NEW IMMIGRATION FUNCTIONS FOR THE OMBUDSMAN

In June 2005, Parliament passed amendments to the *Migration Act 1958*. These changes give the Ombudsman a statutory role in reviewing the cases of detainees who have been held in immigration detention for more than two years (cumulative), with follow-up reviews every six months if the person remains

FIGURE 4.7 DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS COMPLAINT TRENDS, 1999–2000 TO 2004–05



in detention. This statutory monitoring role will substantially enhance our capacity to oversee the administration of important and sensitive legislation that can have a major impact on people's lives.

Shortly after the end of the reporting year, in July 2005, a report from an independent inquiry conducted by Mr Mick Palmer into the immigration detention of Ms Cornelia Rau was followed by an intense public and political focus on immigration issues. Arising from this report, the government proposed enhancing the role of the Commonwealth Ombudsman in immigration matters by designating the office as the Immigration Ombudsman and providing additional funding. The development of these new functions will be reported on in our 2005–06 annual report.

'This statutory monitoring role will substantially enhance our capacity to oversee the administration of important and sensitive legislation ...'

ISSUES ARISING IN COMPLAINT HANDLING

In general we investigate a higher proportion of the complaints we receive about DIMIA (43% in 2004–05), than the general average of 33% across all Australian Government departments and agencies. This reflects our experience that DIMIA does not have a robust complaint-handling system in place. Where an agency does have such a system, we feel more confident in suggesting that complainants take up their concerns with the agency involved in the first instance. We can also focus our efforts on dealing with more complex or systemic matters, and on periodically reviewing the effectiveness of the complaint-handling arrangements.

During the year, we continued to discuss this matter with DIMIA, which is working on developing an improved and expanded internal complaint-handling system. We also experienced delays in getting responses from DIMIA to some matters we raised in the course of investigations. We will continue to address these issues with DIMIA during 2005–06.

DETENTION

The Ombudsman and other staff made a number of visits to immigration detention facilities during the year including Villawood Immigration Detention Facility (IDF), Maribyrnong IDF, Baxter IDF, the Port Augusta Housing Project, Brisbane Women's Correctional Centre, Arthur Gorrie Correctional Centre, the Perth Immigration Detention Centre and the Christmas Island IDF.

Many detainees who approached us during these visits complained about access to medical services, including dental, psychiatric and specialist services. Their concerns included delays in referrals to specialists and other appropriate services, the frequency of visits by medical staff to IDFs, and the quality of medical services. These concerns were exacerbated in isolated locations such as Baxter in South Australia. We expect to have a specific new role in relation to medical services as part of our broader Immigration Ombudsman function.

Restrictive placement and accommodation—Red One

During the year, we pursued the issue of detainees being placed in more restrictive accommodation units at IDFs. Particular concerns related to the processes, procedures and practices of the Red One 'behavioural management compound' and the 'management unit' at Baxter IDF. A prominent issue was whether Red One is appropriate and adequate as a behaviour management tool, and whether due regard is paid to each individual's circumstances.

DIMIA and the IDF service provider, Global Solutions Limited (GSL), are revising the operational procedures that deal with detainees being placed in more restrictive regimes. This revision is in response partly to the concerns we raised and partly to the issues uncovered during the Palmer Inquiry.

We will continue to monitor the development and implementation of appropriate procedures. One option is to conduct an own motion investigation into the use of such restrictive placement and accommodation.

'We will continue to monitor the development and implementation of appropriate procedures.'

Assaults

In May 2004, we wrote to DIMIA expressing concern over the way in which allegations of assaults within IDFs were being investigated by DIMIA and GSL. Our concerns included:

- confusion over responsibilities for reporting, investigating and referring matters (including to State and federal police)
- the quality of information referred to the police, which is used as the basis of their decision to investigate or not investigate
- delays in access to a medical assessment
- delays in reporting allegations to police and lack of direct access by detainees to police
- lack of feedback to detainees on the status and outcome of investigations.

We recommended a number of changes, including:

- providing better information to detainees on how allegations of assault will be dealt with
- improving arrangements for, and direct access to, medical officers
- having more rigorous processes in place for internal investigation where the matter is not referred to the police
- arranging for police to have immediate access to detainees
- providing better feedback to detainees on the progress and outcomes of investigations.

We are pleased that DIMIA has accepted the majority of our recommendations. Specific amendments have been made to the GSL operational procedures to reflect our recommendations. We are continuing to discuss the outstanding issue of the amount of information provided to detainees on the outcome of investigations.

Maintenance costs arising from detention

We received a number of complaints relating to the costs incurred by detainees when in detention centres. Migration policy instructions specify that detained non-citizens should be informed of the likely costs as soon as detention commences, and be given updated information weekly. This policy has not been complied with in a number of cases. It is therefore not surprising that concerns are raised when detainees receive

notification of sizeable debts at the end of their detention period.

We recommended that DIMIA take steps to ensure that officers are aware of the guidelines relating to detention costs and that they comply with migration instructions.

Videotaping incidents in detention centres

When we are investigating alleged incidents at detention centres, DIMIA provides us with any relevant videotapes. We have appreciated DIMIA's willingness to provide these tapes, but have raised some concerns about the quality of the tapes.

DIMIA considered that the quality of the footage was generally adequate, given the context within which it was taken. The department did acknowledge it needed to strengthen its records management guidelines to articulate more clearly the procedures for handling electronic media such as video footage. DIMIA is now developing new guidelines.

COMPLIANCE ACTIVITY

In our 2003–04 annual report, we foreshadowed our intention to concentrate on complaints about compliance activity in 2004–05. To facilitate this, we modified our complaints management system to separately identify complaints about compliance activity.

We finalised 26 complaints about compliance activity during the year. These complaints largely related to the use of search and entry powers and the demeanour of DIMIA officers in discharging their duties. We also held a number of meetings with DIMIA staff throughout the country to better understand the issues involved. We will continue to pay close attention to compliance issues during 2005–06.

It is important to ensure that compliance activity is carried out with due regard to the legislation and proper procedures. The following two cases on which formal reports were made under s 15 of the Ombudsman Act illustrate the issues we encountered during the year.

In one case, a person alleged that DIMIA officers took him from his home to an IDF. He complained to DIMIA that the keys to his home were missing,

and subsequently so had many of his personal possessions. When we made preliminary inquiries, DIMIA told us that State police officers had taken him to the detention facility. However, he continued to maintain they were DIMIA officers.

Our subsequent investigation was lengthy and difficult. DIMIA could provide no satisfactory record of the events under examination, and there was no relevant documentation. We were eventually able to conclude that the complainant had, in fact, been removed from his home by State police officers, not DIMIA officers.

We reported our findings to DIMIA, making a number of recommendations, which included the need for DIMIA to:

- conduct remedial training for all compliance officers in its regional offices about the legal and policy requirements for the recording of significant official actions, including the transfer of custody of detained persons
- put into writing any 'informal agreements' it had with local police services about the police removing people into an IDF
- remind its compliance managers of the requirement to regularly audit registers of official notebooks
- issue national guidelines about how official notebooks are to be issued, returned and accounted for
- review the conduct of an individual DIMIA officer.

DIMIA subsequently implemented most of our recommendations and is in the process of implementing the remainder. The Minister also acknowledged the seriousness of our findings and undertook to consider them in light of the government's response to the Palmer Inquiry into the circumstances of the immigration detention of Ms Cornelia Rau.

'DIMIA subsequently implemented most of our recommendations and is in the process of implementing the remainder.'

The other case related to a complaint from a person who was being held in an IDF about DIMIA unduly

delaying making a decision on his application for a Bridging Visa E (BVE). The Migration Act provides that such applications must be decided within two working days, failing which the applicant is taken to have been granted a visa. If the applicant and the department agree, the timeframe can be extended.

During our investigation we raised concerns about a number of matters, including:

- adequacy of record keeping—there was no record of critical events relating to the statutory requirement that the detainee and DIMIA had to reach agreement to extend the normal two-day deadline for processing of his BVE application
- timeliness of departmental decisions and failure to provide appropriate notification
- apparent lack of a structured departmental process for tracking the processing of, and eventual decision on, BVE applications.

In the light of those concerns, we made a number of recommendations that DIMIA accepted, including procedural changes to:

- amend internal instructions to ensure that agreements with detainees are appropriately documented and signed by both parties
- notify in writing a person who has lodged an invalid visa application
- improve quality assurance and administrative procedures to ensure that all decision making is lawful, timely and in accordance with departmental instructions.

Visa cancellations for long-term Australian residents

During 2004–05, we received several complaints from long-term Australian residents whose permanent residency had been cancelled under s 501 of the Migration Act. Under s 501, the Minister or a delegate can refuse or cancel a visa on character grounds. Each of the complainants had been in Australia for many years and was then held in detention facing possible removal from Australia.

These complaints raised a number of concerns about how s 501 cancellations relating to long-term Australian residents are being administered. As a result, we commenced an own motion investigation, which is due to be completed in the first half of 2005–06.

MIGRATION ISSUES

Regulating migration agents

The Migration Agents Registration Authority (MARA) is responsible for overseeing the registration of migration agents and for investigating complaints about their actions. It is important for an agency that discharges a regulatory role of this kind to deal with complaints received by the agency properly and fairly.

In one instance investigated by our office, MARA had received a number of complaints against a migration agent and had written to him requiring that he respond to the complaints by a particular date. The agent requested an extension of time but his request was refused. He then complained to the Ombudsman about this decision.

We investigated and concluded that MARA's decision to refuse the extension of time was one that was reasonably open for it to make in the circumstances. However, we were concerned that MARA had not responded to the agent's request until two weeks after the due date expired. The problem appeared to arise because a decision on this issue could only be made by the Board, which meets infrequently, and on this occasion did not meet until after the deadline expired. We were also concerned that MARA had not provided any reasons for the refusal of the request.

In response, MARA agreed to put in place a process to keep agents informed about processing of their requests. MARA also agreed that notices of decision issued by the Authority will contain full details of the reasons for the decisions.

Advice to applicants

Applying for a visa can be a complex and lengthy process, and in some cases applicants may incur costs in addition to the application fee. It is important that DIMIA provide clear information to applicants about liability for costs.

We received a complaint from a person whose mother applied for a tourist visa in India and had to undergo a number of medical examinations in order to receive a visa. She complained about the costs of these examinations and alleged that they were unnecessary.

We considered that DIMIA's actions were not unreasonable, but that the information provided

to potential visa applicants relating to the cost of health checks could be misleading. We recommended that DIMIA improve the advice it provides in such cases. DIMIA is amending its forms to alert applicants to the potential costs for certain medical examinations.

Interpreting legislation

The Migration Act and the regulations made under the Act are complex. It is essential that DIMIA staff understand the legislation and apply it correctly in their decision making.

A migration agent complained to us about a number of cases where applicants needed to prove that they had been employed in their nominated skilled occupation for 24 months during the period of 36 months immediately before making an application for a permanent visa. In each case, the applicant was employed with an individual employer for a period greater than the 36-month period.

DIMIA initially refused the applications on the basis that a period of employment in Australia must not be counted unless the person held a substantive visa authorising him or her to work during that period, and that they complied with the conditions of the visa. Even though each applicant had a substantive visa allowing them to work during the relevant 36-month period, they had also worked for the same employer earlier while on a bridging visa. The decision maker disallowed the entire period with the employer, rather than only that period while the applicant was on a bridging visa.

We took the view that in each of the cases DIMIA was not correctly interpreting the legislative provisions. DIMIA accepted our view, subsequently vacated the original decisions and continued to process the applications.

Notification of decisions

It is important for DIMIA to correctly notify visa applicants of decisions, as the time in which to appeal a decision is limited. In some cases, errors by applicants or their migration agents may compound problems.

A complaint received from a person's migration agent in mid-2004 raised concerns about DIMIA refusing his client a visa application in March

2002 without advising her of the decision.

By this time, she was well outside the statutory time limit of 21 days in which she could apply for review by the Migration Review Tribunal (MRT). The agent had asked DIMIA to renotify the decision, but DIMIA refused. The client was 80 years old and about to leave the country.

DIMIA had sent the original decision letter to a post office box no longer used by the migration agent. The agent had recorded the incorrect address in one field of a form. Elsewhere in the form, however, and in other documents, the agent had recorded the correct address. The agent had also made several attempts to contact DIMIA about the visa application, but DIMIA had not responded.

The relevant regulations require DIMIA to address the document to 'the last address for service provided to the Minister by the recipient for the purposes of receiving the document'. We considered that, while some responsibility for the error lay with the agent, the serious effect of refusing to renotify may represent an unjust application of the regulations in these circumstances.

During our investigation DIMIA decided to renotify in August 2004, enabling an appeal to be submitted to the MRT.

Applying online

Australian citizenship and a number of visas can be applied for online, making the process faster and easier for people. However, in some cases this may introduce other problems.

This was illustrated in a complaint which alleged that, during an incomplete online application process, DIMIA had taken \$120 from a person's credit card without authorisation. The client believed that her attempt to complete an application for citizenship on DIMIA's website had failed because the computer had 'crashed' before she could formally submit the application and authorise payment. DIMIA's computer records showed that the online application transaction had been successfully completed.

DIMIA initially rejected the complainant's refund claim, stating that the legislation prevented DIMIA from refunding the application fee based on a change of mind by an applicant. The complainant maintained that she had not changed her mind. She had believed that her online application had not been successfully processed. Our inquiries revealed that there had been a problem with DIMIA's system and, while the transaction had been completed at DIMIA's end, the complainant had been unaware of this at her end.

Following our inquiries, DIMIA reviewed its decision and agreed to give her the benefit of the doubt, refunding the application fee of \$120.

law enforcement

Two law enforcement agencies fall within the Ombudsman's jurisdiction—the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). During 2004–05, the Ombudsman's office was actively engaged across a range of issues in oversighting the law enforcement responsibilities of those agencies. Major activities included handling complaints about actions taken by the law enforcement agencies, oversighting the use by those agencies of intrusive powers, and completing several own motion investigations.

This section provides an overview of the activities undertaken by the Ombudsman's office this year in relation to the two law enforcement agencies.

Table 4.1 lists the functions of law enforcement that come within the Ombudsman's independent complaint and oversight role and the legislative underpinning for each role.

The oversight of the AFP's complaint handling constitutes the majority of our work in law enforcement. This is largely because of the AFP's high level of interaction with the public (especially through community policing in the ACT) and the requirement, specific to the AFP, that all complaints received by the AFP be disclosed to the Ombudsman for external assessment. The Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the ACT Ombudsman

TABLE 4.1 LEGISLATIVE BASIS FOR COMMONWEALTH OMBUDSMAN OVERSIGHT OF LAW ENFORCEMENT ACTIVITIES

Legislation	Function
<i>Complaints (Australian Federal Police) Act 1981</i>	Investigating complaints about Australian Federal Police members in international, national and community policing roles Monitoring the practices and procedures of the AFP
<i>Telecommunications (Interception) Act 1979</i>	Inspecting compliance with the record-keeping requirements of the Act
<i>Crimes Act 1914</i>	Reporting to Parliament on the adequacy and comprehensiveness of controlled operations records
<i>Australian Crime Commission Act 2002</i>	Reporting to the Parliamentary Joint Committee on the Australian Crime Commission about the ACC's involvement in controlled operations
<i>Witness Protection Act 1994</i>	Investigating complaints from people placed on the National Witness Protection Program or from unsuccessful applicants
<i>Australian Security Intelligence Organisation Act 1979</i>	Investigating complaints about AFP members relating to detention of and questioning warrants for suspected terrorists
<i>Ombudsman Act 1976</i>	Investigating complaints about the Australian Crime Commission, the Building Industry Taskforce and CrimTrac
<i>Surveillance Devices Act 2004</i>	Inspecting compliance with the Act
<i>Workplace Relations Act 1996</i>	Inspecting compliance by Building Industry Taskforce members with the record-keeping requirements of the Act

function, which includes ACT Policing (see www.ombudsman.act.gov.au).

AUSTRALIAN FEDERAL POLICE

The Ombudsman's office and the AFP share responsibility for investigating complaints about the AFP and AFP Protective Service members. The AFP's Professional Standards team investigates most complaints about AFP members. The Ombudsman reviews all AFP complaint investigations conducted by the Professional Standards team and, where appropriate, conducts other independent inquiries and investigations.

During the year, the AFP's community policing role remained the primary source of complaints, the majority of which were resolved through workplace resolution. Most complaints were of a relatively minor nature and concerned the alleged conduct of police, such as incivility or rudeness. Under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act), the AFP conciliates these complaints directly between the complainant and senior operational staff through its workplace resolution process. When a complaint is finalised through this process, the AFP provides a report to the Ombudsman explaining how the AFP managed or investigated the complaint.

Many police complaints were effectively resolved with an explanation of police powers and priorities, or acknowledgment of a relatively minor mistake by a member. One example concerned the execution of a search warrant on the wrong person: the person had a name similar to the person for whom the search warrant was intended. The AFP apologised to the person, explained how the mistake had been made and acknowledged the need for due diligence in future when providing details for search warrants. Another complaint related to the execution of a recovery order on a young child—this resulted in a change to the AFP Practical Guide on actioning Family Law Court process.

The AFP's Professional Standards team formally investigates serious complaints about police actions, with greater involvement from Ombudsman staff. We received briefings on the progress of investigations, and worked with

AFP investigators to ensure the appropriate management of systemic issues and contact with complainants. We reviewed all complaint investigation reports and were generally satisfied that investigations were comprehensive and robust.

The majority of our requests to the AFP concerned the need for the AFP to persevere with a complainant in resolving a problem. In one case, we asked the AFP to persist in arranging a conciliation meeting despite problematic behaviour from the complainant, who alternately was insisting on a conciliation but then declining to participate. We also asked the AFP to deal with substantive issues raised by a complainant who appeared to have been prevented from providing information relevant to his complaint.

For some investigations, we requested the AFP to reconsider certain aspects of, or responses to, complaints. The AFP's responses to our requests were invariably professional and helpful, which is illustrative of the mature relationship between this office and the AFP.

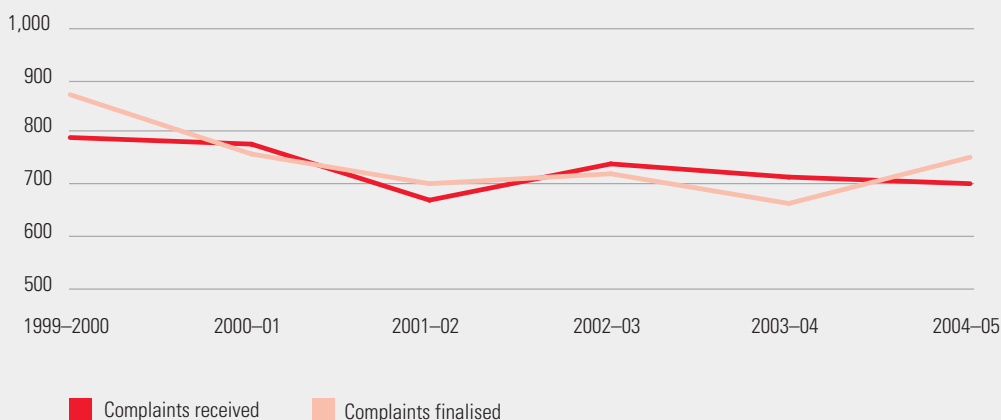
Complaints overview

In 2004–05, the Ombudsman's office received 696 complaints about the AFP, compared to 712 in 2003–04, a decrease of 2%. There was an increase in complaints finalised, to 751 from 664 in the previous year (up 13%). Fluctuations in complaint numbers have occurred over the past six years, as shown in Figure 4.8.

This year, we continued to observe that many complainants remained dissatisfied with the explanations for police actions provided to them through the conciliation process. In most cases, we felt that the conciliation represented an adequate approach to the complainant's concerns. Despite dissatisfaction from the complainant, we decided that further consideration by our office was not warranted for the 258 unsuccessful conciliations.

Even when the result of a workplace resolution process may not be the outcome sought by the complainant, the process is nearly always beneficial. The process achieves improved understanding by all parties involved in the complaint, and the complainant has the opportunity to discuss the matter directly with senior police.

FIGURE 4.8 AUSTRALIAN FEDERAL POLICE COMPLAINT TRENDS, 1999–2000 TO 2004–05



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

Discretionary decision making

Ombudsman staff have worked collaboratively with the AFP since 2003 on a project to improve administrative processes associated with the adjudication of traffic infringement notices (TINs). The project was initiated because of the high level of complaints over a number of years about the AFP's traffic adjudication responsibility.

The project has led to changed administrative practices, including those relating to the AFP's role in deciding whether to withdraw an individual TIN or to allow the dispute to be resolved in court. The Ombudsman is confident the changes will reduce complaints about the AFP in this area. The Ombudsman provided the results of the project to the AFP Commissioner in early July 2005.

In 2004–05, a significant number of complaints about ACT Policing related to TINs—specifically about rudeness or bias on the part of the officer issuing the TIN. It appears that members of the public felt they were not treated respectfully, or that the AFP officer issuing the TIN was not prepared to consider exercising the discretionary power available to the officer not to issue a TIN.

We continued to emphasise that decisions by AFP members that impose a financial penalty on a person

(for example, through the issue of a TIN or a defect notice) or deprive a person of their liberty (through arrest or a refusal to grant bail), should include consideration of any available discretionary powers to take a different course of action.

The reality of operational policing is that AFP members are required to make decisions in pressured circumstances and often when dealing with people who are agitated or aggressive. While the focus in policing is upon maintaining appropriate control of the situation and circumstances, it is also important that AFP members allow people to explain their actions and request the application of police discretion.

Special investigations

Ombudsman staff worked on four special investigations under powers conferred by the Complaints Act. Two investigations were completed in 2004–05, with the other two investigations to be completed in 2005–06.

One of the investigations examined the adequacy of an internal AFP investigation of alleged corrupt behaviour in the building and accommodation area of the AFP. Following notification by the AFP to the Ombudsman of a series of complaints and internal allegations of possible corruption, it was agreed that the Ombudsman's office would oversight the AFP's internal investigation of the matter.

The investigation focused on two issues: the AFP's ability to identify systemic weaknesses that might

have enabled the individual concerned to act corruptly; and whether the AFP's response to the individual's actions was appropriate. We recommended that the AFP Commissioner implement all of the recommendations made by the internal investigation, and consider the apparent systemic failures within the AFP that contributed to the incident. The Commissioner accepted the recommendations and has commenced implementation. He also advised that he has referred the matter to the Director of Public Prosecutions and that criminal charges have been laid. We will continue to take an interest in this matter.

Witness protection program

We received two complaints about the AFP's administration of the National Witness Protection Program (NWPP).

One complaint was from a person who stated that he was offered participation in the NWPP if he assisted the AFP and that the offer was withdrawn when the person was considered 'less useful' to the AFP. This matter raised potentially serious issues for the administration of the NWPP, as participation in the program cannot be used to induce a person to cooperate with police; an offer of that kind would be in contravention of the Witness Protection Act.

The process of deciding who will be accepted as a participant in the program is handled by a specialist area of the AFP that must consider a range of factors separate from the assistance that a person may have provided in an investigation. The making of 'informal' offers might jeopardise the effective operation of the NWPP.

In this case, records showed that the AFP case officers made a formal request for the complainant and his partner to be considered for entry into the NWPP, and that after an appropriate assessment of the complainant's circumstances, this request was rejected. The AFP was also able to satisfy Ombudsman staff that the AFP officers involved were careful not to create an expectation of witness protection when dealing with the person. This was supported by detailed notes prepared at the time by the AFP about the interaction between its members and the person.

The second complaint concerned promises that the AFP allegedly made to a person before

assessment of the complainant's suitability to enter the NWPP. The person also made complaints about the standard of accommodation provided during the time that they were under the AFP's protection. This investigation will be completed in 2005–06.

AFP powers to combat terrorism

Recent amendments to the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) provide for the entry and search of property by police in order to arrest and detain persons on behalf of the Australian Security Intelligence Organisation (ASIO). The ASIO Act amendments preserve the complaints role of the Commonwealth Ombudsman under the Complaints Act, by confirming that a detainee can complain about the actions of AFP members making an arrest or overseeing detention.

During the year, we provided a submission to a review of ASIO questioning and detention powers being conducted by the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Defence Signals Directorate. We also worked 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 did not receive any complaints in 2004–05 arising from the amendments to the ASIO Act.

Australian Federal Police Protective Service

The number of complaints received by, or notified to, our office concerning the Australian Federal Police Protective Service (AFPPS) in 2004–05 was 46, compared to seven in the previous year. This increase was an expected consequence of the AFPPS falling under the proactive notification requirements of the Complaints Act from July 2004.

The complaints received about the AFPPS fell broadly into two categories:

- airport security issues—complaints from people who had been delayed by having to undergo explosives trace detection tests in airports, and from drivers who had been issued with parking tickets for illegal parking at airports
- personal protection being given to VIPs and diplomatic staff—complaints primarily about AFPPS members undertaking diplomatic escort or protection duties who directed members of the public to move on.

We also received complaints associated with AFPPS activities at Parliament House from people who were dissatisfied with the way in which AFPPS members spoke to them.

The AFPPS reported a serious matter to the Ombudsman during the year concerning an AFPPS member who was using a mobile phone to photograph women travelling on escalators. During investigation by the AFP's Professional Standards team, the member admitted to misconduct and subsequently resigned from the AFPPS. The AFP decided not to lay criminal charges against the member, and we were satisfied that the complaint has been managed appropriately.

AUSTRALIAN CRIME COMMISSION

Complaints against the ACC are managed under the Ombudsman Act. While the ACC is not required to proactively report complaints to the Ombudsman's office, we have appreciated a strong and open working relationship with the ACC. The ACC notifies the Ombudsman's office about any significant matters, allowing us to consider whether further investigation by Ombudsman staff is warranted.

During the year, we conducted a follow-up investigation into the ACC's response to the recommendations from independent consultants and our own investigation of alleged corrupt activity by two former secondees. In response to the allegations, the ACC had developed policies and programs to promote professionalism and integrity within the ACC as primary elements of a corruption risk management approach. The Ombudsman formed the opinion that the actions taken by the ACC were appropriate and proportional responses to the issues, and indicated that further investigation of this matter was not warranted.

Ombudsman staff also conducted an own motion investigation into the ACC's conduct of controlled operations carried out by the ACC under State and Territory legislation. The results of this investigation are discussed later in this section.

Complaints

In 2004–05, we received 12 complaints about the ACC, compared to six last year. Three of the complaints related to issues of property. We are not obliged to refer all complaints to the ACC. The ACC has been highly responsive to the complaints referred to it, as demonstrated below.

One of the property complaints related to the ACC's failure to return seized property and to respond to freedom of information (FOI) requests about the property. Following our inquiries, the ACC quickly remedied the situation by providing compensation for the property that had been destroyed, revising its procedures to ensure adherence to FOI statutory time limits, and reviewing its exhibit management policies and procedures.

We received briefings from the ACC about non-property related complaints, which we decided did not warrant further investigation. Complaints related to matters such as a person's concern that they were under surveillance by the ACC, the application of proceeds of crime legislation, and aspects of a major operation conducted by the ACC and its management of a registered informant connected to that matter.

We also conducted a formal investigation into a complaint about the ACC relating to the National Witness Protection Program. The complainant alleged that the ACC had misled him about participation in the witness protection program and whether he was entitled to immunity for certain offences he had committed. Ombudsman staff found no grounds for criticism of the ACC in this matter. The process of reviewing these activities was complicated by an ongoing, difficult and rapidly evolving operational context that involved three law enforcement agencies and understandably dispersed communication between the complainant and the ACC. A number of observations were made to the ACC highlighting the importance in this context of accurate and contemporaneous record keeping. The ACC has taken action to further enhance its informant handling procedures.

MONITORING AND INSPECTION ACTIVITIES

The Ombudsman's monitoring and inspection role expanded during 2004–05 with passage of the *Surveillance Devices Act 2004* and amendments to the *Workplace Relations Act 1996*. The office's monitoring and inspection role now encompasses the following areas:

- telecommunications intercepts by the AFP and ACC
- use of surveillance devices by the AFP and ACC and, in some instances, use of Commonwealth powers by State law enforcement agencies
- controlled (covert) operations by the AFP and ACC
- the use of compliance powers by members of the Building Industry Taskforce under Part VA of the *Workplace Relations Act*.

The initial inspections of the use of surveillance devices by members of the AFP and ACC, and the use of compliance powers by members of the Building Industry Taskforce, will be conducted in the first half of 2005–06. Inspection methodologies and checklists were developed during the year in preparation for the first inspections of surveillance device records.

The Ombudsman sponsored inspection workshops in November 2004 and June 2005. Representatives from agencies with similar accountability responsibilities (such as State Ombudsmen) attended the workshops, which offered a forum to share best practice and other information.

Telecommunications interceptions

Under the *Telecommunications (Interception) Act 1979* (TI Act), the Ombudsman is required to inspect the records of the AFP and the ACC to ensure the accuracy of records and the extent of compliance of the records in accordance with the provisions of the Act.

A report on these inspections is then presented to the agency and later to the Attorney-General. Ordinarily, two inspections of each agency are carried out each year, but in 2004–05 three inspections were conducted because of a change

in practice within the office concerning the inspection period covered by a report. Three inspections were conducted at the AFP (including a regional inspection) and three at the ACC.

Reports on the results of the inspections covering 2003–04 were presented to the Attorney-General in September 2004. The reports provided to the agencies after each inspection concluded that there is a high degree of compliance with the detailed record-keeping requirements of the TI Act. We did make some recommendations for improving the administrative and compliance systems of both agencies and for assisting staff in administering telecommunications interception warrants.

We have been grateful for ongoing policy assistance from staff from the Attorney-General's Department in clarifying issues relating to the TI Act.

Controlled operations

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

During the year, four inspections of controlled operations records were conducted. Two inspections were conducted at the AFP and two at the ACC. The inspections concluded that with some minor exceptions both agencies are complying with the requirements of the *Crimes Act* and providing comprehensive information in formal reports. These inspections resulted in reports to both agencies, a briefing to the Parliamentary Joint Committee on the ACC, and an annual report for 2003–04 presented to the Parliament in December 2004.

As stated in our 2003–04 annual report, following a briefing by the Ombudsman to the Parliamentary

Joint Committee on the ACC in October 2003, an own motion investigation was initiated into record keeping related to ACC controlled operations authorised under State or Territory legislation. These operations were not caught by the mandatory inspection requirements of the Crimes Act. The purpose of the investigation was to assess the adequacy of the mechanisms the ACC had developed for ensuring that controlled operations complied with State and Territory legislative requirements and administrative best practice. The Ombudsman investigation looked also at whether there was any indication that the ACC was choosing to conduct controlled operations under particular State or Territory legislation in order to minimise

the application of the Commonwealth accountability framework to controlled operations.

Ombudsman staff reviewed the application, authorisation and record-keeping practices of the ACC for all jurisdictions in which ACC controlled operations occurred. The investigation found no evidence that the ACC was choosing to conduct and/or participate in controlled operations under particular State legislation in order to escape the rigour of Commonwealth controls. There was no basis to criticise the ACC for the way in which it was handling controlled operations under State laws. We provided results of the investigation to the ACC and the Parliamentary Joint Committee into the ACC in April 2005.

other agencies

The jurisdiction of the Commonwealth Ombudsman extends to nearly all Australian Government agencies. However, the vast majority of the complaints we receive relate to the agencies covered earlier in this chapter. The remaining 2,002 (or 12%) of the complaints we received in 2004–05 related to 84 agencies in 16 portfolios. Table 4.2 sets out the ten other agencies about which most complaints were received.

This section provides some examples of complaints handled by the Ombudsman and the themes taken up by the office, to illustrate the diversity of issues handled each year. These examples show the variety of situations in which people seek assistance in handling the difficulties they encounter with government. Complaints also present an opportunity to improve government administrative practice.

Some of the more interesting complaints came from agencies that do not make the list of ‘top ten other agencies’, as can be seen from the complaint issues relating to the Department of Family and Community Services (FaCS).

DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

During 2004–05, significant changes were made to the policy responsibilities of FaCS. Previously, the department had policy responsibility for most payments and programs administered by Centrelink. Responsibility for a number of these assistance programs and payments has been transferred to the Department of Education, Science and Training and the Department of Employment and Workplace Relations (DEWR).

We gave particular attention to three areas of FaCS’s responsibility during the year: the \$600 one-off payment for families; the marriage-like relationship policy; and the extension of advance payments.

\$600 one-off payment for families

The 2004 Budget provided that a \$600 one-off payment (per child) would be paid to families who,

on Budget night on 11 May 2004, were entitled to receive fortnightly instalments of Family Tax Benefit Part A (FTB). The bonus payment was to be paid in June 2004.

Following the introduction of this bonus payment, we received complaints about non-payment of the entitlement by Centrelink. Some parents had been told that they could not be paid the bonus payment in June because their FTB had been cancelled or suspended for various reasons prior to Budget night. This was despite the fact that their FTB had since been restored and backdated.

FaCS had taken the view that some parents were not eligible to receive the payment in June 2004 because of the terms of the family assistance legislation. However, a special administrative scheme had been established to ensure that those families would be paid by September/October 2004.

We took the view that there was no legal reason why these families should wait until September/October 2004 to be paid. FaCS agreed with this view and took steps to ensure that appropriate payments were made. FaCS later advised that the number of customers paid as a result of our office’s inquiry was 6,117, with a total outlay of \$3.32 million.

Marriage-like relationships

Numerous complaints to the office during the year raised a variety of issues relating to the implementation of the marriage-like relationship policy.

The relationship status of a customer is important for social security purposes. A person’s eligibility for a social security payment and their rate of payment can be affected if they are considered to be a ‘member of a couple’. *The Social Security Act 1991* sets out a number of options for the meaning of a ‘member of a couple’. For example, a person may be a member of a couple if they are considered to be in a marriage-like relationship.

TABLE 4.2 COMPLAINTS RECEIVED ABOUT TOP TEN OTHER AGENCIES, 2001–02 TO 2004–05

Agency	2001–02	2002–03	2003–04	2004–05
Department of Employment and Workplace Relations	145	245	295	352
Health Insurance Commission	152	125	137	179
Australian Securities and Investments Commission	118	81	114	129
Telstra Corporation	114	137	101	115
Comcare	119	118	116	94
Department of Health and Ageing	73	85	101	93
Australian Customs Service	80	70	73	84
Department of Foreign Affairs and Trade	50	60	99	82
Family Court of Australia	69	59	90	79
Insolvency and Trustee Service Australia	58	40	78	67

Given the importance of a person's relationship status to their social security entitlements, the office commenced an own motion investigation to examine the policy underpinning the administration of marriage-like relationships under the social security law. This investigation will continue into 2005–06.

Advance payments

Advance payments are available to most income support recipients, but not for those receiving Parenting Payment (Partnered). We reported on this issue in previous annual reports and recommended to FaCS that the advance payment scheme available to income support recipients should be extended to Parenting Payment (Partnered) customers.

The basis for our recommendation was that it was unreasonable and discriminatory to exclude recipients of the partnered rate from the advance payment scheme. The Ombudsman was informed that the recommendation had merit, and that legislative change would be considered. Some time elapsed without any formal commitment to or timetable for legislative change.

In late 2004 the Ombudsman made a formal report to the Prime Minister under s 16 of the Ombudsman Act, recommending that the advance payment scheme be extended. The Prime Minister subsequently informed the Ombudsman that the government had decided that Parenting Payment (Partnered) recipients should be able to access advance payments. As matters relating to Parenting Payment customers now fall within the portfolio responsibility of the

Minister for Employment and Workplace Relations, policy responsibility for this change has transferred from FaCS to DEWR.

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.

In last year's annual report, we outlined the work we had undertaken with DEWR in relation to the administration of the General Employee Entitlements and Redundancy Scheme (GEERS). Complaint issues regarding GEERS accounted for 163 (or 44%) of the 370 DEWR complaint issues finalised in 2004–05, compared to 118 complaint issues (or 40%) in the previous year.

Of the 163 complaint issues about GEERS, we investigated 28%. While the number of complaints is small in comparison with the 11,376 GEERS claims processed by DEWR in 2004–05, there has been a noticeable increase in complaints during the year.

Following discussion with DEWR in mid-2004, our data showed a marked decline in complaints about GEERS. As the year progressed, complaint numbers again rose. This reflects the complex nature of some GEERS issues. Late in 2004–05, DEWR initiated further discussion, which has been a constructive way of addressing a range of complex issues that are highlighted in the case studies:

Company restructures—the ‘corporate veil’ and Creditor priority.

Another program administered by DEWR that directly affects individuals is the recognition of trade qualifications as part of the migration process. The *Recognising differences* case study illustrates the importance in such a program of tailoring procedures and processes to meet the needs of a diverse client base.

DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES

In 2004–05, we received 35 complaints about the Department of Transport and Regional Services (DOTARS), compared to 104 in 2003–04. This was

a decrease of 66%, and brings complaint numbers back to the level in earlier years, which was 40 complaints in 2001–02 and 49 complaints in 2002–03. The significant increase in complaints in 2003–04 was due to numerous complaints about import approvals not being granted for vehicles already physically landed in Australia. A Full Federal Court looked at the issue and held that import approval could be granted under existing legislation: *Minister for Transport and Regional Services v Marra* [2003] FCAFC 294.

We continued a review into the complaint-handling mechanisms employed by DOTARS. During the 2004–05, the department developed new complaint procedures within its Vehicle Standards Safety Branch and initiated a review of internal complaint-handling procedures in other areas.

CASE STUDY company restructures—the ‘corporate veil’

Mr A had applied to the GEERS scheme for benefits lost when company H2, his employer, had gone into liquidation. On investigation it became clear that the company H2 had taken over the business of another company, H1, about halfway through Mr A’s employment.

Mr A was unaware of this corporate change: he continued to work at the same premises with the same people, doing the same work, and for a company with only a minor change in name. This corporate change placed about half of Mr A’s employee entitlements outside the reach of his GEERS claim.

Following discussions with DEWR, it was agreed that we would research whether H1 had also gone into liquidation. Depending on the outcome, DEWR would be able to assist Mr A with advice about a GEERS claim for company H1 or other action against H1 if this company was still operating.

CASE STUDY creditor priority

Mr B was employed by a company in financial difficulty. By a Deed of Company Arrangement, the creditors of the company agreed to accept a reduced repayment of debts to allow the company to keep trading. In that circumstance, GEERS will not cover the liability to employees of the company unless the deed provides that GEERS, in substitution for the employees, has priority as a creditor. The effect of a provision of that kind is to give GEERS the same priority that employees would have under legislation. Without this safeguard, GEERS will not cover the liability of the company to the employees. If GEERS did pick up that liability, it could have the practical effect of providing a government subsidy to the other creditors of the company, by eliminating the priority claim of the employees.

This restriction in the GEERS scheme is understandable, but it can impact adversely on employees of a company in financial difficulty. The employees are left in the position that they have no entitlement under GEERS, and must make individual claims against an employer, which is now the subject of a DOCA

Whether and how employees should be covered in a situation such as this raises a complex issue of public policy. The Ombudsman’s office has taken the issue up with DEWR, and it is the subject of ongoing discussion.

DEPARTMENT OF THE TREASURY

A complaint we investigated about the Department of the Treasury (*To build or not to build?* case study) illustrated the importance of an agency paying close attention to the statutory provisions being administered. The case also illustrated, for members of the public, that a change in their circumstances does not necessarily mean they will be released from obligations they have entered into.

AUSTRALIAN MARITIME SAFETY AUTHORITY

The *Cape Jaffa Lighthouse platform* case study, on a complaint about the Australian Maritime

Safety Authority, provides a window into the diverse nature and complexity of complaints handled by the office.

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

Agency client service charters inform the public of the service standards they can expect from agencies. It is to be expected that members of the public will rely on an agency's charter in their dealings with the agency. It is therefore important that a charter should accurately reflect the service the agency is required to provide, or aims to provide. The *All or any?* case study illustrates a problem that can arise when charter wording is not accurate.

CASE STUDY recognising differences

A migration agent contacted us, complaining about the way Trades Recognition Australia (TRA) processed an application made by his client for recognition as a cook/chef. His client, Ms C, had paid a higher fee to get priority processing and provided contact details of her employer in Iran, a restaurateur, to verify her employment. Priority applications take on average three months to process.

There was an initial delay of nearly four months, following which TRA tried to make telephone contact with her employer in Iran. TRA rejected Ms C's claims when they were unable to contact her employer. Ms C's agent said TRA had sought to make contact during Ramadan, when restaurants in Iran are either closed or operate very limited hours.

Following our investigation of the complaint, TRA agreed to reopen Ms C's application and to make contact with her employer. Ms C's application was subsequently granted.

CASE STUDY to build or not to build?

Mr D held a temporary visa when he purchased property in an Australian city. His acquisition of the property was approved subject to specific conditions, including a requirement to build a new dwelling on the property.

Mr D later became a permanent resident. He complained to the Ombudsman after receiving a letter stating that he had failed to comply with the conditions of the approval, and requesting him to sell the property, irrespective of price, to an Australian citizen. As an Australian permanent resident, Mr D felt that he should be released from the conditions imposed when his residential status was different.

We investigated the complaint and agreed that Mr D did not fall outside the operation of the *Foreign Acquisitions and Takeovers Act 1975* by reason of having become a permanent resident. On the other hand, we considered that the procedure in the statute for compulsory sale did not come into operation until a person had first been convicted of an offence under that Act. Treasury agreed with this reading of the legislation, and accepted that in future it should warn a person in this situation that the matter may be referred to the Director of Public Prosecutions.



Image by Robert Mock

Australasian gannets and pied and black-faced cormorants on the Cape Jaffa Lighthouse platform, Margaret Brock Reef, SA

CASE STUDY Cape Jaffa Lighthouse platform

Mr E complained that the Australian Maritime Safety Authority (AMSA) had allegedly misrepresented an engineer's report by indicating that the condition of the Cape Jaffa Lighthouse platform situated on the Margaret Brock Reef in South Australia was such that it should be condemned rather than abandoned. AMSA had no further use for the structure, as the authority had relocated the maritime safety beacon. AMSA considered the obsolete structure to be a hazard to shipping and the marine environment and wanted to remove it. It was Mr E's view that the engineer's report did not recommend that the structure be demolished.

Considerable efforts had been made by AMSA to offer the structure to various South Australian Government departments, which declined to accept responsibility for it. There was notable public interest in the structure, as it has a rich maritime history. In addition, the structure is a place of environmental significance because it is a nesting site for Australasian gannets and home to pied and black-faced cormorants.

Following our investigation over a number of months, including examination of agency files, AMSA decided not to take action to commence demolition of the structure in April/May 2005 as originally planned. AMSA decided that the structure would remain in place until at least March 2006. This will allow one more breeding cycle to occur at the site and negotiations to continue with the South Australian Government before final action is taken. In reaching this decision, AMSA recognised the efforts of the local community and various members of the South Australian Parliament to develop a viable alternative to demolition of the structure.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Ombudsman receives a small number of complaints each year about the Australian Securities and Investments Commission (ASIC), and some of these complaints throw up challenging issues of law and administration.

In one such case, the Ombudsman raised with ASIC whether it should develop public guidelines on what constitutes 'the public interest', for the purposes of ASIC bringing civil recovery proceedings under s 50 of the *Australian Securities and Investments Commission Act 2001*. This arose from a complaint to the Ombudsman from a member of parliament,

querying the reasons given by ASIC to a constituent for not commencing proceedings under s 50. The Ombudsman did not find error in ASIC's decision, but pointed to the role that internal agency guidelines can play in promoting clarity and consistency in the administration of indeterminate statutory phrases.

Another ASIC complaint handled during the year drew attention to an instance in which legislative requirements were not being fully met in the discharge of an ASIC supervisory function. As the *Unclaimed monies* case study shows, we can be useful in bringing to the attention of government agencies the failure of organisations, over which they have a supervisory function, to comply with legislative requirements.

CASE STUDY all or any?

The Insolvency and Trustee Service Australia (ITSA) Client Service Charter stated that the Inspector-General in Bankruptcy maintains high national standards of bankruptcy and procedures by 'inspecting the administrations of all bankruptcy trustees' and 'investigating complaints about any administration'.

Mr O complained that ITSA's Bankruptcy Regulation Branch, which exercised the Inspector-General's powers, decided not to investigate all aspects of complaints about a registered trustee. Mr O contended that ITSA's actions were inconsistent with the ITSA Client Service Charter.

We investigated and found that, while ITSA examines all complaints, there was no legislative requirement for the Inspector-General to inspect 'all' bankruptcy trustees or to investigate complaints about 'any' bankruptcy. These decisions are at the discretion of the Inspector-General and are based on the issues raised and available alternative remedies.

We raised with ITSA the desirability of the Client Service Charter being changed to remove any ambiguity in their complaint handling, to which ITSA agreed.

CASE STUDY unclaimed monies

The *Banking Act 1959* requires banks and other authorised deposit-taking institutions to lodge with the Australian Securities and Investments Commission (ASIC) a statement of all unclaimed moneys held in accounts, within three months of the end of each financial year. The statement must contain the name and last known address of the account holder, the amount, and the branch at which the account was kept. This information can be of assistance in identifying the owner or whoever may now be entitled to the funds.

Following a complaint from a company whose activities included tracing potential owners of unclaimed monies, Ombudsman staff raised with ASIC a concern that some statements being lodged did not provide the last known address of the account holder or the branch where the account was held.

ASIC acknowledged that this was occurring and advised that it would write to authorised deposit-taking institutions emphasising the importance of ensuring that all required details were included in the statement. ASIC also advised that, when statements were lodged without this information, it would write to the institution requesting reasons why the information was not included.

freedom of information

Access to government information is integral to democratic, transparent and accountable government. The express purpose of the *Freedom of Information Act 1982* (the FOI Act) is to extend, as far as possible, the legal right of individuals to obtain a range of documents held by Australian Government agencies and to seek amendment of records containing personal information within them.

The FOI Act expressly empowers the Ombudsman to investigate complaints about the actions of Australian Government agencies in response to FOI requests. It also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters. The Ombudsman's role under the FOI Act reflects the more general role of the office in promoting transparency in government administration. This includes ensuring that agencies implement sound document management procedures, provide clear and accessible information, and are open and responsive to complaints about issues to do with access to information.

COMPLAINTS ABOUT FOI

During the year, we received 275 complaints and finalised 289 complaint issues about the way that Australian Government agencies handled requests under the FOI Act (see Table 4.3). This is a 16% increase over the 236 complaints received in 2003–04.

We received a number of complaints from people who were experiencing unnecessary difficulty in making an FOI application to an agency. In one case, the agency had refused to accept an email request, despite its own policy that recognises this as a valid way to apply under the FOI Act.

In another case, the agency suggested that an application was not valid because it requested 'information' not 'documents'. The FOI Act does not require requests to use the word 'document' or the expression 'freedom of information' or 'FOI'. It only requires that enough information is provided for the agency to identify the relevant documents, which this request did.

TABLE 4.3 FREEDOM OF INFORMATION COMPLAINTS RECEIVED AND ISSUES FINALISED, BY AGENCY, 2004–05

Agency	Complaints received	Issues finalised
Centrelink	92	93
Department of Immigration and Multicultural and Indigenous Affairs	36	38
Child Support Agency	24	25
Australian Taxation Office	12	13
Department of Defence	9	10
Department of Veterans' Affairs	8	8
Australia Post	7	7
Telstra Corporation	7	7
Australian Federal Police	5	5
Department of Foreign Affairs and Trade	5	6
Department of the Environment and Heritage	5	5
Other	65	72
Total	275	289

A related matter of concern is that there continue to be examples of agencies failing to comply with their statutory obligation to help applicants make a valid FOI application. Under the FOI Act, if an agency receives a 'request' that is not in the right form, or is not accompanied by the required \$30 application fee, the agency must promptly tell the person what is required.

As in previous years, the majority of FOI-related complaints continue to be about delays in processing applications. In a number of cases this was due to basic administrative error, such as the agency misplacing the FOI request, failing to interpret it as an FOI request, failing to forward it to the relevant area for processing, or forgetting to send its decision (and the documents) to the applicant. In other cases, it was due to unanticipated staff shortages or delays in consultation. In such cases, the usual remedy is for the agency to apologise and expedite processing of the request.

In some cases we have also suggested that the agency refund the application fee and/or processing charge. In one case, the agency conceded that a wider problem existed, and implemented systemic remedial action, including training staff and upgrading its computer system.

In another case, the complaint was about the agency deciding to refund processing charges paid in respect of the request, but then failing to pay back the money. In response to our inquiries, the agency implemented a new checklist procedure designed to ensure that no tasks remained outstanding before finalising FOI requests.

DELAYS IN PROCESSING FOI REQUESTS

During 2004–05, we received many complaints from individuals and representations from organisations about significant delays in the processing of FOI requests by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). DIMIA has been facing difficulty in complying with the statutory requirement that FOI requests be processed within 30 days. Processing times were far exceeding the statutory timeframe for responses.

We discussed our concerns with DIMIA, and were advised that a number of strategies were being implemented to address the problem, including:

- allocating additional resources
- setting up a separate FOI section
- implementing a prioritisation system for backlog and new cases
- pursuing IT improvements to better track applications and complaints
- working with migration agents to seek their assistance in narrowing the scope of their requests to specific documents rather than asking for whole files.

The Ombudsman is satisfied that the strategy being put in place by DIMIA to resolve the problems will be appropriate to get the processing of FOI requests back under control in the longer term. DIMIA is providing us with updates on progress, and we will continue to monitor the implementation of the strategy and to ensure that DIMIA continues to give FOI processing a high priority.

In the meantime, we continue to accept complaints about FOI delays and may investigate if we consider that particular matters should be given priority. When an agency fails to comply with the statutory deadline for processing FOI requests, the FOI Act provides that the agency is deemed to have refused access and the person may appeal to the Administrative Appeals Tribunal. While we did not necessarily recommend this action, as there are costs attached, we did advise complainants about this option, as it is only proper that it be brought to their attention.

OWN MOTION INVESTIGATION

As reported last year, in the last quarter of 2003–04, the Ombudsman conducted an own motion investigation into the quality of FOI processing by Australian Government agencies. The investigation report is now expected to be published in early 2005–06.

As the sample size is limited, we will not be identifying specific agencies. Issues of concern are being raised with individual agencies; the Ombudsman's public report will be in a general form.

defence force ombudsman— finding solutions through cooperation

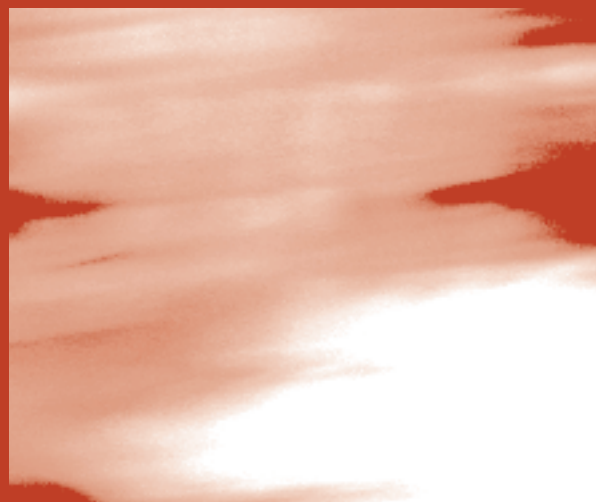
An office of Defence Force Ombudsman (DFO) was created within the Department of Defence in 1975. The functions and powers of the office were given to the Commonwealth Ombudsman by an amendment to the Ombudsman Act in 1983.

The DFO can receive complaints from serving and former members of the Australian Defence Force (ADF). A complaint can be about administrative action taken by the ADF, Department of Defence, Department of Veterans' Affairs or Defence Housing Authority. A unique feature of the DFO role is that it investigates complaints about employment-related matters, such as leave, postings, promotions, discharge, pay and allowances, pensions, and internal complaint handling within the ADF.

The Defence Team meets regularly with key personnel in the Defence portfolio to discuss complaint management issues and to develop strategies for resolving individual complaints. There is regular interaction with two agencies in the Department of Defence that have an overlapping function—the Complaints Resolution Agency, which internally investigates requests for a redress of grievance; and the Inspector-General of the Australian Defence Force, which investigates complaints of unacceptable behaviour, including victimisation, abuse of authority, and avoidance of due process.

The Inspector-General is independent of the chain of command, reporting directly to the Chief of the Defence Force. In 2004–05, the Department of Defence and the Ombudsman conducted a joint review of the ADF Redress of Grievance process, making many proposals for improving the complaint management process for ADF members.

Members of the DFO Team visit ADF establishments to meet the staff responsible for internal complaint management, as well as serving members and their families, to explain the DFO role and how it deals with problems faced within military units. During 2004–05, visits were made to bases in Brisbane, Darwin, Katherine, Adelaide, Jervis Bay, Wagga Wagga, Singleton and Perth. These visits included meetings with ADF support groups including representatives from the RSL and the Defence Community Organisation.



how the ombudsman helped people

The major role of the Ombudsman's office is to provide a response and some kind of resolution to the thousands of complaints and other approaches that we receive each year.

This chapter, first introduced in last year's annual report, illustrates that theme by drawing together examples of how the Ombudsman's office helps people resolve their complaints, often without investigation or without any adverse finding against an Australian Government agency. This facilitation of effective complaint resolution accounts for the great bulk of our work each year. In reporting on the work of the office, it is important to emphasise our range of complaint-handling methods and techniques, and the varied ways in which we provide assistance to the public.

'... effective complaint resolution accounts for the great bulk of our work each year.'

A common complaint against government and other large organisations is that individual interests are easily submerged by other considerations. This grievance has gained intensity in an age of automated decision-making and bulk processing. And yet at the end of every decision or process is a person. A chief reason for the existence of an Ombudsman office is to focus attention on the individual impact of government administration. We aim to tailor our response to the individual problem, but see broad themes emerging that are taken up in this chapter.

Some of the themes discussed below, such as our complaint referral work and liaison with members of parliament, continue on from similar themes identified in last year's report. Others discussed include our ability to work around a problem and the use of mediation and conciliation in complaint resolution.

ADDED VALUE THROUGH COMPLAINT REFERRAL AND ADVICE

As we reported last year, the majority of complaints and inquiries to the Ombudsman are handled by referring complainants back to the agencies concerned. This is consistent with good dispute resolution principles, which stress that an agency should generally be given the first opportunity to consider a complaint and resolve it. Most agencies have internal complaint-handling procedures that can deal effectively with most of the complaints they receive. 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 the clients of the agency. Complaint referral is also often the quickest means of addressing a person's complaint.

This year, we were able to assist 5,988 complainants by providing them with advice about how best to pursue their concerns with the relevant agency. Often, this involves explaining an agency's complaint process to the complainant and providing relevant contact details. Our website also sets out practical tips for complainants on how to resolve their complaints and disputes.

In some instances, our office is more actively involved in the complaint referral process. In our 2003–04 annual report, we reported on our standing arrangement with the Australian Taxation Office (ATO). This arrangement enables many tax complaints to be referred efficiently to the ATO's internal complaint-handling unit, eliminating the need for the complainant having to repeat the details of their complaint to the ATO. This year, we employed a similar arrangement with Centrelink in relation to complaints from people who missed out on the government's \$600 one-off bonus payment for families. The arrangement enabled us to provide the details of the complaint direct to Centrelink so as to ensure that the people

were appropriately paid (see page 58 of 'Looking at the agencies' chapter of this report for more details).

Ombudsman involvement in the referral process can also reinforce the need for agencies to address complaints quickly and effectively, as shown in the *Safety concerns* case study.

The Ombudsman's office views it as an important part of its function to work with agencies in strengthening their internal complaint-handling mechanisms. This is taken up at other points in this report—notably in relation to the Australian Defence Force (ADF), concerning our participation in a joint review of the ADF's Redress of Grievance process; and in relation to immigration, in the emphasis we have given in dealings with the Department of Immigration and Multicultural and Indigenous Affairs to the importance of strengthening its complaint handling, particularly in detention facilities.

Another venture, introduced this year as a pilot for a broader office-wide study, was a project to test the effectiveness of our referral processes in relation to tax complaints. At the time of reporting, the project was ongoing. We will report our

findings in our 2005–06 annual report, as well as our progress in examining the effectiveness of our complaint referral function across a broader range of agency complaints.

WORKING AROUND A PROBLEM

Almost thirty years of handling complaints about Australian Government agencies has taught us to focus on finding practical solutions to the problems people experience in their dealings with government. In many investigations we are able to identify a way of working around the problem a person is experiencing, without the need to determine if there was any fault by the agency.

'... finding practical solutions to the problems people experience in their dealings with government.'

This commonly occurs where there has been a communication breakdown between the complainant and the agency. The Ombudsman's office can act as a conduit between the two parties, as the *Acting as a conduit* case study illustrates.

CASE STUDY **safety concerns**

Mrs A, the wife of a member of the RAAF, complained to the Ombudsman that the cooktop in their Defence Housing Authority (DHA) property was leaking gas. She was concerned for the safety of her four young children. A week before she contacted our office, gas fitters told her that the cooktop needed to be replaced and DHA had advised her that a work order had been placed to carry out the work.

We contacted DHA upon receiving the complaint. DHA responded shortly afterwards, advising that arrangements had been made to replace the cooktop the next day. DHA had called Mrs A to confirm the arrangement and to ensure she had the correct contact phone number for urgent maintenance matters for future reference. Mrs A had not been aware of the contact number or of the undertaking by DHA to respond to requests to the 1800 number within 24 hours.

CASE STUDY **acting as a conduit**

Ms B raised concerns about the Health Insurance Commission's (HIC) decision to reject her Medicare card application. HIC had rejected it because they had not received certain certified documents that they requested. Ms B claimed that she sent them to HIC several times.

To resolve the situation, we arranged for Ms B to send the documents to our office so that we could forward them to the HIC. Upon receiving Ms B's documents, HIC approved her application.

At other times, we can make suggestions to an agency about alternative ways of dealing with a problem. This might involve escalating a matter to a more senior officer within an agency, or encouraging a change of case officer where the relationship with a complainant has apparently broken down. Where a complaint involves multiple contact points within an agency, an effective solution can be the appointment of a case manager. The case study, *Case managing a resolution*, demonstrates how the appointment of a case manager can be beneficial for both the agency and the complainant.

WORKING WITH MEMBERS OF PARLIAMENT

Representations to the Ombudsman's office from members of parliament (MPs) on behalf of

constituents who are struggling with government administration are an important part of our democratic system. Like the Ombudsman's office, MPs are keen to improve the quality of public administration. Accordingly, over the course of the year, the Ombudsman continued a commitment to giving personal and priority attention to complaints from MPs and their staff.

This more focused approach allows us to quickly and effectively deal with MPs' complaints, particularly when they raise an issue of some urgency, as the *Speedy response* case study shows.

CONCILIATION AND MEDIATION OF COMPLAINTS

It is now well accepted that good complaint handling is an effective alternative dispute resolution (ADR)

CASE STUDY *case managing a resolution*

Mr C, a solicitor, complained to the Ombudsman on behalf of a family property business with a range of different tax problems. Some tragic personal circumstances had combined with a decade of inattention by the taxpayers to their tax affairs, to the point that they were facing prosecution for non-lodgment, recovery action on outstanding tax debts, ongoing audits, and a series of related objections and appeals. Mr C was struggling to manage the growing tax problems and dealing with multiple contact points within the Australian Taxation Office (ATO).

We approached the ATO and suggested that it may be beneficial for both the ATO and the taxpayers if there were a more co-ordinated approach to the matters. The ATO agreed, and appointed a central contact person independent of the existing case officers to case manage the various issues. The ATO case manager was able to meet with the taxpayers to get a better understanding and clearer overview of their circumstances. From this perspective, the case manager was able to work with the taxpayers and Mr C to facilitate compliance with their tax obligations.

CASE STUDY *speedy response*

A member of parliament came to us with a complaint from a constituent, Mrs D, who was concerned about the actions of the Australian Electoral Commission (AEC). Mrs D told the MP that the AEC had removed one of her sons (who was overseas) from the Australian electoral roll, taking away his ability to vote in the upcoming election.

We contacted the AEC, which advised that it was willing to assist in reinstating Mrs D's son on the roll and to outline his voting options. To ensure that the matter was resolved quickly (the election was to be held shortly), Mrs D was invited to discuss the situation directly with the AEC. The AEC explained that Mrs D's son could either provide written confirmation of his 'real' place of living within Australia or complete a declaration vote certificate to enable him to cast a declaration vote while overseas.

mechanism. In turn, ADR processes, especially conciliation and mediation, can usefully be employed in effective complaint handling. Ombudsman staff employ these techniques in their dealings with agencies and complainants. We can also encourage both agencies and complainants to consider more formal uses of ADR as an efficient and often satisfactory means of resolving a dispute, particularly when the only alternative is litigation.

Mediation can often facilitate a mutually acceptable solution to an unresolved dispute. For example, the *Mediated remedy* case study shows how Ombudsman staff encouraged parties to a dispute to use an external mediator to determine a fair and reasonable amount for a compensation payment.

Sometimes our office plays a more direct role in helping to negotiate fair outcomes for both complainants and agencies, as the *Negotiating a fair result* case study illustrates.

Another area where we have seen the effective use of ADR in complaint handling relates to complaints about the Australian Federal Police (AFP). Some police complaints are about relatively minor matters or reflect a misunderstanding about police procedures. Since the mid-1980s, the AFP's Professional Standards team has conciliated such complaints. While this has been a largely successful measure, it has sometimes been at significant cost and often delay, particularly when some complainants only want their concerns brought to the attention of particular AFP members.

CASE STUDY **mediated remedy**

Mr E had developed a prototype for a new postage product that he wanted to sell through post office shops, with the cost of the postage included in the retail price of the product. He emailed a picture of the product to Australia Post, asking what it would cost to post the item. Australia Post provided oral advice on the cost.

Mr E went ahead with developing his product, investing significant time and money, only to be told by Australia Post that the final postage cost would be more than three times what he had originally been advised. Mr E considered that the increased postage cost would make his project financially unviable.

Following our intervention, Australia Post agreed to compensate Mr E, but the two parties could not agree on a figure. We referred Australia Post and Mr E to a free mediation service, which facilitated an agreement about the appropriate remedy. Australia Post is also looking at its procedures for providing advice on such matters.

CASE STUDY **negotiating a fair result**

Mr F was receiving income support payments and sought a small emergency payment from Centrelink in order to avoid being sent to jail for 40 days for failure to pay a long-standing debt to a hire purchase company. The company indicated that it would be willing to put a stay on legal proceedings if Mr F could pay \$100 immediately and agree to repay the remainder of the debt via instalments.

Centrelink refused Mr F's request on the grounds that his financial circumstances were reasonably foreseeable, and he would have known of the debt for some time. Mr F complained that although he had been made aware of the debt some years ago he had not been officially notified that the company sought repayment, until he received a summons to appear in court. By the morning of the court hearing, Mr F had raised \$50 but still required a further \$50 in order to avoid a possible jail sentence.

Following negotiations between our office and a Centrelink social worker, it was agreed that Mr F should be given the benefit of the doubt, and that it should be accepted that he would not have known that the debt was being pursued until he received the summons. An emergency payment of \$50 was approved, and Mr F was able to avoid jail.

In such cases, the complainants have not found the conciliation process particularly useful.

During 2004–05, the Ombudsman's office and the AFP agreed to trial a 'conciliation by letter' process. This process provides complainants with a written explanation from the AFP about the events that they experienced, including an apology where warranted, and a source of feedback to the members concerned. These conciliation letters also advise complainants about their right to approach the Ombudsman's office if they are concerned about the outcome of their complaint. While the 'conciliation by letter' initiative is clearly less personal than face-to-face conciliation, it appears to have increased the ability of the AFP to respond to the issues identified by some complainants. It has also provided more complainants with the remedies they have been seeking.

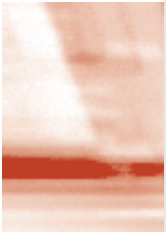
'... conciliation letters also advise complainants about their right to approach the Ombudsman's office ...'

PROMPTING AGENCY ACTION

A common way the Ombudsman's office can help people is through prompting an agency to take the necessary action to resolve the complaint. Where an agency's complaint-handling system is highly responsive, this may only require bringing the complaint to the agency's attention. In other cases, we can provide suggestions as to how a matter might be addressed. We may also be able to provide an agency with more information, or information in a more useful format than the complainant is able to provide, enabling their matter to be dealt with appropriately.

The three case studies—*Prompting an internal investigation*, *Encouraging direct contact* and *Compelling individual circumstances*—illustrate a range of ways in which we have been able to prompt an agency to respond to a complainant's concerns. In the first case study, the agency commenced an internal investigation after our initial approach. In the next, we were able to facilitate more direct contact between an agency and a complainant. In the third case study, we were able to encourage an agency to focus on the particular and compelling individual circumstances of the complainant.


CASE STUDY prompting an internal investigation



Ms A contacted our office alleging that a Royal Australian Air Force (RAAF) member had presented as evidence, in a private legal matter, a letter allegedly sent to Ms A by the Commanding Officer (CO) of the local RAAF unit. While Ms A had received a letter from the CO, the version she had received differed considerably from the one presented during the legal proceedings. Ms A was concerned that the RAAF member may have accessed documents that he was not authorised to access and used the document for a purpose other than that intended by the CO.

Following our contact with the Department of Defence, the CO agreed to initiate a formal internal investigation to determine how the version of the document had been accessed and whether or not security and privacy regulations had been breached. Ms A was satisfied that our involvement had resulted in an investigation being initiated.

CASE STUDY encouraging direct contact



Mr H raised concerns about the counter service given by one Centrelink office. He claimed he had to stand in a queue for almost an hour before being served, and was concerned that Centrelink made no effort to put more staff on during a busy period.

Ombudsman staff raised Mr H's concerns with the relevant Centrelink office manager, who agreed to contact Mr H directly to discuss the matter. Mr H was satisfied with the action and clarification given by Centrelink.

CASE STUDY compelling individual circumstances

Mr I ran a small business and relied on his wife to manage the financial aspects of the business. Unbeknown to Mr I, his wife was suffering from a deteriorating mental health condition and had allowed the business to get behind with its tax affairs. Mr I complained to the Ombudsman about the apparent decision of the Australian Taxation Office (ATO) to deny him release from his tax debts.

Following our inquiries and the provision of additional information, we suggested that given Mr I's compelling personal circumstances there might be scope for the ATO to take a more flexible approach. While release from the debt was still not an option, the ATO agreed to remit accumulated interest on Mr I's tax debts and negotiated a suitable repayment arrangement that took into account Mr I's capacity to repay the debt.

taxation ombudsman—finding practical solutions to administrative problems

The Commonwealth Ombudsman has always dealt with complaints about the Australian Taxation Office (ATO). A specialist role of Taxation Ombudsman was established within the office in 1995, in recognition of the imbalance that exists between the powers of the ATO and the rights of taxpayers. The creation of the office, by amendment of the Ombudsman Act, arose from a recommendation made by the Parliamentary Joint Committee of Public Accounts. The Taxation Ombudsman is assisted by a Special Tax Adviser and a Tax Team.

The Taxation Ombudsman is the only external complaint-handling agency for taxpayers with complaints about the ATO. The special focus of the role is tax administration, and practical resolution of the individual and myriad problems encountered by taxpayers. Drawing from this individual complaint handling, the Taxation Ombudsman also highlights systemic problems and remedies in tax administration. In this broader role, the Taxation Ombudsman works with other external oversight bodies to improve tax administration, notably the Inspector-General of Taxation and the Australian National Audit Office.

The greatest challenge for those working in the tax field is the ever-increasing complexity of tax law and the tax system. The Taxation Ombudsman plays an important role in assisting taxpayers to find their way through this complexity, as well as pointing out to the ATO ways in which processes and

information might be usefully simplified. The underlying approach to the Taxation Ombudsman role is to find practical solutions to administrative problems. These issues are taken up in a separate annual report by the Taxation Ombudsman.

We aim to better engage with the tax professional community, to tap into their expertise, pick up on their concerns and provide another avenue for their feedback about the health and integrity of the tax system. To do this, we have developed a tax-specific outreach package focusing on the needs of small businesses and tax practitioners operating in rural and regional Australia.

problem areas in government decision making

The problems that people encounter in dealing with government are sometimes unique, but at other times there are common themes. This chapter takes up a few problem areas that were identified in the course of complaint handling and investigation in 2004–05. There are other perennial problems taken up in last year's report that have not been highlighted this year. Two that arise frequently in Ombudsman reports are record keeping, and the accuracy or quality of agency advice, especially oral advice.

FALLING THROUGH THE CRACKS

Government is a complex structure, of many agencies, laws and programs. The federal division of responsibilities between the Australian and State governments adds to this complexity. Some of the complaints and inquiries that are brought to the Ombudsman's office arise from this structural feature of government. For example, roughly 40% of complaints and inquiries to the Ombudsman are 'out of jurisdiction', reflecting the fact that people are unsure about where to turn to resolve a problem.

Another difficulty facing many people is that the issue confronting them crosses the boundaries of different programs or the responsibilities of different agencies. For example, three entities—universities, the Australian Government Department of Education, Science and Training (DEST), and the Australian Taxation Office (ATO)—administer the Higher Education Contribution Scheme (HECS). Most universities fall within the jurisdiction of State Ombudsmen, although students with HECS problems also have a right of appeal through DEST to the Commonwealth Administrative Appeals Tribunal, or to the ATO. This can be confusing for students. During 2004–05, we assisted students where the matter fell clearly within our jurisdiction and we provided information about their options where the matter fell outside our jurisdiction.

'Another difficulty facing many people is that the issue confronting them crosses the boundaries of different programs or the responsibilities of different agencies.'

In a complex system of laws and rules, there is a further risk that a person who is acknowledged to be in need of government assistance will fall through the cracks of the different assistance programs that are available. An illustrative complaint that we resolved this year concerned an elderly veteran, living in an aged care facility, who was in need of a new motorised scooter. The issue in contention was whether the responsibility was borne by the Department of Health and Ageing, which administered the Quality of Care Principles for aged care facilities, or the Department of Veterans' Affairs (DVA), which provided assistance to veterans. After considerable correspondence and meetings, the issue was resolved with DVA agreeing to buy a new scooter for the veteran (which he is happily now using). The issue of principle was not necessarily resolved by the outcome in this case, and we wrote to both departments suggesting that they meet to develop a practical solution to the inconsistencies in their respective policy approaches.

Another and related source of complaints to the office is people who fall 'off the cliff'; that is, outside the rules for eligibility for a government benefit. Eligibility for Medicare benefits is a case in point. People resident in Australia who are obliged to pay the Medicare levy under Australian taxation law are not necessarily entitled to a Medicare card or eligible to claim benefits.

'... complaints from people who fall outside the rules for eligibility for a government benefit.'

To surmount that exclusion a person may have to satisfy the Health Insurance Commission that they live in Australia (and are not here just temporarily) and that they are an 'eligible person' under the Health Insurance Act 1973. Among the eligibility requirements are that the person can provide a passport, birth certificate or visa, and residency documents such as a rates notice, photographic drivers licence, financial institution card, or rental contract. Complaints are made to the Ombudsman alleging that the eligibility requirements are administered in an unreasonable manner. One such complaint was from a person who had retired from the Navy in 1985, had been travelling the world since, and had been paying the Medicare levy and completing tax returns. After being refused a Medicare card, he complained that either he should be able to get a Medicare card or not have to pay the Medicare levy.

The scheme administered by the Australian Prudential Regulation Authority (APRA) for early release of superannuation benefits has also given rise to complaints about eligibility requirements. APRA can approve an early release of benefits to enable a person to make a payment on a loan to prevent foreclosure of a mortgage on their principal place of residence. This power can only be exercised where the mortgagee gives APRA a written statement that payment is overdue and the mortgagee will foreclose on the mortgage if the person fails to pay the amount owed.

Some complaints to our office were from people who had used their house as security for a loan, but not by way of a mortgage. APRA had no power in that situation to approve an early release of superannuation benefits, though the realisation of the security by the lender would have the same practical effect as the foreclosure of a mortgage. This ties in with an issue raised in our 2003–04 annual report (pages 86–87) as to whether a safety net discretion to deal with the unexpected or exceptional case should be a feature of complex statutory schemes.

AUTOMATED DECISION MAKING

Australian Government agencies are turning increasingly to computerisation and expert systems in the administration of programs. The systems perform various functions and stages in decision

making and service delivery. The integrity of these systems is vital where government administration is characterised by mass decision making, particularly in areas of financial entitlement, adjustment and benefit provision, such as welfare veteran support benefits, child support and taxation.

Automated administrative processes have greatly improved the efficiency of much government administration. However, automated processes can sometimes fail, causing problems and confusion. The risk that this poses to administrative law principles was the subject of a recent report by the Administrative Review Council, *Automated Assistance in Administrative Decision Making* (Report No. 46, 2004).

The issue has also been taken up in earlier annual reports of the Ombudsman. For example, our 2002–03 annual report (page 27) noted a 21% increase in complaints, consistent with problems and increased workload flowing from the Child Support Agency introduction of a new computer system in the previous year. Subsequently, our 2003–04 annual report (page 42) noted a 20% reduction in complaints against the agency, due primarily to bedding down of the new computer system.

'The integrity of these systems is vital where government administration is characterised by mass decision making.'

Complaints received in 2004–05 illustrate the range of issues arising from automated decision making and administration. One problem area is the difficulty faced by agencies in cancelling or negating a system-generated letter prior to it being sent to a client or customer. Complaints were received about problems encountered in an agency's mail merge program when conducting a mass mail-out to several thousand people; some people received letters they should not have received. Our inquiries revealed that the agency was aware of its error, had alerted the Privacy Commissioner to the possible breaches of privacy, and had already begun to provide the individuals concerned with appropriate remedies.

Another complaint was from a person who had received three notices generated on the same day,

including one notice suggesting that the complainant need take no action until a further notice was issued. The complainant was understandably annoyed when a subsequent interest charge was levied. The agency accepted that it was fair and reasonable to cancel the interest because of the likelihood of confusion about the need to pay by the due date. The agency also agreed to review its current procedures and systems to ensure that, where possible, notices are issued in a logical sequence to avoid confusion.

A similar problem arose for a person who received three letters from an agency in a five-day period, all informing him of different decisions based on changes to his income. Two of the letters contained incorrect information, and the third contained correct information. The person incorrectly interpreted these letters to suggest that the agency had made three separate changes, based on different income information. Our inquiries revealed that this was not the case and, in part, the multiple letters occurred because the system sent out the letters despite a staff member having cancelled the letters.

We also received a number of complaints from people who, for behavioural reasons, were banned from contacting an agency by any method except in writing. The complainants were still receiving computer-generated correspondence inviting them to telephone to discuss the contents of the letter. The letters had been generated in bulk computer runs. The agency's computer system is not able to automatically send an alternative letter to this group of people inviting them to contact in writing, instead of by telephone. The agency informed the Ombudsman that it is considering enhancements to its computer system to better manage individual contact arrangements.

THE LIMITS OF GOVERNMENT RESPONSIBILITY

The grievances that stem from people's contact with government are sometimes unavoidable or difficult to redress by direct action. It can nevertheless be important for government agencies to be responsive in dealing with people who feel aggrieved, and to acknowledge the source of the grievance.

This point is highlighted by complaints received in the law enforcement jurisdiction from people who have been subject to coercive law

enforcement action, ranging from the execution of a search warrant, questioning and arrest, to the instigation of a prosecution. The distress often felt by people in this situation can be greatly magnified when they are later exonerated, or prosecution action is not taken.

'It can be important for government agencies to be responsive in dealing with people who feel aggrieved ...'

One illustrative complaint during the year was from a member of parliament on behalf of a constituent who had been the subject of a police search of her work computer because of suspected child pornography. The police took no further action, but she felt that the police search had itself been damaging to her peace of mind, relationship with her employer, and reputation among her colleagues. Our investigation did not find any ground on which we could be critical of the police, who had followed a proper procedure in obtaining a warrant to conduct a search.

The price of living in a regulated society is that citizens may be subject to intrusive law enforcement activity. There is a public expectation that law enforcement agencies will react to the intelligence they receive. This carries a risk that people will be incorrectly implicated in alleged offences and will only be exonerated after investigation or trial.

That said, the Ombudsman's office has generally urged government agencies to temper that unpleasant reality by executive action that addresses the grievances that arise from law enforcement and regulatory action. The Australian Federal Police's workplace resolution system noted elsewhere in this report is an effective model in this respect. Being prepared to apologise can also lessen hurt and distress, even though error by the agency has not been proved.

The limits of government responsibility and responsiveness are also tested by complaints that stem from the failure of private entities to meet their obligations to government, with consequent injury to others. An example is complaints about the superannuation guarantee. Where an employer fails to pay superannuation contributions in respect of employees, the ATO can

pursue the employer for the unpaid superannuation. However, the ATO is limited to using the recovery mechanisms established by law. If an employer goes into insolvency, there is often little scope for the ATO to recover the monies owed to the employees.

The government has established the General Employee Entitlements and Redundancy Scheme to assist such employees to recover some work-related entitlements. Even then, some employees will still not receive their full entitlements. In such cases, it is difficult for our office to go beyond investigating with a view to reassuring complainants that government has done all it reasonably can to assist in the recovery of their lost entitlements.

Our tax work reveals other similar examples. Tax agents play an increasingly important role in our taxation system, with almost 75% of individual tax returns prepared by agents. Although there is some scope for administrative discretion, the ultimate responsibility for the return rests with the taxpayer. Where an agent makes a mistake in a return, or fails to lodge a return, the taxpayer will generally carry the burden for those errors. One line of investigation we can pursue is to ensure that the ATO has considered all the facts and been prepared to exercise any available discretion to assist the taxpayer. Beyond that, we will generally advise the taxpayer of their right to take up the matter with either the relevant Tax Agents' Board or professional body, such as the Institute of Chartered Accountants in Australia.

Action taken by government contractors that affects members of the public is another area where we have cause to examine the limits of government responsibility. This has been a particular theme this year in complaints about actions occurring in immigration detention facilities managed by a private service provider under a contracted arrangement with the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). The department retains an overall duty of care for detainees, and the Immigration Detention Standards provide the framework for how detainees are to be managed and treated. The department may nevertheless decline responsibility for actions taken by independent contractors, such as medical practitioners.

In one disputed instance during the year, we were critical of DIMIA for declining responsibility for inadequate medical treatment provided to a detainee, who suffered permanent incapacity as a result. The Ombudsman's letter to the department expressed dissatisfaction with the outcome: 'It is disappointing that this situation has reached a point where the only practical course of action now open to Mr N and his family is the costly pursuit of the actions of medical professionals employed by [the detention service provider] for the Department. I note the Department's refusal to offer an apology to the family. I accept that the Department's stance on this matter is not one which further debate will change but would have hoped that the Department might indicate some regret to the family on a 'without prejudice' basis for the events that occurred while in the Department's care.'

law enforcement—oversighting police investigations and policing

The Commonwealth Ombudsman's role in overseeing the administration of policing by the Australian Federal Police is anchored in separate legislation, the *Complaints (Australian Federal Police) Act 1981*. Complaints to the Ombudsman are initially referred for investigation to the AFP Professional Standards team. The AFP reports to the Ombudsman on all complaints received by or investigated within the AFP.

The Ombudsman's primary role is to oversee AFP investigations. A professional and effective working relationship with the Professional Standards team is essential to this oversight role. The relationship is maintained through weekly meetings between senior staff of both agencies to discuss complaints and emerging issues, and to keep abreast of police policy and practices. At any time during an investigation, or at its conclusion, the Ombudsman can initiate a special investigation under the Complaints Act.

An infrequent but important aspect of the Ombudsman's role is to be notified of critical incidents. AFP Professional Standards contacts the Ombudsman if an incident occurs that raises an integrity issue or that could damage public confidence in policing or AFP complaint handling. We also investigate allegations of corruption, excessive use of police force, protection of whistleblowers and the effectiveness of witness protection.

Depending upon the nature of the issue, the Ombudsman may conduct a separate and formal investigation, maintain close oversight of a police investigation, or conduct a joint investigation.

Over two-thirds of complaints to the Ombudsman are about community policing by the AFP in the Australian Capital Territory. The expansion of AFP policing functions in Australia and abroad could throw up new issues.

Reform of the AFP complaints system was proposed in a report on AFP professional standards by the Hon. William Fisher AO QC (discussed in last year's annual report). Under the proposed model, the Ombudsman would be less involved in minor complaints management and more concerned with handling serious or unresolved complaints.



promoting good administration

A key objective of the Ombudsman's office 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.

We pursue this objective in different ways—by looking in depth at an issue arising in a particular agency, drawing attention to problem areas across government administration, conducting own motion investigations, working jointly with agencies to devise solutions to the administrative problems that arise within government, and making submissions to external reviews and inquiries that are examining issues in public administration.

Throughout 2004–05, we made use of each of those strategies for promoting good administration within and across agencies. Another special project of the office, is work being undertaken internationally, and especially in the Asia–Pacific region, to promote good governance and administrative integrity.

SUBMISSIONS, REVIEWS AND RESEARCH

The Ombudsman's office is frequently invited to contribute by way of a formal submission to inquiries being conducted in Australia by parliamentary committees and executive agencies. An example discussed below is a submission to a review being undertaken by the Department of Finance and Administration (DoFA) of the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme. Another submission was to a review of the Australian Security Intelligence Organisation's questioning and detention powers being conducted by the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Defence Signals Directorate.

Review of CDDA Scheme

During the year, DoFA conducted a review of the CDDA Scheme. This review came about as a result of a report of the Australian National Audit Office, which concluded that DoFA should periodically monitor the CDDA Scheme.

The Ombudsman provided a written submission that highlighted that most complaints to the Ombudsman arose from the administration of the CDDA guidelines by different agencies, rather than from the content of the guidelines. We gave examples of complaints received about CDDA claims on matters such as:

- lack of experience of CDDA decision makers in some agencies
- rejection of CDDA claims at an inappropriate level in agencies
- reluctance by agencies to talk directly to claimants in examining claims
- a tendency to prefer an agency officer's version of events to a claimant's without proper investigation
- failure by agencies to address the core issue underlying a CDDA claim
- undue delay in deciding claims
- inadequate reasons explaining why a claim had been rejected.

One concern that we highlighted in the submission arose from instances in which compensation had been refused by an agency because of the potential availability of a court remedy. The guidelines provide that CDDA is not generally payable where a legal remedy is available to an applicant. Our concern was that a claimant should not be forced into legal action to obtain a remedy that they would not have had to pursue but for an agency's defective administration. When considering whether another remedy is available, it may be appropriate for an agency to bear in mind the principle that compensation should return



A J Brown (Griffith University), Peter Robertson (Monash University), Jeff Lamond (Merit Protection Commissioner) and John McMillan (Commonwealth Ombudsman) following the introductory national research project workshop entitled 'Whistling While They Work', June 2005

the person to the position they would have been in had the defective administration not occurred.

Whistleblowing project

In November 2004, the Minister for Education, Science and Training announced that the Australian Research Council had allocated \$585,000 to a research project entitled 'Whistling While They Work'.

The Commonwealth Ombudsman's office is collaborating in this three-year, national research project into the management and protection of internal witnesses (or 'whistleblowers') in the Australian public sector. The project is being led by Griffith University and involves five other universities and 12 industry partners from the Commonwealth, State and Territory public sectors.

Protecting whistleblowers and other internal witnesses to corruption, misconduct and maladministration is an ongoing challenge in public sector governance. The project will build on previous Australian and international research to assemble a more up-to-date and representative picture of how whistleblowing and related public interest disclosures are being and should be managed.

Strategies for managing internal disclosures are crucial to effective integrity systems, early detection of corruption and maladministration, and maintaining positive and healthy workplaces. They are critical to law enforcement, sound financial management,

public accountability and the careers and well being of individual staff.

The Ombudsman's office is contributing significant resources to the project, including the participation of senior staff on the project steering committee, a part-time staff member to work on the project, and a one-off cash contribution of \$15,000. During 2004–05, the Ombudsman and the Merit Protection Commissioner co-hosted an introductory workshop entitled 'Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in the Australian Public Sector' attended by 45 Australian Government agency representatives. The Ombudsman also addressed a public seminar, held as part of this project, on legislative options in designing a whistleblower protection scheme.

Legislative change in migration matters

In 2003–04, we reported that the Ombudsman wrote to the Secretary of DIMIA in December 2004 recommending that action be taken to overcome the problem that certain visa holders who had successfully appealed to the Migration Review Tribunal (MRT) may still be unsuccessful in their application for a permanent visa. The specific example given was where the MRT had set aside a DIMIA decision to cancel a student visa but the student may not have been able to meet the criteria for a permanent visa if their student visa had expired before the MRT finalised its decision.

The Minister subsequently agreed to amendments to the Migration Regulations to ensure that such people would no longer be disadvantaged.

We can now report that the Migration Amendment Regulations 2004 (No. 8) 2004 No. 390 contains the appropriate amendments.

OWN MOTION AND MAJOR 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 publicly on seven own motion and major investigations. Two of the reports were completed and provided to the relevant agency in 2003–04, and were reported in last year's annual report. They dealt with the use of access powers by the ATO and the refusal by the Tax Agents' Board of NSW to provide reasons for decisions not to pursue complaints about tax agents.

The other five investigations dealt with two complaints about DIMIA concerning delay in the processing of an application for a bridging visa and a complaint about immigration detention (see 'Looking at the agencies—Immigration' section on page 45); a review of the implementation of recommendations from a review of the corporate and operational implications for the Australian Crime Commission arising from alleged criminal activity by two former secondees; and a review of the Australian Defence Force's (ADF's) Redress of Grievance system. Outlines of two of these investigations, and an outline of an investigation into administrative matters relating to the ADF's management of personnel under the age of 18 years follow. When finalised, all major investigations are reported on our website (www.ombudsman.gov.au/publications).

Review of Redress of Grievance process

The Ombudsman has commented adversely in previous annual reports on the timeliness of the ADF's internal complaint management process, known as the Redress of Grievance (ROG) process. A project was initiated jointly in August 2004 by the Chief of the Defence Force and the Defence Force Ombudsman to conduct a wide-ranging review of the effectiveness of the ROG process.

Representatives from the Department of Defence and the Commonwealth Ombudsman's office formed a Joint Review Team to conduct the review. A report was released publicly in April 2005.

It is pleasing that the Department of Defence and the ADF have since taken action to accept and to implement the recommendations in the report. This complements other action taken in recent years by the ADF to streamline the process for handling complaints submitted by its members, and to reduce the time taken to resolve complaints. Among the recommendations from the joint review being implemented were those to increase staffing levels within the department's Complaint Resolution Agency, to provide further training for investigation officers, to improve management information systems to introduce performance management and reporting standards, and to seek changes to the legislation and policies on complaint handling.

The Chief of the Defence Force noted at the time of the release of the report that he was confident ADF members would shortly notice a marked improvement in complaint handling turnaround.

Allegations of corrupt activity in the Australian Crime Commission

In June 2004, the Ombudsman conducted an own motion investigation into a review conducted by independent consultants of the operational and corporate implications for the Australian Crime Commission (ACC) of alleged corrupt activity by two former secondees. The issue was revisited by the Ombudsman in 2004–05, by examining the steps since taken by the ACC to implement the recommendations from the earlier own motion investigation. The later report concluded that the ACC had developed policies and programs to promote the concepts of professionalism and integrity as its primary corruption risk management approach.

The Ombudsman commended the ACC for its commitment to formulating a strategy to address the issues that had been identified by the independent review and the Ombudsman's own motion investigation. The Ombudsman formed the opinion that the actions taken by the ACC

were appropriate and proportional responses to the issues, and indicated that further investigation of the matter was not warranted.

In his report, the Ombudsman stated that it is important for a successful anti-corruption or integrity framework that the community's trust in the integrity of policing is not misplaced. Below is an excerpt from the report released in November 2004.

It may be useful for me to make a general comment about the role of management and supervision in the ACC. A workplace culture that is actively distrustful will undermine productivity and morale. Equally, a workplace that is overly trusting can be open to manipulation and dishonesty. It is imperative that a balance is achieved in any workplace to ensure that trust is not 'misplaced'. The development of policies and practices, and the conduct of audits, can be no substitute for specialist knowledge, an awareness of roles and responsibilities, and sound judgement.

It is therefore important that managers fairly, but critically, view the actions and motivations of their staff. Failure to do so will undermine the effect of the policies that have been developed and reviewed by the ACC.

Managers should not 'suspend disbelief' when reviewing issues within their workplace. They should be able to demonstrate that they have applied intellectual rigour to understanding their responsibilities, and investigating anomalies in their workplace. Managers should also be aware of the increased likelihood of corrupt or inappropriate behaviour occurring in the workplace when trust is misplaced.

Young people in the military

During 2004–05, Ombudsman staff completed an own motion investigation into administrative matters relating to ADF's management of personnel under the age of 18 years. The investigation was in response to several serious complaints made to the office about the adequacy of Defence's administration of its younger personnel.

The investigation looked at the ADF's policies and procedures for dealing with young people; at the mechanisms in place to ensure that staff understand

their obligations to young people and that policies are implemented; and at how complaints from young people are handled by the ADF.

A draft report on the investigation was provided to the Chief of the Defence Force in June 2005 for comment. A final report on the investigation is expected to be released late in 2005, and will be reported in the Ombudsman's 2005–06 annual report.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

The Ombudsman institution is now found in countries around the world. Offices established in over 130 countries are members of the International Ombudsman Institute (IOI), of which the Commonwealth Ombudsman's office is a member. The Asia–Pacific Ombudsman Region (APOR) is a vibrant branch of the IOI. Our office is playing an active role regionally and in this global network to promote principles of administrative justice and good governance.

The office's international program expanded considerably during 2004–05, with the support of funding from the Australian Agency for International Development (AusAID). The office has worked closely with other Australian Ombudsman offices to establish a program of mutual cooperation and assistance with Ombudsman offices in Asia and the Pacific.

The Commonwealth Ombudsman attended the IOI Conference, which is held every four years, in Quebec City, Canada in September 2004. In the years between IOI Conferences, an annual conference of APOR members is held. This year it was held in Wellington, New Zealand in February 2005. Conference attendees in Wellington studied the problems of small offices, with the Commonwealth Ombudsman giving a paper on institutional strengthening in this context.

A senior representative from our office attended a Human Rights and Complaint Handling Conference in Malawi in February 2005 to provide information and training sessions on Australian administrative law, the operations of the Commonwealth Ombudsman's office, and alternative dispute resolution. The Danish Institute of Human Rights supported this visit on behalf of the Malawian Body of Case Handling Institutions.



Participants at Human Rights and Complaint Handling Conference, Malawi, February 2005

In 2004–05, funding from various AusAID programs supported our office’s international activities to facilitate the exchange of specialist advice, training, technical assistance and support to the National Ombudsman Commission of Indonesia, the Thailand Ombudsman, and the Ombudsmen in the Cook Islands, Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

Indonesia

We have been working with the National Ombudsman Commission of Indonesia over several years. Early activities included training in Australia specifically about the roles, values and competencies required of ombudsman staff.

The present situation in Indonesia is one of rapid change and numerous challenges. The commission is working to establish regional ombudsman offices and perceives that decentralising services is an important change from a top-down system of government to a more open system. The commission has translated training material—received during its participation in the 2003–04 Commonwealth Ombudsman Advanced Investigation Course—into Indonesian and is presenting it regionally through a seminar process. This seeding process has established some regional ombudsman

services and stimulated regional demand. During 2004–05, we supported five of these seminars, directly participating in two.

Our Information Technology Director visited Jakarta in May 2005 to provide advice on the information technology framework and business planning needs to be considered for the commission’s central and decentralised offices. This resulted in a Strategic Information Technology Plan, which we will continue to support where possible through providing strategic advice.

Thailand

During 2004–05, training has been the predominant activity with the Thai Ombudsman’s office. The director of our Law Enforcement Team visited Thailand in April 2005 to look at maximising returns from training in Australia through transfer processes that would build training capacities within the Thai office.

We sponsored four senior investigation officers to attend training courses in Australia: a four-week ANU Ombudsman Professional Short Course in October 2004; and the Police Integrity Investigation Course run jointly by the Australian Federal Police and the Commonwealth Ombudsman in June 2005.



The Deputy Ombudsman, Mr Ron Brent, visited Maumere on Flores Island, Indonesia to provide the keynote address at a regional seminar.

Papua New Guinea

We are developing a close working relationship with the Ombudsman Commission of Papua New Guinea through staff placements and other activities. Our aim is to establish an ongoing twinning relationship to gradually raise skill and knowledge levels. One of our staff members completed a three-month placement in Port Moresby in June 2005, developing initial relationships and an outline of a three-year strategic twinning arrangement. A second placement will commence in August 2005.

Pacific island regional strengthening

We have taken a coordinating role in working to strengthen regional sharing of skills and knowledge amongst ombudsmen in the Pacific island region. The Ombudsman of Fiji is taking on the role as lead counterpart agency for the Pacific nations of the Cook Islands, Fiji, Samoa, Solomon Islands, Tonga and Vanuatu.

The Commonwealth Ombudsman and New South Wales Ombudsman co-hosted a Forum of Pacific Island Ombudsmen prior

to the APOR Conference in Wellington in February 2005 to present the recommendations from a scoping study. This provided a strong base for further discussion, an opportunity to address immediate concerns, and the basis for a proposal to AusAID for a medium-term project to commence in 2005–06.

Activities and progress to date include implementing a professional peer network; initiating a three-month trial to provide a legal/strategic resource for south-west Pacific Ombudsmen; supporting sessions on strategic and business planning; organising two staff to work in the Fijian and Samoan Ombudsmen's offices for three weeks; and facilitating training for a senior investigation officer from each of the Ombudsman offices in the Cook Islands, Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

Other international cooperation

Another means of international cooperation has been to host senior-level delegations from several foreign offices, including from the Republic of Maldives, China, the United Kingdom, Korea and Indonesia.



Participants at the Asia-Pacific Ombudsman Region Conference in Wellington, New Zealand, February 2005

COOPERATION AMONG AUSTRALIAN OMBUDSMEN

There are a large number of ombudsman offices established in Australia, in the public and private sector. Internationally, Australia has one of the most developed frameworks of ombudsman offices.

There is a close cooperation among Australian ombudsman offices, both informally and formally. At the formal level, there are two groupings in which the Commonwealth Ombudsman is an active participant. One is the APOR of the International Ombudsman Institute. Membership of the APOR comprises the public sector ombudsman offices established in this region. A major project of the members of APOR has been the development of the regional cooperation program described earlier in this chapter.

The other grouping is a new association formed in 2003, the Australian and New Zealand Ombudsman Association (ANZOA). The association was established by industry ombudsman offices in Australia, but membership is open generally to any ombudsman office. The Commonwealth

Ombudsman is a member of the Executive of ANZOA. Projects on which ANZOA has been active over the past year include identifying and addressing systemic issues, training and accreditation of staff, benchmarking of complaint workloads and efficiency, the review of ombudsman schemes, and internal review of complaint handling within ombudsman offices.

In June 2005, the first meeting of its kind attended by most public sector and industry Ombudsmen in Australia and New Zealand was held in Canberra, hosted by the Commonwealth Ombudsman. The meeting of seventeen Ombudsmen was attended by Australian State Ombudsmen (from New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia); Australian industry Ombudsmen (Banking and Financial Services Ombudsman; Financial Industry Complaints Service; Energy and Water Ombudsmen from NSW and Victoria; General Insurance Ombudsman, and Telecommunications Industry Ombudsman); and from New Zealand, the Chief Ombudsman, Banking Ombudsman, Electricity Complaints Commissioner, and Insurance and Savings Ombudsman.

inspections—putting intrusive powers under periodic scrutiny

The Commonwealth Ombudsman's role in auditing statutory compliance by agencies in selected areas has developed as a distinct and major activity of the office.

The Ombudsman is responsible under the *Crimes Act 1914*, *Telecommunications (Interception) Act 1979* and *Surveillance Devices Act 2004* for monitoring whether there is compliance with those Acts in the records maintained by the Australian Federal Police and the Australian Crime Commission concerning telecommunications intercepts, use of surveillance devices and controlled (covert) operations. The Ombudsman also has responsibility under the *Workplace Relations Act 1996* for reviewing statutory compliance in the records maintained by the Building Industry Taskforce as to its use of coercive powers.

Interceptions, surveillance, controlled operations and building inspections are intrusive activities that can interfere with personal privacy and individual rights. The possibility of misuse of the powers is reduced by tight legislative controls, for example, on who is authorised to conduct an interception, how an authority is granted, the length of time it is active, and use of the intercept information. Those and other controls are the subject of detailed record-keeping requirements that are spelled out in the legislation.

The role of the Ombudsman's office is to examine, through an annual schedule of audit visits, whether those statutory requirements are being met. Reports are given to the agency, the Minister, and the Parliament. Staff of the Ombudsman's office have observed that periodic auditing of this kind encourages a strong culture of compliance within law enforcement agencies. It is a systematic means of ensuring that external accountability is a reality.

While the role is essentially an inspection and auditing role, it can throw up difficult issues of judgment. In particular, the review of the use of coercive powers by the Building Industry Taskforce may necessitate some examination of whether the decision to use those powers is sustained by the material available to the decision maker. Some challenging oversight issues have also arisen. As described elsewhere in this report, we conducted our own motion investigation into controlled operations undertaken by the Australian Crime Commission under State rather than Commonwealth legislation.

challenges in complaint handling

Other chapters in this report describe the complaint issues that were investigated by the office during the year. Equally important is the system by which those complaint issues are received and investigated. This chapter looks at some of the projects we undertook during the year to improve the efficiency and effectiveness of complaint handling and investigation within the office. These include better data management, development of a Public Contact Team, and a new outreach program. Other projects were examined in last year's annual report, including a client satisfaction survey, the use of computerisation in complaint handling, and a strategic planning exercise.

DATA MANAGEMENT

A major project this year was the development of a new complaints management system. This system is computer-based, and is integral to the effective management of individual complaints by the office and the strategic garnering of data from those complaints.

The complaints management system must align with other activities in the office: efficient document creation and filing; the movement of the office towards being an electronic rather than a paper-based office; the growing emphasis upon email as a means of communication both internally and with complainants and agencies; and the increasing need for officers operating outside the office to be able to undertake mobile computing.

We have been developing a new complaint management system to meet those challenges. This project is being undertaken in conjunction with a private sector company that delivers systems to some other ombudsman offices in Australia.

We are also undertaking a major overhaul of all aspects of our information technology infrastructure and electronic document handling. This has proved to be a substantial project but one that has the potential to improve the efficiency of data entry,

the quality of data, the support that the system can provide for timely complaint management and quality control, and the efficiency with which documents are created, stored, retrieved, and moved around our eight different offices.

While we are not ready to be a paperless office, we are actively restraining the unnecessary duplication of electronic records in paper form. This requires levels of data integrity and document management that can provide the assurance of accurate record keeping, while also guaranteeing safety of the data from a security perspective and ensuring that the data is not subject to the vagaries of complex technical systems.

EFFICIENT HANDLING OF COMPLAINTS

The office has been reviewing the procedures it uses for receiving complaints and allocating those complaints to investigation or complaint officers. This task is as challenging as it is important. We receive upward of 30,000 complaints and inquiries each year, at eight separate offices, by telephone, mail, email and in person, and relating to as many as a hundred different Australian Government agencies. A decision has to be made as to which of the inquiries and complaints will be investigated, which of the seventy or so investigation officers will be allocated the complaint, and the degree of senior involvement in the investigation.

The allocation of cases has until now been influenced strongly by two factors.

- The State or Territory office in which the complaint is received or the complainant resides usually commences (and completes) the investigation.
- Different investigation officers around Australia have been designated as agency specialists (especially for agencies about which only a small number of complaints are received).

During 2004–05, a new system was developed for introduction in 2005–06. A small Public Contact

Team is being established in the Canberra office, through which all telephone complaints and inquiries will pass. The team will handle the majority of telephone contacts—for example, answering queries as to the jurisdiction of the Ombudsman, referring people to agency complaint-handling units, and resolving the more straightforward cases after contacting an agency. Cases that require a more expert analysis or sustained investigation will be referred to the most appropriate investigation officer.

This is one of the more far-reaching changes that have been made in the history of the office to the way in which complaints are handled. Among the benefits that are expected from this change are:

- the efficient dispatch of simpler inquiries
- more consistency in public contact activities
- better allocation of cases to the most appropriate and skilled investigation officer
- early detection of emerging problem areas in government administration
- greater uniformity in data entry
- better supervision by senior officers of the work of the office.

Another objective motivating this change is to strengthen the role of the State and Territory branches of our national office. The advantages of a national office structure were described in last year's annual report, and include personal contact with complainants, local knowledge of government service delivery, and interaction with community gatekeepers. More time can be spent by staff in State offices on developing that side of our work, and on investigating difficult cases, if less time is spent on routine public contact work and preliminary complaint analysis. The investigation expertise within local offices can be developed at the same time.

STAFF TRAINING

Staff training is equally important to the efficient handling and investigation of complaints. This will be a feature of the new Public Contact Team, with staff in that team being specially trained in telephone work, in identifying issues, and in identifying practical remedies for resolving problems with government.

Over the past two to three years, two other training programs have been developed for all staff—a basic course in complaint handling and investigation, and

an advanced investigation course. While these courses have been successful, it can be difficult in a national office with eight separate offices to ensure that all staff (particularly new staff) have the opportunity to undertake a course at an appropriate time. This problem is heightened when (as at present) there is both an expansion in staff numbers and a turnover of existing staff. To deal with this, we are currently investigating the delivery of training through 'online modules', which will make training materials more readily available in the location and in the timeframe required for new staff in any of our offices across the nation. We are also putting increasing emphasis on orientation training and initial training.

Another dimension of the training program is that it has been integrated with the international program of engagement with other ombudsman offices in the south-east Asian and Pacific Regions. Staff from some of those ombudsman offices have regularly joined the training courses being run in our office. Conversely, our staff have spent time in the other ombudsman offices, providing training and support.

OUTREACH INTO REGIONAL AREAS

In the 2004 Budget, the Australian Government made a commitment to support a four-year program of regional outreach in the Ombudsman's office. The program commenced in 2004–05. A core objective of the program is to raise awareness of the Commonwealth Ombudsman's role and services through visits to regional centres. We also distributed information in a targeted manner to key community networks, including through regional media where appropriate.

We achieved our aim of conducting, or participating in, an average of at least one focused outreach activity each week during the year. A total of 65 outreach activities, involving all States and Territories were undertaken.

Although it is difficult at this early stage in the program to evaluate results, we estimate that around 1.2 million Australians were directly exposed to information about the Commonwealth Ombudsman.

Highlights of the outreach program during the year included:



Ombudsman staff member, Brenda Linsell (right), at the Wimmera Field Days with representatives from Small Business Answers, Wimmera Business Centre and AusIndustry

- **Visits to 40 regional and rural communities:** in NSW, to Albury, Ballina, the Hunter Valley, Kempsey, Lismore, Tamworth, Wagga Wagga, Wollongong and Wreck Bay; in Victoria, to Ballarat, Bendigo, Echuca, Gippsland region, Horsham, Mildura, Shepparton, Swan Hill, Wangaratta and Wodonga; in Queensland, to Hervey Bay, Mt Isa and Townsville; Mt Gambier in South Australia; and Albany, Bunbury and Broome in Western Australia. In each centre we provided briefings on the role and functions of the office to a broad mix of electorate staff, staff of community and legal aid organisations, chambers of commerce, taxation agents and staff of Australian Government agencies.
- **Advertising and articles in special newspaper supplements:** these appeared in Canberra and Darwin; in the Italian newspaper *La Fiamma*; and in the Department of Veterans' Affairs publication *Vetaffairs*.
- **Broadcasting information in ten community languages:** this occurred through Centrelink's fortnightly national broadcast program on the SBS national radio network, reaching approximately 296,000 listeners.
- **Participation in community events:** these were events attended by large numbers of the general public, including the Wimmera Field Days (estimated 50,000 visitors) in Victoria; the National Multicultural Festival (estimated 20,000 visitors) in Canberra; the Albany Agricultural Show (estimated attendance 17,500), North West Expo (estimated 20,000 visitors) and Wagin Woollerama (estimated 30,000 visitors) in Western Australia; and community fairs in Sydney and Perth.

Ombudsman staff made presentations at a wide variety of functions to audiences as diverse as multicultural organisations, Australian Defence Force facilities, administrative law seminars and the Country Women's Association of NSW.

We also explored potential outreach partnerships with other complaint organisations and ombudsman offices, and organisations such as chambers of commerce. The latter played a key role in our visit to the Hunter Valley region of New South Wales in June 2005, in helping to organise, and co-hosting, a number of taxation-focused forums for small business.

A priority for the office is to build on our achievements to date and develop a more sophisticated, strategic and targeted outreach program for 2005–06.

postal industry ombudsman—safeguarding consumer rights in the postal industry

Legislation to establish the office of Postal Industry Ombudsman was introduced into the Commonwealth Parliament in August 2004. Under the proposed legislation, the Commonwealth Ombudsman will undertake the role of Postal Industry Ombudsman.

The creation of a separate office of Postal Industry Ombudsman is an important step in safeguarding consumer rights in the postal industry. Each year in Australia the public and business send and receive hundreds of millions of postal items. With such high volume, problems will occur, and it is important that there is an independent, external, high-profile agency to deal with complaints. Creating an ombudsman is now a recognised way in Australia for ensuring integrity and professionalism in complaint investigation.

The office of the Postal Industry Ombudsman will:

- take over the existing role of the Commonwealth Ombudsman of investigating postal complaints against Australia Post (the Ombudsman receives about one thousand complaints each year)
- have jurisdiction to investigate complaints against private sector postal operators that register to participate in the scheme

- develop a costing regime in accordance with Regulations for the scheme to be self-funding and for the cost of investigations to be charged on a proportionate basis to participants in the scheme
- have available the normal powers of an ombudsman to require information or documents, and to publish findings; and be required to observe procedural fairness in investigations.

The scheme is distinctive, in conferring jurisdiction upon a single ombudsman to investigate complaints in the public and the private sector. This private sector jurisdiction poses a new challenge for the Commonwealth Ombudsman. The commercial focus in the postal operations of Australia Post will also need to be reflected in the Ombudsman's approach to complaint handling.

Pending enactment of the legislation, which is expected to occur in 2005–06, we have been working to establish a framework of operations for the Postal Industry Ombudsman scheme.

accountability and management

CORPORATE GOVERNANCE

The Governor-General appointed Prof. John McMillan as Commonwealth Ombudsman in March 2003 and Mr Ron Brent as Deputy Ombudsman in June 2003, both for a five-year period. The remuneration for the Ombudsman and Deputy Ombudsman is determined in accordance with a ruling by the Remuneration Tribunal. The office's Executive comprises the Ombudsman, Deputy Ombudsman and five Senior Assistant Ombudsmen.

Each year, the Ombudsman's office develops a Strategic Plan and a Business Plan, which identify priorities for the year. Progress against these plans is monitored and assessed on a quarterly basis, with any adjustments made accordingly.

Strategic plan

The major objectives outlined in the office's 2004–05 Strategic Plan were to:

- investigate complaints against Australian Government agencies and make recommendations for resolving complaints
- foster good complaint handling in Australian 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.

The Strategic Plan for the office is being reviewed for the period 2005–06 to 2007–08, and a priority action plan for 2005–06 is being developed.

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.

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, and the office process for monitoring compliance with legislation, and government policy directives.

The Audit Committee comprises five members: Mr Ron Brent, Deputy Ombudsman (Chair); Ms Helen Fleming, Senior Assistant Ombudsman (alternate Chair); Mr Joe D'Angelo, Chief Finance Officer from the Department of the Senate; Ms Mary Durkin, Senior Assistant Ombudsman; and Ms 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. The Audit Committee endorsed the consultant's reports.

Business continuity planning

An important issue for the office is continuity management 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.

Finalisation of a business continuity plan was delayed in 2004–05 due to the office's implementation of the new information technology framework. 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 public's ability 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 2005–06 and tested as part of its implementation.

Fraud prevention and control

The Ombudsman has adopted a Fraud Control Plan 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 reviewed its fraud risks and controls in 2004–05, and the risk of fraud remains low. The Audit Committee has endorsed the office's new Fraud Control Plan.

Occupational health and safety

The office's Occupational Health and Safety Committee is made up of elected representatives from staff, including the State offices, and chaired by the Human Resource Manager, who represents management. The committee met twice 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 2004–05, 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
- workplace assessments were conducted for employees
- necessary eye examinations were undertaken
- first aid facilities and supplies were made available
- individual health awareness was raised through a health management program.

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 the management of any work-related or personal stress.

Providing access to people with disabilities

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 and Workplace Diversity Plan.

Disability action plan

The Ombudsman's Disability Action Plan was reviewed during 2004–05. A revised plan is now in place for the three-year period from July 2005 to June 2008. The plan commits the office to ensuring that people with disabilities are not disadvantaged when accessing the services provided by our organisation. It outlines the various approaches we are taking, such as:

- being accessible, with the minimum of formality, to all people who believe they have been adversely affected by defective government administration, regardless of ethnic or cultural background, sex, language differences or disability
- identifying, and overcoming where possible, barriers which might prevent ready access to the Ombudsman's information and services
- ensuring that the office identifies and understands the priorities and needs of the community (particularly those facing disadvantage).

The implementation of the plan is being monitored through the office's Occupational Health and Safety Committee.

Commonwealth Disability Strategy

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

Our role as regulator

The Ombudsman does not enforce regulations directly, but provides a complaints resolution service under statute for the Australian Government, which can include recommendations to agencies on enforcement of regulations. The Ombudsman seeks to promote awareness of services in all areas of the Australian community, and provides an online complaints lodgement facility on the office's website (which complies with Australian Government accessibility requirements). Ombudsman staff regularly liaise with community organisations to promote awareness of the Ombudsman's services.

Our role as provider

The office's complaints management system has a specific quality assurance function. Complaint handling is reviewed to ensure that outcomes are appropriate and to identify areas that may have affected service delivery.

The Ombudsman has an established internal complaints and review process, which allows complaints about the office's decisions and service quality to be resolved quickly, fairly and informally. We seek to promote awareness of the office's role and service in all areas of the Australian community. An important element in a redevelopment of the Ombudsman's website (to be completed in 2005–06) is to better meet web accessibility guidelines.

Our role as employer

The Ombudsman's Workplace Diversity Plan aims to ensure that, in working to achieve the goals of the office, the diverse background, skills, talents and views of staff are recognised, encouraged and valued, and that all staff are aware of the value of creating a culture of workplace diversity. The plan provides for the following 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.
- Employment policies and procedures are made available in a manner that is responsive to the needs of prospective employees. Appropriate material is provided in hard copy to prospective employees when they seek details of employment opportunities, as well as via the office's website in accessible formats.

- 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

Reporting requirements contained in s 311A of the *Commonwealth Electoral Act 1918* oblige the Ombudsman to report details of all amounts over \$1,500 (including GST) paid during 2004–05 for advertising or market research, including payments to advertising agencies, market research bodies, polling organisation, direct mail services and media advertising organisations. To support the office's outreach program to regional and rural Australia, advertisements were placed in 13 regional and ethnic newspapers. The total payment by the Ombudsman for newspaper advertising was \$5,295.

Service charter

We are committed to providing the best service possible to the community. 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 conclusions and decision on a complaint, they may ask for a review of how the investigation was conducted. A more senior officer not previously involved in the matter will conduct a review, and seek to determine whether the conclusion reached was reasonable, justified and adequately explained to the complainant. Only in exceptional circumstances will more than one review be undertaken.

In last year's annual report, we stated that we would review the office's service charter and the mechanisms for monitoring, responding to and recording complaints about our service. This review has been held over until early 2006 following the implementation and bedding down of the office's new complaints management system and revised work practices.

Feedback from complainants to this office is an effective way to identify where changes may need to be made. During the year, 14 written comments were received from complainants about our services. Most of the feedback concerned service delivery and decisions reached, with 12 of the comments positive and two negative. The negative comments related to dissatisfaction about decisions we made.

EXTERNAL SCRUTINY

Privacy legislation

Consistent with the Privacy Commissioner's stated approach, we continued to assess and manage our privacy issues. In doing so, we applied the *Privacy Act 1988* and the secrecy provisions in the Ombudsman Act.

The Ombudsman provided information to the Privacy Commissioner for inclusion in the Personal Information Digest. The Commissioner did not issue any reports about the actions or practices of the office under s 30 of the Privacy Act during 2004–05.

In late 2004, the Administrative Appeals Tribunal (AAT) made a decision in relation to compensation for a person whose personal information had been found by the Privacy Commissioner to have been wrongfully disclosed to the Ombudsman's office by an ACT Government

agency: *Rummery and Federal Privacy Commissioner* [2004] AATA 1221. The Ombudsman was critical of the Privacy Commissioner's determination in the ACT Ombudsman Annual Report 2003–04, pointing to a possible chilling effect on Ombudsman investigations if agencies were excessively constrained by privacy breaches in conveying information to the Ombudsman's office (which is itself subject to strict secrecy and privacy obligations). The Ombudsman was further of the view that no breach of privacy had occurred, and that the disclosure to this office (in its ACT Ombudsman role) was both proper and authorised by the *Ombudsman Act 1989* (ACT).

The decision of the AAT to award compensation for the breach of privacy adds to our concern that there will be a growing reluctance by agencies to disclose information to the Ombudsman in the absence of a formal statutory notice. There are clear signs of that trend emerging in our dealings with Australian Government agencies. The office has raised with government the option of amending the Ombudsman Act to clarify that an agency can provide information to the Ombudsman that the agency reasonably thinks is relevant to an investigation without breaching privacy laws.

Litigation and legal issues

During 2004–05, our office was the respondent in five matters brought to the AAT by two applicants (both former complainants) who had made requests under the *Freedom of Information Act 1982*. In three matters by one FOI applicant, the AAT is expected to hear the cases early in 2005–06 after significant delay requested by the applicant. The AAT dismissed an application by the other applicant in late 2004 (on the ground that internal review by the agency should first occur for the AAT to have jurisdiction). Following internal review, the applicant applied again to the AAT. The application was decided early in 2005–06, with the AAT setting aside the decision, but replacing it with a slightly revised decision that the office had proposed.

The Ombudsman is also a respondent in a matter in the Federal Magistrates Court brought by a complainant. At 30 June 2005, the court had not yet decided whether to allow the applicant the extension of time he would need to bring the action.

Section 35 of the Ombudsman Act provides that the office is not compellable to provide, to a court or tribunal, information or documents obtained by the office in discharging its functions. We customarily rely on that statutory non-compellability when required by subpoena or discovery to produce information for the purposes of a legal proceeding to which we are not a party.

PEOPLE MANAGEMENT

During 2004–05, 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 within our obligations under the *Public Service Act 1999*.

Workplace relations

The Australian Industrial Relations Commission certified a two-year agreement on 22 October 2003. The Certified 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 9.1. (Note: as statutory officers, the Ombudsman and Deputy Ombudsman are not included.)

TABLE 9.1: APS EMPLOYEES COVERED BY CERTIFIED AGREEMENT AND AUSTRALIAN WORKPLACE AGREEMENTS, BY SES AND NON-SES, 30 JUNE 2004

	SES	Non-SES
Certified Agreement	0	109
Australian Workplace Agreements	3	2

SES = Senior Executive Service

Non-salary benefits provided to staff under the agreement include employee-sponsored superannuation.

The Certified Agreement and the non-Senior Executive Service (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 an internal forum for discussion of issues surrounding implementation and operation of the agreement. It also provides the consultative, advisory and information-sharing mechanism between management and employees on matters affecting employment conditions in the office.

Career development and training

Career development and training focused on continuous improvement of performance through analysis of the organisation's needs. During the year, we employed a consultant to review the office's training and development program. Following the review, we implemented a number of the recommendations, including changing our approach to induction training to better meet the needs of new staff members, developing a training program in presentation and representational skills, and looking at a range of measures for the ongoing development of leadership and supervision skills for staff with supervisory responsibilities.

Key areas of training and staff development conducted during the year were:

- investigations course and on-the-job training
- mediation and alternative dispute resolution
- dealing with difficult people
- presentation skills
- performance management
- preventing bullying and harassment
- general information sessions.

All staff attended workshops to participate in a review and evaluation of the office's Performance Management Program and to explore key elements of effective performance appraisal, and to discuss ways of preparing effectively and staying on track. Staff also worked through a process for negotiating useful work plans and personal development plans. The workshops were held to consolidate the first full year's operation of the office's new performance management program.

An induction program was held during the year for all new staff members to provide a consolidated overview of the organisation and its functions. Subsequent new staff members were provided with individual sessions on their commencement.

The office also contributed to the development of its staff by providing study assistance to enable a number of staff to undertake courses at educational institutions.

In July 2004, a two-day workshop was held for the office's senior managers to look at some of the strategic challenges facing the office, as well as



Ombudsman staff working through some of the challenges facing the office.

issues such as juggling priorities, managing workload, encouraging more junior staff and contributing to office-wide priorities. The office's national managers group also met several times during the year to discuss specific issues arising out of the workshop.

Staffing profile

As at 30 June 2005, the actual number of employees was 116, which included the Ombudsman and Deputy Ombudsman, who are statutory appointments. The full-time equivalent number of employees was 102.

During the year, 34 employees (20 of whom were women) were engaged on an ongoing basis. Nineteen

ongoing employees left the office, equating to a turnover rate of 16%. While this turnover is relatively high, given the nature of the office's work and the fact that we run eight offices throughout Australia it is not unreasonable. There is a cost to staff turnover, however, it also provides opportunities for a small office to renew and broaden its skill base.

The numbers of ongoing and non-ongoing employees, by gender and Australian Public Service classification, are shown in Table 9.2. Six employees on long-term leave without pay under the Prime Minister's Directions 1999 are not included in the table. Table 9.3 provides the office's staffing profile by location and gender.

TABLE 9.2 STAFFING PROFILE, BY LEVEL AND GENDER, 2004–05

Salary	Men	Women	Total
APS1 \$30,774—\$33,981	-	-	-
APS2 \$34,794—\$38,584	-	-	-
APS3 \$39,632—\$42,775	2	5 (incl 3 non-ongoing)	7 (incl 3 non-ongoing)
APS4 \$44,170—\$47,958	8 (incl 2 non-ongoing)	14 (incl 2 non-ongoing)	22 (incl 4 non-ongoing)
APS5 \$49,266—\$52,241	5 (incl 2 non-ongoing)	11	16 (incl 2 non-ongoing)
APS6 \$53,211—\$61,124	8 (incl 2 non-ongoing)	15 (incl 1 non-ongoing)	23 (incl 3 non-ongoing)
EL1 \$68,214—\$73,660	10 (incl 2 non-ongoing)	8	18 (incl 2 non-ongoing)
EL2 \$78,676—\$89,197	10 (incl 1 non-ongoing)	10	20 (incl 1 non-ongoing)
SES, non SES and statutory officers—above \$94,943	4*	6	10
TOTAL	47* (incl 9 non-ongoing)	69 (incl 6 non-ongoing)	116* (incl 15 non-ongoing)

* Includes two statutory officers.

TABLE 9.3 STAFFING PROFILE, BY LOCATION AND GENDER, 2004–05

Location	Men	Women	Total
ACT	32*	41	73
NSW	2	9	11
NT	0	1	1
QLD	3	7	10
SA	0	4	4
TAS	1	0	1
VIC	6	6	12
WA	3	1	4
TOTAL	47*	69	116*

* Includes two statutory officers.

FINANCIAL MANAGEMENT

Financial performance

Revenue received from ordinary activities was \$12.762 million in 2004–05.

The office received \$11.480 million in appropriation revenue, amounting to \$2 million more than received in 2003–04. The additional revenue was provided to strengthen the Ombudsman's capacity to:

- promote public sector accountability in relation to law enforcement legislation and in regional and rural Australia, and to improve the office's delivery of online services
- inspect surveillance records held by other agencies and to ensure their compliance with relevant legislation such as the *Surveillance Devices Act 2004*
- oversight compliance powers of the Building Industry Taskforce under the *Workplace Relations Amendment (Codifying Contempt Offences) Act 2004*
- support Australian and overseas companies and individuals accessing the Ombudsman as a free avenue for complaint or review regarding trade, tender or contract objections.

Total expenses for the office were \$12.342 million leading to a surplus in 2004–05 of \$0.420 million, primarily due to the delays involved in the development of additional activities above.

Financial position

The office's total equity—that is, sum of the office's assets less its liabilities—has increased by \$0.519 million, due mainly to a surplus in the 2004–05 year and an increase in the asset revaluation reserve.

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' relate to prepayments.

The office's total assets increased to \$3.965 million in 2004–05 from \$3.731 million in 2003–04. The increases arose primarily from the implementation of a new complaints management system and related electronic data management, and the replacement of aged desktop information technology equipment (Infrastructure, Plant and Equipment). The proportion of each type of asset held during 2004–05 is set out in Figure 9.1.

Financial assets

The Statement of Financial Position shows cash holdings of \$2.157 million. This compares with the \$2.477 million held in 2003–04. The decrease in cash holding is primarily due to purchases of Infrastructure, Plant and Equipment. The office also drew on its Appropriation Receivable to fund these purchases.

Non-financial assets

The office's non-financial assets increased to \$1.668 million in 2004–05 from \$0.870 million in 2003–04, primarily due to purchases of Infrastructure, Plant and Equipment. The purchases were for implementing a new complaints management system and related electronic data management, and replacing aged desktop information technology equipment.

Liabilities

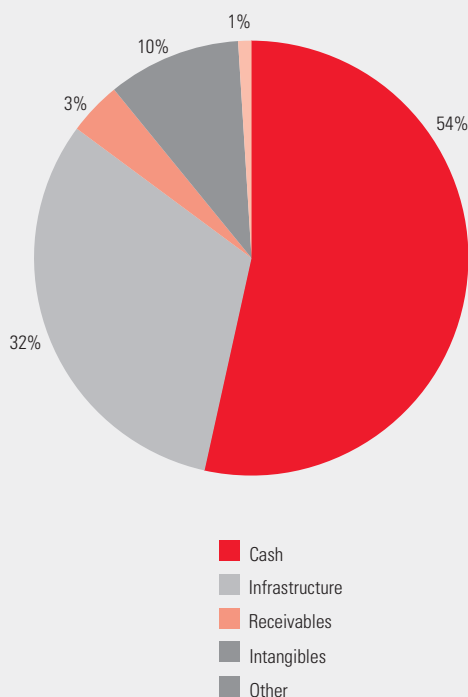
Total liabilities decreased by \$0.285 million, to \$3.193 million in 2004–05 compared to \$3.477 million in 2003–04. The decrease in liabilities was primarily due to a reduction in employee accruals and creditors.

Factors affecting future performance

In the 2005–06 Budget, we received additional funding of \$0.770 million over four years to:

- support Australian and overseas companies and individuals accessing the Ombudsman as a free avenue for complaint or review regarding trade, tender or contract objections (in the 2005–06 to 2008–09 years)
- establish a connection to Fedlink (a secure communication channel between the Ombudsman's office and other Australian Government agencies).

FIGURE 9.1 OFFICE ASSETS BY CATEGORY, 2004–05



Consulting 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. The main categories of contracts relate to information technology, financial services, human resources services, and policy, governance and legal advice.

During 2004–05, five new consultancy contracts with a value of \$10,000 or more were entered into to the value of \$145,936. Of this amount, \$122,009 was actually expended in the reporting year. In addition, one ongoing consultancy contract was active in 2004–05, involving total actual expenditure of \$990. (The total expenditure of this consultancy was \$26,464.) See Appendix 4 for details of new consultancy contracts. (Details are also available at www.ombudsman.gov.au.)

Total actual expenditure for new and existing consultancies in 2003–04 was \$278,565 (nine new consultancies) and in 2002–03 was \$98,562 (two new consultancies).

Competitive tendering and contracting

In 2004–05, we continued to outsource activities relating to the provision of financial services and payroll and recruitment services as follows:

■ DuesburysNexia

Financial services to the value of \$606,547 for the period 18 October 2000 to 30 June 2005 with net savings over a five-year period of approximately \$200,000. Following market testing in 2004, we entered into a contract commencing 1 July 2005 for services to be provided for a five-year period, including a two-year option, for \$756,900.

■ Rel Corp Management Services Pty Ltd

Payroll and recruitment services through the Department of the Prime Minister and Cabinet to the value of \$311,687 for the period 25 August 2002 to 25 August 2005. The contract has been extended for an additional period of six months, pending the outcome of marketing testing by the department.

Contracts with DuesburysNexia and Rel Corp Management provide for the Auditor-General to have access to a contractor's premises.

INFORMATION TECHNOLOGY

Significant planning of information technology infrastructure and business systems was conducted during 2004–05, resulting in changes initiated in a number of key information technology functions:

- complaints management system
- network information management architecture
- facilities management and desktop replacement.

These changes are the foundation for achieving greater consistency and integrated electronic management of information and workflow.

As reported in our 2003–04 annual report, 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 inherent restrictions of our complaints management

system and our current network architecture would inhibit our ability to make these changes.

During the year, part of the process of enhancing capacity and processing capability within the new environment included upgrading the office's ageing desktop workstations (including printers), implementing a new corporate email environment, instituting a web content management system, and reviewing complaints management work practices and functional specifications. With the upgrade of desktop equipment and the corporate email system, relevant training was conducted for staff.

Complaints management system

The electronic complaints management system is the office's core business application for complaint handling. A review of the current system's functionality found a number of performance weaknesses, including poor network performance (particularly in our State offices), limited reporting flexibility, operational issues and the need for enhancements in workflow.

The complaints management system review highlighted a need to move to a distributed database system across the Ombudsman's eight offices, with replication back to the national office in Canberra. Upgrades to all server operating systems were completed during the year to facilitate this process.

A tender process resulted in a suitable supplier being selected to implement a new system. Significant progress was made during the year in adapting the system to meet the office's functional requirements. Acceptance testing of the new system is expected to occur during September, with implementation to be completed by the end of 2005. Other factors in this process are data migration from the old system, staff training and change management.

These changes aim to improve the handling of complaint information within the office and to integrate better with other office applications, such as email and web services. The 'Challenges in complaint handling' chapter provides further information on how the complaints management system is used and on some of the challenges faced.

Network information management architecture

Our aim is for all information relating to a complaint to reside in the new complaints management system. The system will support registration of material to enable tracking of manual files from within the system, as well as the ability to move email content or associated documents into the system. While the system is a combination of records and workflow, the office's non-complaints management information is a 'record' or document management process. Typical content in this area is corporate email, network file shares (storage) and web content.

During the year, we upgraded the office's email system. In 2005–06, we plan to add additional features and move to a more structured email environment and network-shared storage, including electronic records management functionality and archiving.

The office's internet and intranet websites are being redeveloped to improve the effectiveness of the sites and the content management processes. As part of this project, a workplace web content management system was instituted during the year. Implementation of the redeveloped sites will be completed in the first half of 2005–06.

Other planning in this area includes greater mobility for use of email and flexibility in remote access (with appropriate security). We are also looking at ways to improve the office's contact mechanisms and integration between voice records and data records.

Facilities management

The management of information technology facilities (equipment and help desk) was resourced in-house for most of the year. To manage an increased level of demand for help desk user support, we implemented a new database system to track requests and outsourced the support function towards the end of the year. We will review the help desk function in 2005–06.

With suppliers moving to online facilities, we have progressed to online bill reporting and bill verification for our Telstra 1300 number system, frame relay services and voice services.



appendixes

APPENDIX 1

presentations and papers by staff

Airo-Farulla, G. 2004, *With Respect to: Characterising Commonwealth Laws*, paper presented to Constitutional Law Teachers' Workshop, Sydney.

Airo-Farulla, G. 2004, *Judicial Review of Gaming Regulation*, paper presented to 1st Annual Governance Research Network and Regulatory Institutions Network Conference, Canberra.

Airo-Farulla, G. 2004, *He Ain't Heavy, He's My Brother: Separation of Powers and Judicial Counterweights*, paper presented to 2004 Australian Institute of Administrative Law, National Administrative Law Forum, Hobart.

Airo-Farulla, G. 2004, *Courts and Tribunals—What's the Diff?*, paper presented to the Australian Institute of Judicial Administration, National Tribunals Conference, Brisbane.

Airo-Farulla, G. and White, S. 2004, *Separation of Powers, 'Traditional' Administration and Responsive Regulation (2004)* Vol. 4 Macquarie Law Journal No. 57.

Airo-Farulla, G. 2005, *Judicial Review of Gaming Regulation*, paper presented to Griffith Law School Staff Seminar, Brisbane.

Airo-Farulla, G. 2005, *When can a Tribunal Change its Mind?*, paper presented to Council of Australasian Tribunals Seminar, Brisbane.

Brent, R. 2004, *The Role of Good Governance in Australia*, presented to the National Commission of Indonesia Regional Seminar, Maumere, Indonesia.

Brent, R. 2005, *Policies, Guidelines and Legislation in Good Administration*, presented to the ACT Contact Officers Forum, Canberra.

Brent, R. 2005, *Common Faults in Administrative Inquiries*, presented to Inspector-General Australian Defence Force (IGADF) Inquiry Officers Course, Sydney.

Browne, D. 2005, *Introduction to Alternative Dispute Resolution*, presented to the Malawian Body of Case Handling Institutions Conference, Zomba, Malawi.

Browne, D. 2005, *Australian Administrative Law and the Ombudsman*, presented to the Malawian Body of Case Handling Institutions Round Table, Zomba, Malawi.

Browne, D. 2005, *Australian Administrative Law and the Ombudsman*, presented to the National Ombudsman Commission of Indonesia Regional Seminar, Manado, North Sulawesi, Indonesia.

Browne, D. 2005, *The Ombudsman and the Public Service*, presented to the National Ombudsman Commission of Indonesia Regional Seminar, Surabaya, East Java, Indonesia.

Durkin, M. 2004, *The Role of the Defence Force Ombudsman*, presented to the Defence Force Legal Conference, Canberra.

- McMillan, J. 2004, *The Ombudsman and the Rule of Law*, paper presented to the Australian National University Public Law Weekend, Canberra.
- McMillan, J. 2004, *Reflections—from Academia to Practitioner*, presented to the Australian Public Service Commission Seminar, Brisbane.
- McMillan, J. 2004, *Problem Areas in Administrative Law*, presented to a joint Commonwealth/State Ombudsman Seminar, Perth.
- McMillan, J. 2004, *Border Security and Immigration*, presented to United Nations Youth Ambassadors, Canberra.
- McMillan, J. 2004, *Administrative Law and Outsourced Decision making*, paper presented to Australian Public Service Secretaries' Meeting, Sydney.
- McMillan, J. 2004, *Adapting to Change: the Contemporary Role of the Ombudsman*, presented to the Joint Initiatives Group, Sydney.
- McMillan, J. 2004, *Legal Training for Primary Decision Makers*, presented to Administrative Review Council, Canberra.
- McMillan, J. 2005, *Problem Areas and Emerging Issues: An Ombudsman Outlook*, presented to the Australian Institute of Administrative Law, Melbourne.
- McMillan, J. 2005, *Legislative Scrutiny from an Ombudsman Perspective*, presented to the International Conference on Scrutiny of Bills and Human Rights, Canberra.
- McMillan, J. 2005, *Problem Areas and Emerging Issues: An Ombudsman Outlook*, presented to the Australian Institute of Administrative Law, Perth.
- McMillan, J. 2005, *Problem Areas in Administrative Law*, presented to the Australian Public Service Commission Seminar, Perth.
- McMillan, J. 2005, *Complaint Management and Good Government*, presented to ACT Contact Officers' Forum, Canberra.
- McMillan, J. 2005, *Natural Justice*, presented to the joint Australian Federal Police/Ombudsman Integrity Investigation Program, Canberra.
- McMillan, J. 2005, *The Ombudsman and Parliament—Assimilating their Complaint Functions*, presented to a seminar for State and Commonwealth Parliamentarians, Hobart.
- McMillan, J. 2005, *Principles of Australian Public Law*, presented to newly appointed SES officers, Canberra.
- McMillan, J. 2005, *The Ombudsman—Future Directions*, paper presented to the Australian Institute of Administrative Law National Administrative Law Forum, Canberra.
- McMillan, J. 2004–05, various presentations on administrative law, the Ombudsman and complaint handling to seminars organised by the Australian National University, Attorney-General's Department, and Sparke Helmore.
- Pitham, C. 2004, *Who's got the map?*, paper presented to the Australian Institute of Administrative Law, National Administrative Law Forum, Hobart.

freedom of information statement

This appendix provides information required under the *Freedom of Information Act 1982* (the FOI Act), which stipulates that Australian Government agencies must report annually on:

- the organisation and functions of the agency
- the categories of documents that are held by the agency
- how people can gain access to information held by the agency.

FUNCTIONS AND DECISION-MAKING POWERS OF THE OMBUDSMAN

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.

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*.

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 actions of government Ministers or judges
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)

- the actions of some government business enterprises.

The Ombudsman can decide not to investigate complaints that are 'stale', or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where he considers investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as he thinks fit. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private, and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or authority were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, he 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 report to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force complaints

The Defence Force Ombudsman (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 team 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

The FOI Act enables the Ombudsman to investigate complaints about actions and decisions by departments and agencies about 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 members. 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 a member be charged with a criminal offence or a breach of discipline, or some other course of action.

The Ombudsman's intercept and surveillance devices audit

Under the *Telecommunications (Interception) Act 1979* and the *Surveillance Devices Act 2004*, 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 Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP and the ACC.

Audit of compliance powers

The Ombudsman also has responsibility for auditing the use of the compliance powers in the *Workplace Relations Act 1996* by members of the Building Industry Taskforce.

Australian Capital Territory (ACT) Ombudsman

Under ACT legislation, and 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 Government 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
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.
- documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
- records of telephone conversations involving the complainant
- most database entries relating to the complainant.

- In the course of investigation, we may provide an agency response to a complainant so that he or she can better understand the agency's position.
- It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the documents' content and context, in the light of their experience in dealing with requests for similar documents.

A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make.

The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

- 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 has been considering whether exempting the office from the operation of the FOI Act would not, on balance, adversely affect the right of complainants. The Ombudsman proposes to raise this issue in the context of a review of the office's legislation.

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. (See contacts in 'References' section of this report.)

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 as detailed below.

FOI requests to the Ombudsman's office

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (15 in 2004–05, compared to 23 in 2003–04 and 37 in 2002–03), mostly for documents related to investigations. Following are some observations about how those requests are handled.

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:

APPENDIX 3

statistics

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—administrative deficiency 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 2004–05, including some complaints carried over from previous years.

Complaints received—complaints received in 2004–05.

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—

investigation not warranted for one of the following reasons: complaint issue is 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—complaint not within the Ombudsman's legal powers.

Resolved without determination—complaint issues resolved before the office reached a view as to whether or not there was any administrative deficiency.

Special investigation—investigations conducted under s 46 of the Complaints Act may be conducted solely by the Ombudsman or jointly with the AFP.

Substantiated—complaint issue was found to be true.

Unsubstantiated—there were no grounds for the complaint.

TABLE 1 COMPLAINTS RECEIVED, AND COMPLAINTS AND ISSUES FINALISED, 2004–05, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

Agency	Complaints		Outcome of issues finalised								Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Ombudsman investigation not warranted	Advised to pursue elsewhere	Resolved without determination	Complaint not pursued	Out of jurisdiction		
Agriculture, Fisheries and Forestry											
Australian Fisheries Management Authority	2	2	1					1			2
Australian Quarantine and Inspection Service	31	29	1	2	3	12	1	6	4		29
Australian Wine and Brandy Corporation	2	2	1			1					2
Department of Agriculture, Fisheries and Forestry	6	5	1			3			1		5
Australian Pesticides and Veterinary Medicines Authority	1	1	1								1
Attorney-General's											
Administrative Appeals Tribunal	11	12	3	2	3	1	1	2			12
Attorney-General's Department	21	26	5	8	9	1	2	3			28
Australian Crime Commission	12	11	1	6	2		1	1			11
Australian Customs Service	84	85	1	9	11	57	1	8	5		92
CrimTrac	2	1				1					1
Director of Public Prosecutions	9	11		2	2	2	1	5			12
Family Court of Australia	79	80	2	5	11	24	2	4	32		80
Federal Court of Australia	6	7	2	3	1			1			7
Federal Magistrates Court	7	7		2	3		1	1			7
High Court of Australia	4	5				2		1	3		6
Insolvency and Trustee Service, Australia	67	64	1	20	24	31	7	4			87
Office of Film and Literature Classification	1	1				1					1
Privacy Commissioner	31	29	2	4	8	12	2	3	1		32
Commonwealth Parliament											
Department of Parliamentary Services	1										
Communications, Information Technology and the Arts											
Australia Council	2	2				2					2
Australia Post	1,190	1,188	114	189	252	413	210	50	22		1,250
Australian Broadcasting Authority	18	14	2	5	3		4				14
Australian Broadcasting Corporation	7	8	1	1	4			5			11
Australian Communications Authority	15	16	4	7	5						16
Australian Film Commission	1	1				1					1
Australian Sports Commission	3	1		1							1
Australian Sports Drug Agency	3	3		3					1		4

Agency	Complaints		Outcome of issues finalised							Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Ombudsman investigation not warranted	Advised to pursue elsewhere	Resolved without determination	Complaint not pursued	Out of jurisdiction	
Department of Communications, Information Technology and the Arts	7	6		1		2		3		6
National Archives of Australia	2	2			1	1				2
National Gallery of Australia	1	2			2					2
Special Broadcasting Service Corporation	1	1				1				1
Telstra Corporation	115	113	1		4	96	2	1	10	114
Defence										
Australian Army	170	182	4	15	56	75	18	29	1	198
Australian Army Cadet Corps	2	2				1		1		2
Australian Defence Force Academy	1	2		1		1				2
Defence Force Retirement and Death Benefits Authority	7	7		2	2	2		1		7
Defence Housing Authority	24	22		4	4	11		2	1	22
Department of Defence	125	125	5	9	32	56	3	14	13	132
Department of Veterans' Affairs	203	201	11	28	37	90	16	25	5	212
Royal Australian Air Force	61	64	1	6	21	33	5	6	3	75
Royal Australian Navy	67	75	1	9	27	29	13	7	1	87
Veterans' Review Board	2	2					1	1		2
Education, Science and Training										
Australian National Training Authority	1	2		1			1			2
Australian National University	4	4			2	1			1	4
Australian Nuclear Science and Technology Organisation	-	1				1				1
Commonwealth Scientific and Industrial Research Organisation	2	2			1	1			1	3
Department of Education, Science and Training	34	36	2	4	5	13	4	5	4	37
Employment and Workplace Relations										
Australian Industrial Registry	2	2			1	1				2
Comcare	94	98	7	12	13	47	11	13	2	105
Department of Employment and Workplace Relations	352	354	9	55	67	164	27	32	16	370
Office of the Employment Advocate	4	3			1	1		1		3
Environment and Heritage										
Department of the Environment and Heritage	16	14	3	3		2	3	3	1	15
Great Barrier Reef Marine Park Authority	2	5			2	5		1		8

Agency	Complaints		Outcome of issues finalised								Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Ombudsman Investigation not warranted	Advised to pursue elsewhere	Resolved without determination	Complaint not pursued	Out of jurisdiction		
Family and Community Services											
Department of Family and Community Services	26	28	2	2	9	7	1	2	6	29	
Social Security Appeals Tribunal	11	11		2	4	2	2	2	1	13	
Finance and Administration											
Australian Electoral Commission	29	30		8	5	12	3	3	3	34	
Commissioner for Superannuation (ComSuper)	36	31		5	8	15	3			31	
Department of Finance and Administration	8	9		2	1	1			7	11	
Department of Human Services											
Australian Hearing	2	1							1	1	
Centrelink	7,699	7,719	416	1,084	1,168	4,595	681	247	41	8,232	
Child Support Agency	2,094	2,105	130	550	418	977	188	115	16	2,394	
CRS Australia	27	28	2	3	4	15	1	3	1	29	
Health Insurance Commission	179	185	7	39	40	60	28	12	2	188	
Health Services Australia	9	9			2	4		1	2	9	
Foreign Affairs and Trade											
Australian Agency for International Development (AusAID)	1	1	1							1	
Australian Trade Commission	4	3			2				2	4	
Department of Foreign Affairs and Trade	82	79	3	19	19	32	2	5	2	82	
Health and Ageing											
Department of Health and Ageing	93	93	3	12	18	39	5	11	7	95	
Food Standards Australia New Zealand	1	2		1				1		2	
Immigration and Multicultural and Indigenous Affairs											
Aboriginal and Torres Strait Islander Commission	13	16	1	1	4	5		4	1	16	
Aboriginal and Torres Strait Islander Services	13	17	1	1	3	4	6	3	1	19	
Aboriginal Hostels Limited	3	3				1	1		1	3	
ATSIC Regional Council Zones	4	3			2			1		3	
Central Land Council	1	1		1						1	
Department of Immigration and Multicultural and Indigenous Affairs	873	885	41	181	237	322	125	73	7	986	
Migration Agents Registration Authority	6	4		1	1	2		2		6	
Migration Review Tribunal	28	30	1	6	10	8		3	3	31	
National Accreditation Authority for Translators and Interpreters	1	1							1	1	
Northern Land Council	6	6	1		2	3				6	

Agency	Complaints		Outcome of issues finalised								Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Ombudsman Investigation not warranted	Advised to pursue elsewhere	Resolved without determination	Complaint not pursued	Out of jurisdiction		
Refugee Review Tribunal	6	6			1	4			1	6	
Torres Strait Regional Authority	1	1				1				1	
Industry, Tourism and Resources											
Department of Industry, Tourism and Resources	3	4			5	2				7	
Industry Research and Development Board	1	1			1					1	
IP Australia	7	7			1	6				7	
Prime Minister and Cabinet											
Australian National Audit Office	1	1					1			1	
Australian Public Service Commission	3	2				1			1	2	
Transport and Regional Services											
Airservices Australia	2	3		2		1				3	
Australian Maritime College	1	1							1	1	
Australian Maritime Safety Authority	-	1					1			1	
Civil Aviation Safety Authority	16	18		3	1	8		6	1	19	
Department of Transport and Regional Services	35	39		6	5	17	3	5	6	42	
National Capital Authority	1	3	4	1	2					7	
Treasury											
Australian Bureau of Statistics	47	46		5	12	25	2	2		46	
Australian Competition and Consumer Commission	38	34		4	9	14		8		35	
Australian Prudential Regulation Authority	44	44		4	18	15	1	3	3	44	
Australian Securities and Investments Commission	129	126	2	26	29	41	11	23	1	133	
Australian Taxation Office	1,633	1,591	40	244	299	877	82	118	29	1,689	
Department of the Treasury	5	5	1	1	1	1			1	5	
Productivity Commission	1	1			1					1	
Reserve Bank of Australia	2	2			1			1		2	
Royal Australian Mint	2	2			2					2	
Superannuation Complaints Tribunal	13	16	1	4	4	2	1	6	1	19	
ACT Government agencies	459	498	28	52	253	181	25	36	21	596	
Australian Federal Police	696	751			386	6	1	123	14	914	
TOTAL	17,310	17,441	851	2,670	3,615	8,532	1,505	1,051	331	18,939	

Note: Table 2 provides a breakdown of outcome of complaint issues finalised for the AFP. Detailed information on complaints about ACT Government agencies and AFP ACT Policing is in the ACT Ombudsman Annual Report 2004–05 (see www.ombudsman.act.gov.au).

TABLE 2 AFP COMPLAINT ISSUES FINALISED, 2004–05, *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981*

Complaints	Received	696
	Finalised	751
Outcome of complaint issues finalised	Conciliated	325
	Incapable of determination	2
	Substantiated	8
	Unsubstantiated	49
	Ombudsman investigation not warranted	386
	Advised to pursue elsewhere	6
	Resolved without determination	1
	Complaint not pursued	123
	Out of jurisdiction	14
	Total issues finalised	914

TABLE 3 AFP METHOD OF HANDLING COMPLAINT ISSUES FINALISED, 2004–05, *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981*

Method of handling complaint issues finalised	Ombudsman decision not to investigate	170
	Ombudsman preliminary inquiries	88
	Ombudsman investigation	1
	AFP workplace resolution	577
	AFP investigation	77
	Special investigation	1
	Total issues finalised	914

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.

APPENDIX 4

consultancy 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.

Table 4 provides details of consultancy services let by the office during 2004–05 with a contract value (GST inclusive) of \$10,000 or more.

(1) Methods of selection

Open tender—procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders.

Select tender—procurement procedure in which the procuring agency selects which potential suppliers

are invited to submit tenders in accordance with the mandatory procurement procedures.

Direct sourcing—procurement process, available only under certain defined circumstances, in which an agency may contact a single potential supplier or suppliers of its choice and for which conditions for direct sourcing apply under the mandatory procurement procedures.

Panel—arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements.

(2) Reasons for decision to use consultancy

A—skills currently unavailable within agency

B—need for specialised or professional skills

C—need for independent research or assessment

TABLE 4 CONSULTANCY SERVICES, 2004–05

Consultant name	Description	Contract price	Selection process (1)	Justification (2)
Australian Government Solicitor	Development of tender and contract templates	\$19,519	Direct sourcing	B
Palm Consulting Services Group	Provision of services to support improvement in Ombudsman service delivery and performance reporting	\$17,600	Direct sourcing	B
Resolution Consulting Services	Review of the office's outcome and outputs structure	\$16,150*	Select tender	A
Resolution Consulting Services	Provision of a cost model and services for cost attribution relating to the Postal Industry Ombudsman and Outreach program	\$34,100	Direct sourcing	A
Walter Turnbull	Implementation of the office's 2004–05 and 2005–06 Internal Audit Plans	\$58,567	Select tender	A
Total		\$145,936		

* Agreed value increased due to scoping of additional requirements

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 Commonwealth Ombudsman for the year ended 30 June 2005. 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 Commonwealth Ombudsman's annual report.

Scope

The financial statements and Chief Executive's responsibility

The financial statements comprise:

- Statement by the Commonwealth Ombudsman and Chief Finance Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments and Contingencies;
- Schedule of Administered Items; and
- Notes to and forming part of the Financial Statements

of the Commonwealth Ombudsman for the year ended 30 June 2005.

The Commonwealth Ombudsman is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Commonwealth Ombudsman, and that comply with accounting standards, other mandatory financial reporting requirements in Australia, and the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*. The Commonwealth Ombudsman is also responsible 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.

GPO Box 707 CANBERRA ACT 2601
Centenary House 19 National Circuit
BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them 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 judgment, 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.

I have performed procedures 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 Commonwealth Ombudsman financial position, and of its performance as represented by the statements of financial performance 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 Commonwealth Ombudsman.

Independence

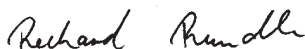
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

Audit Opinion

In my opinion, the financial statements of the Commonwealth Ombudsman:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Commonwealth Ombudsman financial position as at 30 June 2005 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable accounting standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Richard Rundle
Executive Director

Delegate of the Auditor-General
Canberra

Date: 9 September 2005

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT BY THE COMMONWEALTH OMBUDSMAN AND
CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2005 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed.....

Professor John McMillan
Commonwealth Ombudsman

Signed.....

R I Brent
Chief Finance Officer

8 September 2005

8 September 2005

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 30 June 2005

	Notes	2004-05 \$	2003-04 \$
Revenues from ordinary activities			
Revenues from government	5A	11,479,675	9,461,675
Goods and services	5B	1,253,576	1,000,379
Revenue from sale of assets	5C	4,090	2,877
Interest	5D	-	-
Other revenues	5E	24,383	55,376
Revenues from ordinary activities		12,761,724	10,520,307
Expenses from ordinary activities (excluding borrowing cost expense)			
Employees	6A	8,111,506	6,882,664
Suppliers	6B	3,804,999	3,199,116
Depreciation and amortisation	6C	300,361	274,145
Value of assets sold	5C	4,321	12,310
Write-down and impairment of assets	6D	120,430	195,000
Expenses from ordinary activities (excluding borrowing cost expense)		12,341,617	10,563,235
Borrowing costs expense	7	-	-
Net surplus/(deficit)		420,107	(42,928)
Net credit to asset revaluation reserve	9C	98,322	-
Total revenues, expenses and valuation adjustments attributable to members of the parent entity and recognised directly in equity		518,429	(42,928)
Total changes in equity other than those resulting from transactions with owners as owners		518,429	(42,928)

The above statement should be read in conjunction with the accompanying notes

OFFICE OF THE COMMONWEALTH OMBUDSMAN

STATEMENT OF FINANCIAL POSITION

as at 30 June 2005

	Notes	2004–05 \$	2003–04 \$
ASSETS			
Financial assets			
Cash	8A	2,157,387	2,477,239
Receivables	8B	<u>139,487</u>	<u>384,141</u>
Total financial assets		2,296,874	2,861,380
Non-financial assets			
Infrastructure, plant and equipment	9A	1,248,563	641,254
Intangibles	9B	388,232	192,495
Other non-financial assets	9D	<u>31,064</u>	<u>36,121</u>
Total non-financial assets		1,667,859	869,870
Total assets		<u>3,964,733</u>	<u>3,731,250</u>
LIABILITIES			
Provisions			
Employees	11A	<u>2,134,228</u>	<u>2,294,559</u>
Total provisions		2,134,228	2,294,559
Payables			
Suppliers	10A	542,316	703,432
Other payables	10B	<u>515,985</u>	<u>479,484</u>
Total payables		1,058,301	1,182,916
Total liabilities		<u>3,192,529</u>	<u>3,477,475</u>
NET ASSETS		<u>772,204</u>	<u>253,775</u>
EQUITY			
Contributed equity		848,000	848,000
Reserves		215,252	116,930
Accumulated deficits		<u>(291,048)</u>	<u>(711,155)</u>
Total equity	12	<u>772,204</u>	<u>253,775</u>
Current liabilities		1,569,108	2,011,566
Non-current liabilities		1,623,421	1,465,909
Current assets		2,327,938	2,897,501
Non-current assets		1,636,795	833,749

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 2005

	Notes	2004-05 \$	2003-04 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations		11,837,000	9,071,000
Goods and services		1,297,254	1,315,331
Interest		-	-
GST received from ATO		<u>358,748</u>	<u>215,509</u>
Total cash received		13,493,002	10,601,840
Cash used			
Employees		(8,271,837)	(6,540,474)
Suppliers		(4,415,271)	(2,714,219)
GST paid to the ATO		<u>-</u>	<u>(16,647)</u>
Total cash used		(12,687,108)	(9,271,340)
Net cash from/(used by) operating activities	13	<u>805,894</u>	<u>1,330,500</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		<u>4,090</u>	<u>2,877</u>
Total cash received		4,090	2,877
Cash used			
Purchase of property, plant and equipment		<u>(1,129,836)</u>	<u>(336,742)</u>
Total cash used		(1,129,836)	(336,742)
Net cash from/(used by) investing activities		<u>(1,125,746)</u>	<u>(333,865)</u>
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		<u>-</u>	<u>430,000</u>
Total cash received		-	430,000
Net cash from financing activities		<u>-</u>	<u>430,000</u>
Net increase in cash held		(319,852)	1,426,635
Cash at the beginning of the reporting period		<u>2,477,239</u>	<u>1,050,604</u>
Cash at the end of the reporting period	8A	<u>2,157,387</u>	<u>2,477,239</u>

The above statement should be read in conjunction with the accompanying notes

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF COMMITMENTS

as at 30 June 2005

	2004-05 \$	2003-04 \$
BY TYPE		
Capital commitments	-	-
Total capital commitments	-	-
Other commitments		
Operating leases	3,784,492	4,641,233
Total other commitments	3,784,492	4,641,233
Commitments receivable	(161,342)	(513,720)
Net commitments by type	<u>3,623,150</u>	<u>4,127,513</u>
BY MATURITY		
All net commitments		
One year or less	703,281	359,843
From one to five years	2,248,408	2,622,237
Over five years	671,461	1,145,433
Net commitments by maturity	<u>3,623,150</u>	<u>4,127,513</u>
Operating lease commitments		
One year or less	864,623	873,563
From one year to five years	2,248,408	2,622,237
Over five years	671,461	1,145,433
Total operating lease commitments	<u>3,784,492</u>	<u>4,641,233</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 schedule should be read in conjunction with the accompanying notes.

FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

SCHEDULE OF CONTINGENCIES

as at 30 June 2005

	2004-05 \$	2003-04 \$
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.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

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.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

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 2005 or in the comparative financial year.

2.2 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.

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.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.2 Revenue (Cont'd)

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.

2.3 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 2004–2005, no amounts were returned to the Official Public Account.

2.4 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.

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.4 Employee Benefits (Cont'd)

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 2005 and is recognised at the nominal amount.

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 2005. 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.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.5 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.

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.

2.6 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.

2.7 Other Financial Instruments

Accounting policies for financial instruments are stated at note 18.

2.8 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.

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.9 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, being revalued annually with sufficient frequency such that the carrying amount of each asset class is not materially different at reporting date, from its fair value.

Fair values for each class of asset are determined as shown below:

Asset class

Fair value measured at:

Leasehold improvements
Depreciated replacement cost

Plant and equipment
Market selling price

Assets which are surplus to requirements are measured at their net realisable value. At 30 June 2005, the Ombudsman had no assets surplus to requirements.

Frequency

Land, buildings, plant and equipment are revalued progressively in successive three-year cycles. All current cycles commenced on 1 July 2004.

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 1 July 2004. All valuations were completed by an independent valuer, Hyman Valuations Pty Limited.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.9 Property, Plant and Equipment (Cont'd)

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.

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 (2003–04: 3 to 8 years).

2.10 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 (2003–04: 5 to 8 years).

2.11 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.

2.12 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.

2.13 Comparative Figures

Comparative figures have been adjusted to conform to changes in presentation in these financial statements where required.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2005

Note 2 – Summary of Significant Accounting Policies (Cont'd)

2.14 Reporting of Administered Activities

The Ombudsman has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2005 or in the comparative financial year.

Note 3 – Adoption of Australian Equivalents to International Financial Reporting 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 Australian Equivalents to International Financial Reporting Standards (AEIFRS). The International Financial Reporting Standards 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, including reporting periods ending on 30 June 2005.

The purpose of issuing AEIFRS 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 AEIFRS will be able to make an explicit and unreserved statement of compliance with International Financial Reporting Standards (IFRS) as well as a statement that the financial report has been prepared in accordance with Australian Accounting Standards.

AEIFRS contain certain additional provisions that 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 that the financial report has been prepared in accordance with Australian Accounting Standards.

AAS 29 *Financial Reporting by Government Departments* will continue to apply under AEIFRS.

Accounting Standard AASB 1047 *Disclosing the impacts of Adopting Australian Equivalents to International Financial Reporting Standards* requires that the financial statements for 2004–05 disclose:

- an explanation of how the transition to AEIFRS is being managed, and
- narrative explanations of the key policy differences arising from the transition the adoption of AEIFRS.
- any known or reliably estimable information about the impacts on the financial report had it been prepared using AEIFRS; and
- if the impacts of the above are not known or reliably estimable, a statement to that effect.

Where an entity is not able to make a reliable estimate, or where quantitative information is not known, the entity should update the narrative disclosures of the key differences in accounting policies that are expected to arise from the adoption of AEIFRS.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 3 – Adoption of AASB Equivalents to International Financial Standards from 2005–2006 (Cont'd)

The purpose of this Note is to make these disclosures.

Management of the transition to AEIFRS

The Ombudsman has taken the following steps for the preparation towards the implementation of AEIFRS:

- The Ombudsman Audit Committee is tasked with oversight of the transition to and implementation of AEIFRS. The Chief Finance Officer is formally responsible for the project and reports regularly to the Audit Committee on progress.
- The following key steps will be undertaken as part of implementing AEIFRS:
 - All major accounting policy differences between current AASB standards and AEIFRS were identified by 30 June 2004.
 - System changes necessary to be able to report under the AEIFRS, including those necessary to capture data under both sets of rules for 2004–05 were completed in 2004. This included the testing and implementation of those changes.
 - A transitional balance sheet as at 1 July 2004 under AEIFRS was completed.
 - An AEIFRS compliant balance sheet as at 30 June 2005 was also prepared during the preparation of the 2004–05 statutory financial reports.
 - The 2004–05 Balance Sheet under AEIFRS will be reported to the Department of Finance and Administration in line with their reporting deadlines
- The Ombudsman has addressed the risks to successful achievement of the above objectives and continues to monitor the implementation.
- External assistance has been engaged where necessary to assist with each of the above steps.

Major changes in accounting policy

The Ombudsman believes that the first financial report prepared under AEIFRS ie at 30 June 2006, will be prepared on the basis that the Ombudsman will be a first time adopter under AASB 1 *First-time Adoption of Australian Equivalents to International Financial Reporting Standards*. Changes in accounting policies under AEIFRS are applied retrospectively i.e. as if the new policy had always applied except in relation to the exemptions available and prohibitions under AASB 1. This means that an AEIFRS compliant balance sheet has to be prepared as at 1 July 2004. This will enable the 2005–06 financial statements to report comparatives under AEIFRS.

A first time adopter of AEIFRS may elect to use exemptions under paragraphs 13 to 25E. When developing the accounting policies applicable to the preparation of the 1 July opening balance sheet, no exemptions were applied by The Ombudsman.

Changes to major accounting policies are discussed in the following paragraphs.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 June 2005

Note 3 – Adoption of AASB Equivalents to International Financial Standards from 2005–2006 (Cont'd)

Management's review of the quantitative impacts of AEIFRS represents the best estimates of the impacts of the changes as at reporting date. The actual effects of the impacts of AEIFRS may differ from these estimates due to:

- continuing review of the impacts of AEIFRS on the Ombudsman operations
- potential amendments to the AEIFRS and AEIFRS Interpretations; and
- emerging interpretation as to the accepted practice in the application of AEIFRS and the AEIFRS Interpretations.

Property plant and equipment

It is expected that the 2005–06 *Finance Minister's Orders* will continue to require property plant and equipment assets to be valued at fair value in 2005–06.

Impairment of Non-Current Assets

The Ombudsman's policy on impairment of non-current assets is at note 2.9.

Under AEIFRS, these assets will be subject to assessment for impairment and, if there are indications of impairment, an assessment of the degree of 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 net present value of net cash inflows for cash generating units of the Ombudsman and depreciated replacement cost for other assets which would be replaced if the Ombudsman were deprived of them.

The most significant changes are that for the Ombudsman's cash generating units, the recoverable amount is only generally to be measured where there is an indication of impairment. Previously all assets' recoverable amount was tested.

However, an impairment assessment of the Ombudsman's assets indicated that no adjustments will be required.

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.

The 2003–04 Financial Report noted that the AEIFRS standards may require the market yield on corporate bonds to be used. The AASB has decided that a deep market in high quality corporate bonds does not exist and therefore national government bonds will be referenced.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 3 – Adoption of AASB Equivalents to International Financial Standards from 2005–2006 (Cont'd)

AEIFRS require that annual leave that is not expected to be taken within 12 months of balance date is to be discounted. After assessing the staff leave profile, the Ombudsman does not expect that any material amounts of the annual leave balance will not be taken in the next 12 months. Consequently, there are no adjustments for non-current annual leave.

Financial Instruments

AEIFRS include an option for entities not to restate comparative information in respect of financial instruments in the first AEIFRS report. It is expected that Finance Minister's Orders will require entities to use this option. Therefore, the amounts for financial instruments presented in the Ombudsman's 2004–05 primary financial statements are not expected to change as a result of the adoption of AEIFRS.

The Ombudsman will be required by AEIFRS to review the carrying amounts of financial instruments at 1 July 2005 to ensure they align with the accounting policies required by AEIFRS. It is expected that the carrying amounts of financial instruments held by the Ombudsman will not materially change as a result of this process.

Reconciliation of Impacts – AGAAP to AEIFRS

	2005* \$	2004 \$
Reconciliation of Departmental Equity		
Total Equity under AGAAP	772,204	253,775
Adjustments to accumulated results	-	-
Total Equity under AEIFRS	<u>772,204</u>	<u>253,775</u>
Reconciliation of Departmental Accumulated Results		
Total Accumulated Results under AGAAP	(291,048)	(711,155)
Adjustments:		
Assets – Carrying Value	-	-
Depreciation	-	-
Total Accumulated Results under AEIFRS	<u>(291,048)</u>	<u>(711,155)</u>
Reconciliation of Net surplus / (deficit) for the year ended 30 June 2005		
Net surplus/(deficit) under AGAAP	420,107	(42,928)
Adjustments:		
Depreciation and Amortisation	-	-
Write-down of Assets	-	-
Total Accumulated Results under AEIFRS	<u>420,107</u>	<u>(42,928)</u>

* 30 June 2005 total represents the accumulated impacts of AEIFRS from the date of transition.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 4 – Events Occurring after Balance Date

No significant events occurred after balance date.

	2004–05 \$	2003–04 \$
Note 5 – Operating Revenues		
<u>Note 5A – Revenues from Government</u>		
Appropriations for outputs	11,463,000	9,445,000
Resources received free of charge		
Australian National Audit Office	16,675	16,675
Provision of audit services	11,479,675	9,461,675
Total revenues from government	<u>11,479,675</u>	<u>9,461,675</u>
<u>Note 5B – Goods and Services</u>		
Goods	-	-
Services	1,253,576	1,000,379
Total sales of goods and services	<u>1,253,576</u>	<u>1,000,379</u>
Provision of goods to:		
Related entities	-	-
External entities	-	-
Total sales of goods	<u>-</u>	<u>-</u>
Rendering of services to:		
Related entities	455,197	202,000
External entities	798,379	798,379
Total rendering of services	<u>1,253,576</u>	<u>1,000,379</u>
Costs of sales of goods	<u>-</u>	<u>-</u>
<u>Note 5C – Net Gain/(Loss) From Sales of Assets</u>		
Infrastructure, plant and equipment		
Proceeds from disposal	4,090	2,877
Net book value of assets disposed	(4,321)	(12,310)
Net gain/(loss) from disposal of infrastructure, plant and equipment	<u>(231)</u>	<u>(9,433)</u>

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

	2004-05 \$	2003-04 \$
Note 5 – Operating Revenues (Cont'd)		
<u>Note 5D – Interest Revenue</u>		
Interest on deposits	-	-
<u>Note 5E – Other Revenue</u>		
Other	<u>24,383</u>	<u>55,376</u>
Note 6 – Operating Expenses		
<u>Note 6A – Employee Expenses</u>		
Wages and salary	6,767,922	5,562,986
Superannuation	1,159,027	967,414
Leave and other entitlements	(19,172)	69,519
Separation and redundancy	-	-
Other employee expenses	<u>168,357</u>	<u>245,850</u>
Total employee benefits expense	<u>8,076,134</u>	<u>6,845,769</u>
Worker compensation premiums	<u>35,372</u>	<u>36,895</u>
Total employee expenses	<u>8,111,506</u>	<u>6,882,664</u>
<u>Note 6B – Supplier Expenses</u>		
Goods from related entities	-	-
Goods from external entities	363,407	293,586
Services from related entities	502,243	386,137
Services from external entities	2,173,351	1,771,447
Operating lease rentals ¹	<u>765,998</u>	<u>747,946</u>
Total supplier expenses	<u>3,804,999</u>	<u>3,199,116</u>

¹ These comprise minimum base payments only.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

	2004-05 \$	2003-04 \$
Note 6 – Operating Expenses (Cont'd)		
<u>Note 6C – Depreciation and Amortisation</u>		
<u>Depreciation</u>		
Other infrastructure, plant and equipment	<u>198,270</u>	<u>166,355</u>
Total depreciation	<u>198,270</u>	<u>166,355</u>
<u>Amortisation</u>		
Intangibles – Computer Software	<u>102,091</u>	<u>107,790</u>
Total depreciation and amortisation	<u>300,361</u>	<u>274,145</u>
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable assets are as follows:		
Leasehold improvements	106,578	72,105
Plant and equipment	91,962	94,250
Computer software	<u>102,091</u>	<u>107,790</u>
Total depreciation and amortisation	<u>300,631</u>	<u>274,145</u>
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		
Plant & Equipment	120,430	-
Net write off of intangibles	<u>-</u>	<u>195,000</u>
Total write-down of assets	<u>120,430</u>	<u>195,000</u>
Note 7 – Borrowing Cost Expenses		
Overdraft	<u>-</u>	<u>-</u>

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

	2004-05 \$	2003-04 \$
Note 8 – Financial Assets		
<u>Note 8A – Cash</u>		
Cash on hand:		
Cash at bank and on hand	2,157,387	2,477,239
Total cash	<u>2,157,387</u>	<u>2,477,239</u>
<u>Note 8B – Receivables</u>		
Goods and services	97,888	-
GST receivable from ATO	41,599	10,141
Appropriation receivable – undrawn	-	374,000
Total receivables	<u>139,487</u>	<u>384,141</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 (2004: 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:

Current	136,826	384,141
Overdue by:		
less than 30 days	-	-
30 to 60 days	-	-
60 to 90 days	-	-
more than 90 days	2,661	-
	<u>139,487</u>	<u>384,141</u>

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

	2004–05 \$	2003–04 \$
Note 9 – Non-Financial Assets		
<u>Note 9A – Infrastructure, Plant and Equipment</u>		
Leasehold improvements		
- at fair value	623,522	255,031
Accumulated amortisation	(115,695)	(122,630)
	<u>507,827</u>	<u>132,401</u>
Leasehold improvements – at cost	-	69,402
Accumulated amortisation	-	(17,958)
	<u>-</u>	<u>51,444</u>
Plant and equipment		
- at fair value	866,280	141,104
- at 2002 Ombudsman's revaluation (deprival)	-	407,520
Accumulated depreciation	(125,544)	(291,116)
	<u>740,736</u>	<u>257,508</u>
Plant and equipment – at cost	-	227,952
Accumulated depreciation	-	(28,051)
	<u>-</u>	<u>199,901</u>
Total Infrastructure, Plant and Equipment	<u><u>1,248,563</u></u>	<u><u>641,254</u></u>
<u>Note 9B – Intangibles</u>		
Computer software – at cost	734,635	451,585
Accumulated amortisation	(346,403)	(259,090)
Total Intangibles	<u><u>388,232</u></u>	<u><u>192,495</u></u>

On 1 July 2004 all material assets were revalued by an independent valuer, Hyman Valuations Pty Limited. Other tangible non-financial assets were revalued by the Ombudsman. The Ombudsman assessed the fair value of such assets by reference to the written down value of the assets and the current replacement cost.

In between formal revaluations the Ombudsman monitors the assets ensuring the fair value of the assets is materially correct. This is conducted annually and assessed as per above.

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 9 – Non-Financial Assets (Cont'd)

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	Leasehold Improvement \$	Plant and Equipment \$	Intangibles \$	Total \$
As at 1 July 2004				
Gross book value	324,433	776,576	451,585	1,552,594
Accumulated depreciation/amortisation	(140,588)	(319,167)	(259,090)	(718,845)
Opening Net Book Value	183,845	457,409	192,495	833,749
Additions:				
by purchase	290,011	538,436	301,389	1,129,836
Net revaluation increment/(decrement)	140,549	(162,657)	-	(22,108)
Depreciation/amortisation expense	(106,579)	(91,691)	(102,091)	(300,361)
Disposals:				
Other disposals	-	(760)	(3,561)	(4,321)
As at 30 June 2005				
Gross book value	623,522	866,280	734,635	2,224,437
Accumulated depreciation/amortisation	(115,695)	(125,544)	(346,403)	(587,642)
Closing Net Book Value	507,827	740,736	388,232	1,636,795

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

Note 9 – Non-Financial Assets (Cont'd)Note 9C – Analysis of Infrastructure, Plant, Equipment and Intangibles (Cont'd)

TABLE B
Summary of balances of assets at valuation as at 30 June 2005

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 30 June 2005			
Gross value	299,000	112,014	411,014
Accumulated Depreciation/Amortisation	(76,900)	(22,752)	(99,652)
Net book value	222,100	89,262	311,362
As at 30 June 2004			
Gross value	255,031	548,624	803,655
Accumulated Depreciation/Amortisation	(122,630)	(291,116)	(413,746)
Net book value	132,401	257,508	389,909

	2004–05	2003–04
	\$	\$
<u>Note 9D – Other Non-Financial Assets</u>		
Prepayments	31,064	36,121

All other non-financial assets are current assets.

Note 10 – PayablesNote 10A – Supplier Payables

Trade creditors and accruals (including GST payable)	542,316	703,432
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All supplier payables are current liabilities

Note 10B – Other Payables

Prepaid income	375,172	450,400
Lease incentives	140,813	29,084
Total other payables	515,985	479,484
Current	402,505	458,983
Non Current	113,480	20,501

**NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**

	2004–05 \$	2003–04 \$
Note 11 – Provisions		
<u>Note 11A – Employee Provisions</u>		
Salaries and wages	33,158	270,060
Leave	1,998,340	1,840,505
Superannuation	102,730	183,994
Separation and redundancy	-	-
Aggregate employee entitlement liability	<u>2,134,228</u>	<u>2,294,559</u>
Workers' compensation	-	-
Aggregate employee benefit liability and related on-costs	<u>2,134,228</u>	<u>2,294,559</u>
 Current	 624,287	 849,151
Non-current	1,509,941	1,445,408

OFFICE OF THE COMMONWEALTH OMBUDSMAN
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 12 – Equity**Note 12A – Analysis of Equity**

Item	Accumulated results		Asset revaluation reserves		Contributed Equity		TOTAL EQUITY	
	2005	2004	2005	2004	2005	2004	2005	2004
	\$	\$	\$	\$	\$	\$	\$	\$
Balance 1 July	(711,155)	(668,227)	116,930	116,930	848,000	418,000	253,775	(133,297)
Net surplus/deficit	420,107	(42,928)	-	-	-	-	420,107	(42,928)
Net revaluation increments/(decrements)	-	-	98,322	-	-	-	98,322	-
Contributions by owner: Appropriations (equity injection)	-	-	-	-	-	-	-	-
Closing Balance as at 30 June	(291,048)	(711,155)	215,252	116,930	848,000	848,000	772,204	253,775

The Ombudsman has no Administered equity.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

	2004–05 \$	2003–04 \$
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	2,157,387	2,477,239
Statement of Financial Position items comprising above cash: "Financial Asset – Cash"	2,157,387	2,477,239
Reconciliation of net surplus to net cash from operating activities:		
Net surplus/(deficit)	420,107	(42,928)
Depreciation/Amortisation	300,361	274,145
Net loss/(gain) on disposal of assets	231	9,433
Net write down of assets	120,430	195,000
(Increase)/Decrease in receivables	276,112	(269,443)
(Increase)/Decrease in prepayments	5,057	2,789
Increase/(Decrease) in employee provisions	(160,331)	342,190
Increase/(Decrease) in supplier and other payables	(124,615)	808,753
Increase/(Decrease) in GST receivable	(31,458)	10,561
Net cash from/(used by) operating activities	<u>805,894</u>	<u>1,330,500</u>

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

	2004–05	2003–04
Note 14 – Executive Remuneration		
The number of executives who received or were due to receive total remuneration of \$100,000 or more:		
	Number	Number
\$130,001 to \$140,000	1	-
\$140,001 to \$150,000	1	-
\$160,001 to \$170,000	-	3
\$170,001 to \$180,000	1	-
\$180,001 to \$190,000	1	-
\$210,001 to \$220,000	-	1
\$220,001 to \$230,000	1	-
\$280,001 to \$290,000	-	1
\$320,001 to \$330,000	1	-
The aggregate amount of total remuneration of executives shown above	\$ 1,185,012	\$ 988,972
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: **\$ 16,675** **\$ 16,675**

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 *Financial Management and Accountability Act 1997*.

Note 17 – Average Staffing Levels	Number	Number
The average staffing levels for the Ombudsman during the year were :	102	85

OFFICE OF THE COMMONWEALTH OMBUDSMAN
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

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 (2004: 30 days).

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 18 – Financial Instruments (Cont'd)

Note 18A – Terms, Conditions and Accounting Policies (Cont'd)

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 2005

Note 18 – Financial Instruments (Cont'd)

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										
			04-05	03-04	04-05	03-04	04-05	03-04	04-05	03-04	04-05	03-04	04-05	03-04	04-05	03-04	%
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	%		
Financial Assets																	
Cash at Bank	8A	2,154,686	2,474,538	-	-	-	-	-	2,701	2,701	2,157,387	2,477,239	0.0	0.0			
Receivables for goods and services	8B	-	-	-	-	-	-	-	97,888	-	97,888	-	n/a	n/a			
Appropriation Receivable	8B	-	-	-	-	-	-	-	-	374,000	-	374,000	n/a	n/a			
Total		2,154,686	2,474,538	-	-	-	-	-	100,589	376,701	2,255,275	2,851,239					
Total Assets											3,964,733	3,731,250					
Financial Liabilities																	
Trade creditors	10A	-	-	-	-	-	-	-	542,316	703,432	542,316	703,432	n/a	n/a			
Total		-	-	-	-	-	-	-	542,316	703,432	542,316	703,432					
Total liabilities											3,192,529	3,477,475					

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**Note 18 – Financial Instruments (Cont'd)**Note 18C – Net Fair Values of Financial Assets and Liabilities

	Notes	2004–05	2003–04		
		Total carrying amount	Aggregate net fair value	Total carrying amount	Aggregate net fair value
		\$	\$	\$	\$
Financial Assets					
Cash at Bank	8A	2,157,387	2,157,387	2,477,239	2,477,239
Receivables for Goods and Services	8B	97,888	97,888	-	-
Appropriation Receivable	8B	-	-	374,000	374,000
Total Financial Assets		<u>2,255,275</u>	<u>2,255,275</u>	<u>2,851,239</u>	<u>2,851,239</u>
Financial Liabilities					
Trade creditors	10A	542,316	542,316	703,432	703,432
Total Financial Liabilities		<u>542,316</u>	<u>542,316</u>	<u>703,432</u>	<u>703,432</u>

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.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005**Note 19 – Appropriations**

Note 19A – Acquittal of Authority to Draw cash from the Consolidated Revenue Fund (CRF) for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs
Year ended 30 June 2005	\$
Balance carried from previous year	2,807,840
Appropriation for reporting period (Act 1) 2004-2005	11,340,000
Appropriation for reporting period (Act 3) 2004-2005	123,000
Adjustments by the Finance Minister	-
Comcover Receipts	2,316
Advance to the Finance Minister	-
Adjustment of appropriation on change of entity function (FMA s32)	-
Refunds credited (FMA s30)	-
Sub-Total 2004-05 Annual Appropriation	14,273,156
Appropriations to take account of recoverable GST (FMA s30A)	508,667
Annotations to 'net appropriations' (FMA s31)	1,179,845
Total appropriation available for payments	15,961,668
Cash payments made during the year (GST inclusive)	13,814,055
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	2,147,613
Represented by:	
Cash at bank and on hand	2,157,387
Departmental appropriations receivable	-
GST receivable from the ATO	41,599
GST payable from Supplies	(51,373)
Total	2,147,613

Year ended 30 June 2004	
Balance carried from previous year	1,058,485
Appropriation for reporting period (Act 1) 2004-2005	9,376,000
Appropriation for reporting period (Act 3) 2004-2005	69,000
Appropriations to take account of recoverable GST (FMA s30A)	320,057
Adjustments and annotations to appropriations	1,162,380
Transfers to/from other agencies (FMA s32)	-
Estimated Administered appropriation to be lapsed	-
Available for payments	11,985,922
Payments made during the year	9,178,082
Appropriations credited to special accounts	-
Balance carried to next year	2,807,840

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 19 – Appropriations (Cont'd)

Represented by:	
Cash at bank and on hand	2,477,239
Departmental appropriations receivable	374,000
GST receivable from the ATO	10,141
GST payable from Supplies	(53,540)
Total	2,807,840

There was no savings offered up during the year and there have been no savings offered up in previous years that are still ongoing.

Footnotes:

- (1) Appropriation Acts nos. 1 and 3 (for the ordinary annual services of government) authorise the supplementation of an agency's annual net appropriation by amounts received in accordance with agreements made under section 31 of the *Financial Management and Accountability Act 1997* between the Finance Minister and the responsible Minister or their delegated or authorised officials.

Doubt has arisen as to whether the agency's Section 31 Agreement covering the periods 1998 to 2005 were effective because our signatory may not have had an express delegation or authority for signing the agreement. A new Section 31 Agreement was signed on 1 February 2005. To put the matter beyond doubt, the agency's current agreement was revised on 30 June 2005 to capture all monies that were subject to prior agreement to the extent it may have been ineffective.

The period and amounts covered by the agreement are set out below.

	1998-99	Total Pre-accrual budgeting	1999-00	2000-01	2001-02	2002-03	2003-04	Sub-total	2004-05	Total 1/7/99 to 30/6/05
Receipts affected	432,872	432,872	564,552	563,674	1,096,167	891,817	1,162,380	4,278,590	553,463	4,832,053
Spent	404,895	404,895	50,746	372,281	720,255	818,637	-	1,961,919	629,031	2,590,950
Unspent	27,977	27,977	513,806	191,393	375,912	73,180	1,162,380	2,316,671	(75,568)	2,241,103

Legal advice indicates that in the circumstances a court is unlikely to conclude that the doubtful agreement is invalid for the purposes of determining whether there has been a breach of section 83 of the Constitution.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 20 – Reporting of Outcomes

Note 20A – Net Cost of Outcome Delivery

	Outcome 1	
	2005 \$	2004 \$
Administered	-	-
Departmental	12,341,617	10,563,235
Total expenses	12,341,617	10,563,235
<i>Costs recovered from provision of goods and services to the non-government sector</i>		
Administered	-	-
Departmental	798,379	798,379
Total costs recovered	798,379	798,379
<i>Other external revenues</i>		
Administered	-	-
Total Administered	-	-
Departmental		
Interest on cash deposits	-	-
Revenue from disposal of assets	4,090	2,877
Reversals previous asset write-downs	-	-
Other	24,383	55,376
Goods and Services Revenue from Related Entities	455,197	202,000
Total Departmental	483,670	260,253
Total other external revenues	483,670	260,253
Net cost/(contribution) of outcome	11,059,568	9,504,603

OFFICE OF THE COMMONWEALTH OMBUDSMAN
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 June 2005

Note 20 – Reporting of Outcomes (Cont'd)Note 20B – Major Classes of Departmental Revenues and Expenses by Output

	Outcome 1					
	Output Group 1		Output Group 2		Outcome 1 Total	
	2005	2004	2005	2004	2005	2004
	\$	\$	\$	\$	\$	\$
Departmental expenses						
Employees	6,489,205	5,506,131	1,622,301	1,376,533	8,111,506	6,882,664
Suppliers	3,043,999	2,559,293	761,000	639,823	3,804,999	3,199,116
Depreciation and amortisation	240,289	219,316	60,072	54,829	300,361	274,145
Other	99,801	165,848	24,950	41,462	124,751	207,310
Total departmental expenses	9,873,294	8,450,588	2,468,323	2,112,647	12,341,617	10,563,235
Funded by:						
Revenues from government	9,183,740	7,569,340	2,295,935	1,892,335	11,479,675	9,461,675
Sales of goods and services	1,002,861	800,303	250,715	200,076	1,253,576	1,000,379
Other non-taxation revenues	22,778	46,602	5,695	11,651	28,473	58,253
Total departmental revenues	10,209,379	8,416,245	2,552,345	2,104,062	12,761,724	10,520,307

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.

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abbreviations and acronyms

AAT Administrative Appeals Tribunal

ACC Australian Crime Commission

ACT Australian Capital Territory

ADF Australian Defence Force

ADR alternative dispute resolution

AEC Australian Electoral Commission

AFC Air Force Cross

AFP Australian Federal Police

AFPPS Australian Federal Police Protective Service

AMSA Australian Maritime Safety Authority

ANAO Australian National Audit Office

ANZOA Australian and New Zealand
Ombudsman Association

AO Officer of the Order of Australia

APOR Asia–Pacific Ombudsman Region

APRA Australian Prudential Regulation Authority

APS Australian Public Service

ASIC Australian Securities and Investments
Commission

ASIO Australian Security Intelligence Organisation

ASIO Act *Australian Security Intelligence
Organisation Act 1979*

ATO Australian Taxation Office

AusAID Australian Agency for International
Development

AWA Australian Workplace Agreement

CDDA Compensation for Detriment Caused by
Defective Administration

CDF Chief of the Defence Force

Complaints Act *Complaints (Australian Federal
Police) Act 1981 (Cth)*

Crimes Act *Crimes Act 1914*

CSA Child Support Agency

Cth Commonwealth

DEST Department of Education, Science and Training

DEWR Department of Employment and
Workplace Relations

DFO Defence Force Ombudsman

DHA Defence Housing Authority

DIMIA Department of Immigration and
Multicultural and Indigenous Affairs

DoFA Department of Finance and Administration

DOTARS Department of Transport and Regional
Services

DVA Department of Veterans' Affairs

EL Executive Level	Ombudsman Act <i>Ombudsman Act 1976</i> (Cth)
FaCS Department of Family and Community Services	PIO Postal Industry Ombudsman
FBT Family Tax Benefit	Postal Act <i>Australian Postal Corporation Act 1989</i>
FOI freedom of information	Prof. Professor
FOI Act <i>Freedom of Information Act 1982</i>	QLD Queensland
GEERS General Employee Entitlements and Redundancy Scheme	RAAF Royal Australian Air Force
GSL Global Solutions Limited	RAN Royal Australian Navy
HEC Higher Education Contribution Scheme	ROG Redress of Grievance
HIC Health Insurance Commission	s section of Act
Hon. Honourable	SA South Australia
IDF Immigration Detention Facility	SES Senior Executive Service
IOI International Ombudsman Institute	SGC Superannuation Guarantee Charge
ITSA Insolvency and Trustee Service Australia	Surveillance Act <i>Surveillance Devices Act 2004</i>
MARA Migration Agents Registration Authority	TAS Tasmania
MC Military Cross	TI telecommunications interception
MP Member of Parliament	TI Act <i>Telecommunications (Interception) Act 1979</i>
MRT Migration Review Tribunal	TIN traffic infringement notice
NSW New South Wales	TRA Trades Recognition Australia
NT Northern Territory	VIC Victoria
NWPP National Witness Protection Program	WA Western Australia

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In writing

Email

Online complaint form

9 am–5 pm Monday to Friday
1300 362 072 (local call charge)
GPO Box 442, Canberra ACT 2601
ombudsman@ombudsman.gov.au
www.ombudsman.gov.au

Commonwealth Ombudsman offices

Adelaide

Fax 08 8226 8618
Level 5, 50 Grenfell Street
Adelaide SA 5000

Hobart

Fax 03 6233 8966
Ground floor, 99 Bathurst Street
Hobart TAS 7000

Brisbane

Fax 07 3229 4010
Level 25, 288 Edward Street
Brisbane QLD 4000

Melbourne

Fax 03 9654 7949
Level 10, Casselden Place
2 Lonsdale Street
Melbourne VIC 3000

Canberra and National Office

Fax 02 6249 7829
Ground Floor, 1 Farrell Place
Canberra City ACT 2600

Perth

Fax 08 9221 4381
Level 12, St Martin's Tower
44 St Georges Terrace
Perth WA 6000

Darwin

Fax 08 8999 1828
Level 12, NT House
Cnr Bennett and Mitchell Streets
Darwin NT 0801

Sydney

Fax 02 9211 4402
Level 7, North Wing
Sydney Central, 477 Pitt Street
Sydney NSW 2000