



Commonwealth  
**OMBUDSMAN**



08

07

ANNUAL  
REPORT

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| October 2008

The Hon. Kevin Rudd MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I have pleasure in submitting the thirty-first Commonwealth Ombudsman Annual Report for the year ended 30 June 2008, 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-fourth Annual Report of the Defence Force Ombudsman.

Section 38 of the *Complaints (Australian Federal Police) Act 1981*, now repealed, requires a report on operations of the Ombudsman under that Act during the year ended 30 June 2008. This report deals with those matters.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "John McMillan".

Prof. John McMillan  
Commonwealth Ombudsman

Defence Force Ombudsman ■ Indigenous Ombudsman ■ Law Enforcement Ombudsman ■ Postal Industry Ombudsman ■ Taxation Ombudsman

## GUIDE TO THE REPORT

In developing our annual report, we set out to meet the parliamentary reporting requirements and to provide information to the community about the diverse nature of the complaints handled by our office.

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

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

### Overview

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

### Performance review

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

### Oversight of Australian Government agencies

Focuses on particular issues that arose in investigating complaints about individual agencies, provides examples of the diversity of complaint issues about government, how the Ombudsman's office helped people to

resolve their complaint issues, and general administrative problems across government agencies. Heads of departments and agencies are provided with an opportunity to comment on draft sections that relate to their organisation. The final content is a decision for the Ombudsman.

### Appendixes and references

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

We also include a list of tables and figures contained in the report, a list of abbreviations and acronyms, and a list of addresses for our offices in each state and territory.

## CONTACTING THE COMMONWEALTH OMBUDSMAN

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

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

**Visit:** Ground Floor, 1 Farrell Place, Canberra ACT 2600

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**Phone:** 1300 362 072 (local call charge)

**Fax:** 02 6249 7829

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**Website:** [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman Annual Report 2007–2008 is available on our website.

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# FOREWORD

There was a large increase in the number of people who approached the Ombudsman's office for assistance in 2007–08. We received a record number of 39,932 approaches and complaints—a 20% increase on the previous year.

Many of those who approached the office—just over half—did so about an issue that was beyond our jurisdiction. The assistance we could provide was to direct the caller to another place for help, or to explain other options. This has become an important aspect of the work of the office. Increasingly, it seems, people turn to an Ombudsman's office for assistance in resolving a problem with government or business.

The complaints we received about matters within jurisdiction increased by 9%. The areas of biggest increase tended to be where a new or revised government program was implemented that advantaged some people and disadvantaged others. Examples were complaints about the Northern Territory Emergency Response, the new child support formula, and changes in the Welfare to Work job participation requirements. A similar increase in postal complaints seemed to reflect an increased use of parcel delivery services for goods ordered over the internet.

As those trends illustrate, a change in government services or business practices is sure to generate complaints about the changes and how they impact on people. The integrity of a new program will partially rest on whether those grievances can be raised and answered in a fair and independent manner. Complaint handling, in



Prof. John McMillan, Commonwealth Ombudsman.

that sense, can bolster public confidence that unpopular decisions are properly made.

Complaints also stem from the complexity of the laws and programs administered by government agencies. It can be vexing for members of the public if they cannot understand why a decision was made, or what must be done to satisfy a government requirement. That was a theme in many complaints received by the Ombudsman's office during the year.

In complex systems it is also more likely that administrative errors will be made—that an agency, for example, will give inadequate or perplexing advice to a person, will take too long to make a decision, or will make a faulty decision. The consequence, even of a simple administrative error or oversight, can be that a person is misled about their rights, is wrongly refused a benefit to which they are

entitled, or incurs an administrative penalty. Small errors can cause great damage.

Those points are developed in three ways in this report. First, the report highlights the importance attached by the Ombudsman's office to providing an appropriate remedy to a complainant. A remedy was provided to a person in over 3,400 cases in the past year. This has become a core statistic in portraying the work of the office. Independently of whether we conduct a painstaking investigation or identify a manifest error by an agency, providing a practical remedy to a person will often resolve their grievance.

As illustrated by the case studies in this report, an effective remedy can be as undemanding for an agency as better explaining its actions, expediting a decision or action, or apologising for a mistake or slip-up. Sometimes that will not suffice, and a different remedy such as financial compensation or changing a decision may be a more appropriate response.

A second way this report draws out the themes in the year's work is by pointing to the broader lessons that a single complaint or problem can teach. Administrative errors can be one-off or exceptional, but just as commonly they point to a weakness in an agency's processes. A strong theme in our work in the past year was to explain how complaints can provide a window on larger problems that need to be corrected. The lesson can be just as relevant to other agencies.

This theme was taken up in special Ombudsman reports published during the year, and also in a new e-bulletin service on recent complaints handled by the office. A paramount lesson in many of the case studies in those publications and in this report has to do with the importance of basic administration—recordkeeping, letter writing, oral communication, reasons for decision, procedural fairness, complaint handling, staff training and case review. Problems that inconvenience or harm members of the public can arise in all areas of government and in the best-designed programs.

Third, as discussed in this report, the office conducted or initiated a record number of own motion investigations during the year. Some of these investigations were triggered by individual complaints which pointed to a systemic or structural problem in government that warranted broader investigation. Some other investigations were in furtherance of the specialist oversight roles that have recently been given to the Ombudsman's office.

The office plans to intensify its own motion and auditing role in the coming years. Individual complaint handling will always remain the core business of the office, but needs to be supplemented by other techniques for identifying problems and improving government. This is a necessary response to the growing size and complexity of government and the frequent contact that people have with government across all aspects of their lives.

The Ombudsman's office is well suited to playing more of a monitoring and administrative auditing role than it has in the past. Our daily contact with the public on all aspects of government draws attention to issues that are of concern to people and to problems that will worsen if not tackled early. This extra oversight can assist government to strengthen its programs and administration.

One other development in the office during the year that warrants special mention is that the Ombudsman and other independent agencies in the portfolio of the Prime Minister have commenced meeting as an integrity group in government. The other agencies are the Australian National Audit Office, Australian Public Service Commission, Inspector-General of Intelligence and Security, National Archives and Privacy Commissioner. This is a welcome development which highlights the independent role these agencies jointly play in working to strengthen executive government, safeguard integrity and enhance accountability to the public.

**John McMillan**  
Commonwealth Ombudsman

# OVERVIEW

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# CHAPTER 1

## OMBUDSMAN'S REVIEW

The past year has been one of achievement and challenge for the Ombudsman's office. The essential business of the office is to handle complaints and enquiries from members of the public about government administrative action. The objective, captured in the office's outcome, is that 'administrative action by Australian Government agencies is fair and accountable'. We meet that objective by helping people to resolve complaints, by fostering improved public administration and by focusing on integrity and legislative compliance in agency administration.

Fair and accountable public administration is a fundamental aspect of a free and democratic society. The right to complain about government to an independent agency is an expression of the individual's democratic rights in relation to government. The exercise of this right minimises the inequality of power, resources and information between individuals and government.

The services of the Ombudsman's office are provided free to the public. In 2007–08 we handled approaches and complaints about 110 Australian Government departments and agencies within our jurisdiction. In short, the office provides a low-cost option to strengthen public administration and to help maintain and improve social justice in Australia.

'In 2007–08 we handled approaches and complaints about 110 Australian Government departments and agencies ...'

### COMPLAINTS

In 2007–08 we received 39,932 approaches and complaints, including requests for information and complaints about organisations and matters that are out of jurisdiction. This was a 20% increase over that recorded in 2006–07. There was a 9% increase in the number of approaches and complaints received about agencies which are in our jurisdiction, with the number increasing from 18,003 in 2006–07 to 19,621 in 2007–08.

This increase demonstrates the confidence which the public has in the office. It also indicates that, no matter how much agencies work to improve their administration, problems inevitably arise.

During 2007–08 we investigated an increased number of complaints (4,700 compared to 4,251 in 2006–07). Of these, 12% required more intensive investigation (11% the previous year). Of the 5,627 separate issues investigated, some agency error or deficiency was identified in 8% of the cases (compared to 4% last year). We identified remedies for individuals or systemic improvements in 75% of the cases investigated, compared to 67% in 2006–07.

Regrettably there was a further decline in the timeliness in investigating complaints, and an increase in the number of complaints open at the end of the financial year. This was largely due to the increase in the number of complaints investigated and their complexity.

As in recent years, an area of great challenge for the office is the investigation of complaints that involve a number of agencies and service delivery organisations. This challenge arose this year in complaints related to the Northern Territory Emergency Response (NTER), which concerned both Australian and Northern Territory Government agencies.

A new function the office discharged this year was to review complaint handling in the Australian Federal Police (AFP). This function arose from legislative changes made in 2006 to the way complaints about the AFP are handled. The Ombudsman is required to inspect AFP complaint records and report to the Australian Parliament, commenting on the adequacy and comprehensiveness of how the AFP has dealt with conduct and practices issues, as well as its handling of inquiries ordered by the relevant minister. The first two such reviews were conducted in 2007–08 and a report will be provided to Parliament in early 2008–09.

## RESPONSIVENESS TO CHANGING DEMANDS

An Indigenous Unit was established in the office in 2007, following the announcement by the former Australian Government of the NTER. The Unit deals with all matters related to the NTER and, more generally, assists Ombudsman staff in dealing with complaints from Indigenous people and communities. The unit led a substantial increase in outreach activity and complaint handling in the Northern Territory, and trained agency staff involved in the NTER in complaint handling. We opened an office in Alice Springs early in 2008.

The response of the office to the NTER demonstrated (in the same manner as the office's response to immigration matters in 2005 and 2006) the capacity of the Ombudsman's office to adapt quickly to changing priorities, and to move resources and experienced staff to areas of emerging need. The Government provided extra



Opening of the Commonwealth Ombudsman's office in Alice Springs.

funding to support the NTER activities. However, the funding was not adequate to cover the large increase in complaints arising from the NTER and the associated outreach and other activities. Resources had to be diverted from other areas in the office to cover the extra workload, which placed pressure on those other areas.

'... demonstrates the capacity of the Ombudsman's office to adapt quickly to changing priorities ...'

### COMPLIANCE AUDITING

The Ombudsman is responsible for inspecting the records of law enforcement and other agencies concerning their use of statutory powers that enable telecommunications interception, access to stored communications, use of surveillance devices, and controlled operations. The agencies in question are the AFP, the Australian Crime Commission (ACC), the Australian Commission for Law Enforcement Integrity, some state law enforcement agencies and some other enforcement agencies. The purpose of the inspections is to ensure statutory compliance and the adequacy and comprehensiveness of records. This contributes to the integrity of those law enforcement activities.

We inspected the records of the AFP on eight occasions, the ACC on seven occasions, the New South Wales Police twice, and the NSW Crime Commission and the South Australia Police once each. There was an increase in activity across all our compliance auditing work. The first audits of access to stored communications were undertaken during the year. It was pleasing to note that, over the year, the agencies made much progress in developing and 'bedding-down' procedures to ensure compliance and good administrative practice in this area.

### PROMOTING GOOD ADMINISTRATION

We continued our program of own motion investigations into problem areas in public administration. During 2007–08 we

published fourteen reports of own motion and other major investigations. The reports covered areas as diverse as Welfare to Work, the notification of decisions and review rights to unsuccessful visa applicants, administration of detention debt waiver and write-off, delay in dealing with requests under the *Freedom of Information Act 1982* (Cth), damage caused to inbound postal items, and allegations concerning the fire on HMAS *Westralia*.

The reports contained a total of 70 recommendations or major issues to be addressed. Of these, 56 were accepted in full or in principle, and three in part. While most recommendations in all reports were accepted, the overall level of acceptance by agencies was lower than usual. The majority of the recommendations that were accepted achieved a commitment from agencies to make substantial changes to improve public administration.

Reports published by the office are an important means of promoting good administration. An example was a report published in August 2007, *Lessons for public administration: Ombudsman investigation of referred immigration cases* (Report No 11/2007), that drew together ten lessons from the investigation of 247 referred immigration matters. The ten lessons in the report, on matters such as recordkeeping, communication, control of coercive powers, and management of unresolved and complex cases, are relevant to all areas of government. The Ombudsman and other senior staff have been asked to give presentations on the report to a wide range of Australian Government agencies and other organisations. The presentations also form part of the regular orientation seminars for members of the Senior Executive Service, organised by the Australian Public Service Commission.

In addition, the office put a greater focus on providing useful information to agencies about the broader lessons that emerge from Ombudsman complaint handling. We launched a series of Ombudsman e-bulletins, available from our website and

through an email subscription. The e-bulletins provide a sample of recent complaints and the lessons that can be drawn from them that are relevant across government.

'The ten lessons in the report ... are relevant to all areas of government'

Another innovation is the publication of a series of fact sheets, with the first two released in early July 2008. One outlined Ombudsman investigations, while the other discussed administrative deficiency.

In August 2007, in celebration of our thirtieth anniversary, we held a major seminar *Improving administration—the next 30 years: Complaint handling, investigation and good administration*. The speakers included private and public sector Ombudsmen, senior staff from Commonwealth and ACT government agencies, and representatives from some advocacy organisations. Their presentations at the seminar covered issues such as complaint handling across the public/private divide, principles of effective complaint handling, complainant perspectives and investigating corruption. Some of the presentations are highlighted in the feature pages of this report.

Another different activity conducted this year in the Immigration Ombudsman role was a program of monitoring of compliance, detention and removal activities of the Department of Immigration and Citizenship. This program includes unannounced visits to places of immigration detention. The program is proving particularly helpful in identifying issues of concern, and gauging the effectiveness of the department's reform process, as described in Chapter 7.

## ENGAGEMENT WITH GOVERNMENT

A new Government took office in Australia in November 2007. A strong working relationship was established early on between the Ombudsman's office and the new Government. This included meetings with a number of ministers, consultation on new government proposals, and a number of submissions to parliamentary committee inquiries. A highlight was the office's close

involvement in a major review initiated by the Minister for Immigration and Citizenship into people who had been held in immigration detention for two years or more.

The Ombudsman's office, along with some other oversight agencies, is located in the portfolio of Prime Minister and Cabinet. Other agencies include the Australian National Audit Office, the Australian Public Service Commission, the Inspector-General of Intelligence and Security, the National Archives and the Privacy Commissioner. These agencies have commenced meeting as an integrity group in the framework of government. Related responsibilities that have been shifted to the Department of Prime Minister and Cabinet are the administration of freedom of information and the development of whistleblower protection proposals. The Ombudsman's office has actively contributed to discussion on these issues within government.

## ENGAGEMENT WITH AGENCIES

The Ombudsman's office needs to maintain a sound working relationship with government agencies in order to deal efficiently and effectively with the thousands of complaints and approaches that we receive each year. In late 2006–07 we commissioned an independent market research company to undertake a survey of the views of the Ombudsman's office held by Australian and ACT Government agencies and staff.

The survey results were positive. For example, the role of the office is accepted and well regarded, with most respondents agreeing on the importance of the office and its impartiality. Helpfully, the survey results indicated some particular areas for improvement. In response, we improved the communication provided to agencies about how we work, and changed the internal allocation of responsibility for dealing with complaints about those agencies that generate a small number of complaints. The survey also pointed to areas where better relationship management with agencies is desirable.

## ENGAGEMENT WITH THE PUBLIC

During 2007–08 we continued with an active outreach program. Staff were involved in 171 outreach activities across all states and territories. This was 47% more than the previous year, due mainly to outreach work associated with the NTER.

Late in 2007–08 we commissioned an independent market research company to conduct a major survey of complainants to the office. The survey focused on access to the office, service delivery perspectives, and the demographics of people who raise complaints with us. The survey results will be assessed in detail in early 2008–09.

## INTERNATIONAL COOPERATION

The Ombudsman's international program continued during the year. Funding from Australian Agency for International Development (AusAID) programs enabled the office to continue working closely with Ombudsmen in the Pacific, Papua New Guinea (PNG) and Indonesia.

A highlight of the Twinning Program with PNG was a workshop on complaint handling for law enforcement and disciplined services held in Port Moresby. The workshop was attended by senior Australian and PNG representatives from the defence forces, and law enforcement, corrections and Ombudsman organisations. The Twinning Program has proved to be productive in assisting the Ombudsman Commission of PNG and the Royal Papua New Guinea Constabulary (RPNGC) to develop arrangements for handling complaints against the RPNGC.

Another highlight has been the transformation of the Pacific Ombudsman network to develop new forms of regional cooperation to strengthen Pacific Ombudsmen offices. This work also addresses the needs of small island states that are currently without an Ombudsman or ombudsman-like process for complaint handling, to improve transparency, accountability and good governance.

## INTERNAL MANAGEMENT

In recent years we have introduced numerous changes to our work practices, such as the introduction of a new five-tiered approach to complaint handling, a new case management system, and a Public Contact Team to be the first point of contact for nearly all approaches to the office. During 2007–08 we conducted an independent post-implementation review of the changes and also had an internal working party look at those changes.

The consultant conducting the post-implementation review concluded that the changes we made were effective and resulted in increased consistency in decision making. Further changes have been implemented following the review and the working party report.

One change was to restructure the office around specialities. The expected benefits from this change are a greater depth of expertise for those agencies about which we receive few complaints, a higher level of consistency in the way we deal with complaints, a greater capacity to identify systemic issues, and a better capacity to manage agency relationships. Other changes during the year included the creation of an Information Management Committee and rationalisation of other committees. This will ensure that the development of information technology, work practices and governance strategies align with a whole-of-office approach to information management. Another initiative was the development of a risk-based quality assurance framework.

In parallel, we have implemented a sophisticated internal training program, that incorporates ten training modules on the functions and work of the office. These include modules on administrative law, managing difficult complainants, written communication, investigations, and statutory powers and delegations.

In 2007–08, the office's operating revenue was \$19.415 million and operating expenses were \$20.072 million, resulting in a deficit of \$0.657 million. The deficit is due primarily to

delays in implementing new initiatives and the increased activity related to the NTER. The office received an unqualified audit opinion on its 2007–08 financial statements.

## YEAR AHEAD

During 2008–09 we will continue to put emphasis on publications and programs to improve public administration, as well as managing complaints and undertaking own motion investigations. We anticipate that the level of compliance auditing work will continue to increase. We expect to continue the trend of the last year of active engagement with parliamentary committees on matters under inquiry.

We will continue working to maintain a sound working relationship with agencies. In addition, we will evaluate the results of the major survey of complainants to identify and implement areas for improvement. We will

also continue our international program with funding from AusAID.

The coming year poses a number of challenges for the office. Should complaint numbers increase further, it will be particularly difficult to meet the budgetary efficiency dividend without cutting service levels. An example of the cost pressures currently faced by the office is that our Melbourne office is moving out of the central business district with the expiry of a lease and the lack of suitable alternative accommodation at an affordable cost. In addition, the office is negotiating a new collective agreement with staff. Attracting and retaining quality staff is important to the continued effectiveness of the office as an accountability institution in government. This becomes a difficult task for the office if salary levels slip further behind public service medians.

# THIRTY YEARS OF COMPLAINT HANDLING —WHAT HAVE WE LEARNT?



30TH ANNIVERSARY SEMINAR—AUGUST 2007

The office of the Commonwealth Ombudsman has been handling complaints from the public for thirty years. Over half a million complaints have been investigated and dispatched during that period, covering all areas of government. Some complaint issues have remained constant throughout the period. New issues and problems continually emerge as well, reflecting the substantial changes over time in the complexity and responsibilities of government.

Thirty years of complaint handling provides a good vantage point from which to see both the problems that arise within government, and the need for complaint-handling systems to deal with those problems.

That was the theme for the opening session of the seminar to mark the thirtieth anniversary of the office. Prof. John McMillan presented ten lessons about complaint handling that emerged from thirty years of listening to what the public has to say about government.

- Complaints are a fact of life.
- Complaints provide a window on systemic problems.
- Complaints can stimulate organisational improvement.



- Complaints must be taken seriously by the leaders of an organisation.
- Complaint handling is suitable for all areas of business and government.
- Complaint handling is a specialist task.
- Good complaint handling can defuse a crisis.
- Complaint work transforms and improves government.
- The price of failure is high.
- We can all do better.

# CHAPTER 2

## THE ORGANISATION

### HISTORY AND ESTABLISHMENT

The office of the Commonwealth Ombudsman commenced operation on 1 July 1977. The office was established by the *Ombudsman Act 1976* (Cth) (Ombudsman Act), as part of a new and distinctive system of administrative law in Australia. The office is in the portfolio administered by the Prime Minister.

Over time the responsibilities of the Ombudsman have expanded as follows:

- 1981—handling of complaints about the Australian Federal Police (AFP)
- 1982—handling complaints about freedom of information
- 1983—Defence Force Ombudsman role
- 1988—compliance auditing of AFP and National Crime Authority (now Australian Crime Commission (ACC)) telecommunication intercept records
- 1989—Australian Capital Territory Ombudsman
- 1995—Taxation Ombudsman
- 2001—monitoring controlled (covert) operations by the AFP and ACC and other agencies
- 2004—auditing the use of surveillance devices by the AFP and ACC
- 2005—assessing and reporting on the detention of long term (two years or more) immigration detainees
- 2005—Immigration Ombudsman role
- 2005—handling complaints about Commonwealth service providers
- 2006—Postal Industry Ombudsman role
- 2006—compliance auditing of access to stored communications by the AFP, ACC,

Australian Commission for Law Enforcement Integrity and other enforcement agencies (such as the Australian Taxation Office and the Australian Customs Service), and the use of surveillance devices by state law enforcement agencies under Commonwealth legislation

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

### ROLE AND FUNCTIONS

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

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

The complaint and own motion investigation roles of the Ombudsman are the more traditional Ombudsman roles that constitute the bulk of the work of the office. The guiding principle in an Ombudsman investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or otherwise wrong. At the conclusion of the investigation, the Ombudsman can recommend that corrective action be taken by an agency. This may occur either specifically in an individual case or more generally by a change to relevant legislation, administrative policies or procedures.

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

In undertaking these roles, the Ombudsman is impartial and independent. The Ombudsman is not an advocate for complainants or for agencies.

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

‘... the Ombudsman is impartial and independent ... not an advocate for complainants or for agencies’

The Commonwealth Ombudsman can consider complaints about almost all Australian Government departments and agencies, and most contractors delivering

services to the community for, or on behalf of, the Australian Government.

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

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

The Commonwealth Ombudsman is also the ACT Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). The role of ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT), and is funded in accordance with a services agreement between the Commonwealth Ombudsman and the ACT Government. The ACT Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the ACT Ombudsman function.

## 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, Alice Springs, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

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

are Senior Executive Service Band 1 staff.

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

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

## OUTCOME AND OUTPUT STRUCTURE

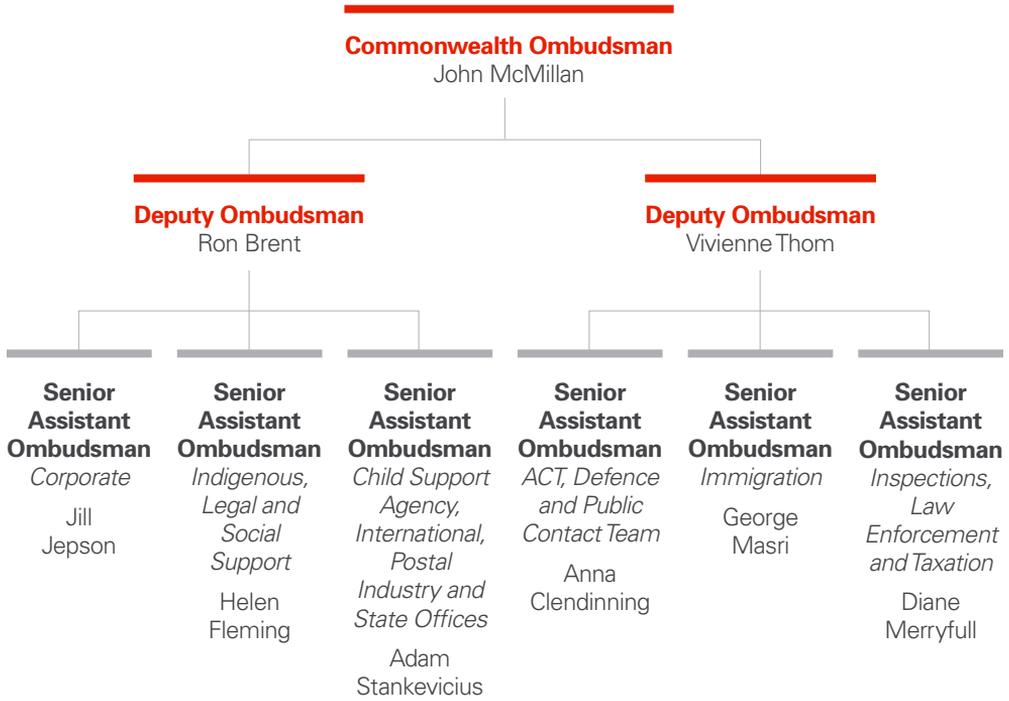
The Portfolio Budget Statements define one outcome for the office, supported by two outputs.

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

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



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

**FIGURE 2.1** Commonwealth Ombudsman organisational structure at 30 June 2008

# PERFORMANCE REVIEW

**CHAPTER 3** PAGE 15  
PERFORMANCE REPORT

**CHAPTER 4** PAGE 27  
MANAGEMENT AND ACCOUNTABILITY

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CHALLENGES IN COMPLAINT  
HANDLING

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PROMOTING GOOD ADMINISTRATION

# COMPLAINT HANDLING IN SMALL AND LARGE AGENCIES



## 30TH ANNIVERSARY SEMINAR—AUGUST 2007

All agencies that deal with the public are expected to have an internal system for handling complaints, but the appropriate type of system can vary from agency to agency.

Ms Julia Neville of the Australian Taxation Office spoke of their central complaint-handling unit, ATO Complaints, which has responsibility for ensuring the internal complaints system is working properly. Ms Neville pointed out that 'in an organisation as large and complex as the ATO, it is often more efficient to deal with complaints in the area that gives rise to them'. This is only effective if the operational areas are committed to effective complaint resolution and procedures are in place to facilitate good complaint handling and management.

Ms Neville pointed to other features of the ATO complaints system. These included a consistent complaint-recording system, Executive involvement in complaint management, a complaint quality assurance scheme, staff alerts on potential complaint issues, and close cooperation between ATO call centre operatives and a dedicated support team in ATO Complaints.

Mr Brett Phillips, Executive Director of the ACT Office of Regulatory Services (ORS) (pictured), explained that ORS



had established separate advice and complaint procedures in its different business areas because of the different types of complaints received. These included complaints about workplace safety, sale of fireworks, retirement village fees, illegal parking, and consumer complaints.

The method for dealing with a complaint could vary. Some could be dealt with by phone discussion, while others may need mediation or the exercise of formal powers of investigation, discipline or civil action.

The ORS experience pointed to the importance of reducing the number of entry points for consumers, developing a common complaint-handling policy, and better information sharing and systems interaction.

## CHAPTER 3 PERFORMANCE REPORT

This chapter summarises the office's performance based on the outcome and output structure set out in the Portfolio Budget Statements (PBS) and Portfolio Additional Estimates Statements (PAES) 2007–08.

In order to give a more comprehensive view of the range of outcomes of our work:

- Chapter 6 outlines some of our general work in promoting good administration
- Chapter 7 provides detailed assessments of our work with major agencies in handling complaints and carrying out inspections and other activities
- Chapter 8 provides examples of the types of remedies and systemic changes we achieved during the year
- Chapter 9 outlines common themes emerging from our work that can help agencies to improve their administrative procedures.

### PERFORMANCE AT A GLANCE

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

**Outcome**—Administrative action by Australian Government agencies is fair and accountable

- **Output 1**—Review of administrative action
- **Output 2**—Review of statutory compliance in specified areas.

Our original price of outputs of \$19.436 million was increased in Supplementary Estimates by \$0.200 million for supporting complaint handling in relation to the Northern Territory Emergency Response (NTER), and reduced later by \$0.082 million as part of the two per cent efficiency dividend.

During the year we received approval to budget for an operating loss of \$0.500 million due to delays in implementing some initiatives from previous years because of the tight labour market and a higher level of activity related to the NTER than had been expected.

Total expenses for the year were \$20.072 million, resulting in a deficit of \$0.657 million. Approximately 95% of our expenses were directed towards output 1, and 5% towards output 2.

A financial overview is provided in Chapter 4—*Management and accountability* on pages 37–8. Details of the total price of agency outputs of the Ombudsman's office are provided in Table 4.3 of that chapter and in Note 15 of the financial statements of this report.

**TABLE 3.1** Summary of outcome and outputs performance, 2007–08**OUTPUT 1: Review of administrative action**

	Quality and quantity measures	Performance
Approaches and complaints	<p><b>Quantity</b> Number and complexity of complaints/ issues received and investigated</p> <p>Number of inquiries and approaches received</p>	<p>19,621 approaches and complaints received about agencies within jurisdiction (compared to 18,003 in 2006–07).</p> <p>19,126 approaches and complaints covering 20,488 issues finalised, with 4,700 complaints covering 5,627 issues investigated (compared to 17,934 approaches with 19,116 issues finalised with 4,251 complaints covering 5,040 issues investigated in 2006–07).</p> <p>Of the complaints investigated, 12% required more substantial investigation (11% in 2006–07).</p> <p>Received 20,311 inquiries and approaches largely consisting of matters outside our jurisdiction or requests for information (15,319 in 2006–07).</p>
	<p><b>Quality</b> Handling of inquiries, approaches and investigated complaints meets Service Standards</p>	<p>76% of all approaches and complaints finalised within one month and 91% finalised within three months. 25% of investigated complaints finalised within one month and 69% within three months.</p> <p>A remedy was recommended or provided in 75% of the investigated cases (67% in 2006–07).</p>
	<p><b>Quality</b> An assessment of feedback received from the public</p>	<p>Finalised 210 internal reviews at request of complainants; the original decision affirmed in 72% of those reviews.</p>
Major investigations and submissions	<p><b>Quality</b> Response to advice, submissions, services, findings and recommendations by government agencies and other organisations</p> <p>Agency satisfaction with the quality of services/acceptance of findings and recommendations</p>	<p>14 own motion and major investigations conducted and reports released publicly.</p> <p>The reports contained 70 recommendations or major issues to be addressed; with 56 accepted in full or in principle, and three in part. The majority of recommendations in all reports were accepted.</p>
	<p><b>Quantity</b> Number of submissions to government</p>	<p>Five submissions on issues relevant to the Commonwealth Ombudsman's office submitted to major inquiries.</p>

	Quality and quantity measures	Performance
Reports on detainees	<p><b>Quality</b></p> <p>Timely completion of reports on detainees</p> <p>Government acceptance of recommendations on detainees</p>	<p>We provided to the Minister for Immigration and Citizenship 225 reports on the Ombudsman's reviews into the circumstances of people who had been in detention for two years or more. The Minister tabled 237 reports in Parliament.</p> <p>It is not possible to report accurately on acceptance. The Ombudsman was consulted about the review of people in long-term detention: see part 1.6 on page 24.</p>
Outreach	<p><b>Quantity</b></p> <p>Number of outreach activities</p>	<p>A total of 171 outreach activities, involving each state and territory (compared to 116 in 2006–07). We continued work on our international program with Ombudsmen offices in the Asia-Pacific region.</p>

#### OUTPUT 2: Review of statutory compliance in specified areas

Quality and quantity measures	Performance
<p><b>Quality</b></p> <p>Timely completion of the inspecting / reporting schedule</p> <p>Government and agency acceptance of and satisfaction with the quality and relevance of inspection findings and recommendations</p>	<p>All inspections completed according to the statutory inspection schedule and all reports finalised in accordance with statutory requirements.</p> <p>All the recommendations were accepted.</p>
<p><b>Quantity</b></p> <p>Number of inspections completed by category</p>	<p>We carried out 19 inspections. We inspected the records of the Australian Federal Police on eight occasions, the Australian Crime Commission on seven occasions, the NSW Police twice, and the NSW Crime Commission and SA Police once each during the year.</p>

#### Purchaser-provider arrangements

The office has purchaser–provider arrangements with the ACT Government for services provided by the Ombudsman as the ACT Ombudsman, and for complaint handling in relation to ACT Policing, performed by the Australian Federal Police (AFP). Detailed information on the outcome of this work is provided in the ACT Ombudsman Annual Report which is submitted to the ACT Legislative Assembly.

The office also has a purchaser–provider arrangement with the Australian Agency for

International Development (AusAID) for Indonesian Ombudsman Enhancement activities, Papua New Guinea Twinning activities and Pacific Island Ombudsman Enhancement activities. The services provided by the Ombudsman contribute to the outcomes and outputs that are the responsibility of AusAID. Performance measures are contained in the AusAID Portfolio Budget Statements in the Foreign Affairs and Trade portfolio. A qualitative description of our work is provided in Chapter 6—*Promoting good administration*.

## OUTPUT 1—REVIEW OF ADMINISTRATIVE ACTION

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

#### Approaches and complaints received

In 2007–08, we received a total of 39,932 approaches and complaints, 20% more than in 2006–07. Of these, 19,621 were about agencies within the Ombudsman’s jurisdiction, compared to 18,003 the previous year (a 9% increase).

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

- the need to gain access to agency records by a formal statutory notice
- the complexity or seriousness of the issue under investigation
- the nature of the allegations made by a complainant

- the time taken by an agency to respond to our requests for information
- the likely effect on other people of the issues raised by the complainant.

During the year we received 20,311 other approaches that consisted largely of matters outside our jurisdiction or requests for information. This compares to 15,319 such approaches in 2006–07; 10,147 in 2005–06 and 12,013 in 2004–05. This increase may relate to the greater public profile of Ombudsmen in recent years, whether it be the Commonwealth Ombudsman, a state or territory Ombudsman, or an industry Ombudsman. It may also relate partly to improved recording procedures in the office, as we try to capture a full picture of our work during the year.

The number of complaints and approaches received electronically continues to increase. Over the past five years, the percentage of approaches received electronically has increased from 5% to 13% of the total.

This has been accompanied by a slight decrease in the proportion of approaches received by telephone or in writing. Table 3.2 details approaches by method received.

**TABLE 3.2** Approaches and complaints, by method received, 2003–04 to 2007–08

Year	Telephone	Written	In person	Electronic	AFP*	Total
2007–08	30,568 (77%)	2,861 (7%)	1,194 (3%)	5,306 (13%)	5 (0%)	<b>39,932</b> (100%)
2006–07	26,081 (78%)	2,626 (8%)	812 (2%)	3,539 (11%)	264 (1%)	<b>33,322</b> (100%)
2005–06	22,897 (81%)	2,383 (9%)	528 (2%)	2,046 (7%)	373 (1%)	<b>28,227</b> (100%)
2004–05	24,561 (84%)	2,323 (8%)	623 (2%)	1,429 (5%)	387 (1%)	<b>29,323</b> (100%)
2003–04	21,681 (82%)	2,638 (10%)	460 (2%)	1,343 (5%)	410 (1%)	<b>26,532</b> (100%)

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

### Approaches and complaints by agency

Of the 19,621 approaches and complaints received within the Ombudsman's jurisdiction, 15,332 (78%) were about Australia Post; the Australian Taxation Office (ATO); Centrelink; the Child Support Agency (CSA); the Department of Education, Employment and Workplace Relations (DEEWR) and the former Department of Employment and Workplace Relations; and the Department of Immigration and Citizenship (DIAC).

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

### Approaches and complaints finalised and investigated

We finalised a total of 39,398 approaches and complaints. Of these, 19,126 were about agencies within the Ombudsman's jurisdiction (compared to 17,934 in 2006–07). We investigated 4,700 separate complaints (25% compared to 24% in 2006–07). Of the complaints investigated, 12% required more substantial investigation, sometimes involving a high level of involvement of senior management and the use of formal powers (categories 4 and 5 in our classification system). This compares to 4,251 complaints investigated in 2006–07, of which 11% required more substantial investigation.

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

In 2007–08 we finalised 20,488 issues about agencies which were within the Ombudsman's jurisdiction. Of the complaint issues finalised, we investigated 27% (26% in 2006–07). The remaining complaint issues

were usually finalised by referring the complainant to the internal complaint processes of the agency, or deciding that investigation was not warranted.

Of the issues investigated and finalised, some agency error or deficiency was identified in 8% of complaints (compared to 4% last year). This increase partly reflects a greater emphasis in our office on providing feedback to agencies through the mechanism of a formal finding of administrative deficiency. The most common type of deficiency noted was unreasonable delay (27% of the cases), followed by human error (18%), procedural deficiency (18%), flawed administrative process (15%) and inadequate advice, explanation or reasons (9%).

'... some agency error or deficiency was identified in 8% of complaints ...'

### Causes of complaint

As in previous years, the majority (81%) of the complaint issues finalised by the Ombudsman's office under the *Ombudsman Act 1976* related to the correctness, propriety or timeliness of a decision or action of an agency. The remainder of the complaint issues finalised related to other matters, such as the accuracy or completeness of advice given by agencies (12%), the conduct of officers in agencies (3%), or the application of a policy to the complainant's circumstances (2%).

### Complaints carried forward

The total number of complaints carried forward (past 30 June 2008) was 1,772 compared to 1,316 at 30 June 2007. A backlog will always exist as some complaints are received late in the reporting period. In addition, some complaints are complex and take longer to investigate. The increase in backlog is due principally to the increased number of complaints being received and investigated in 2007–08.

## 1.2—Handling of inquiries, approaches and investigated complaints meets Service Standards.

Our Service Charter outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met. We continue to be committed to providing the best service possible to the community.

We completed an internal review of the office's service charter during the year. The review took account of relevant issues arising from the survey of Australian Government agencies and the post implementation review of our work practice changes, described further in Chapter 5—*Challenges in complaint handling*.

### Timeliness

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

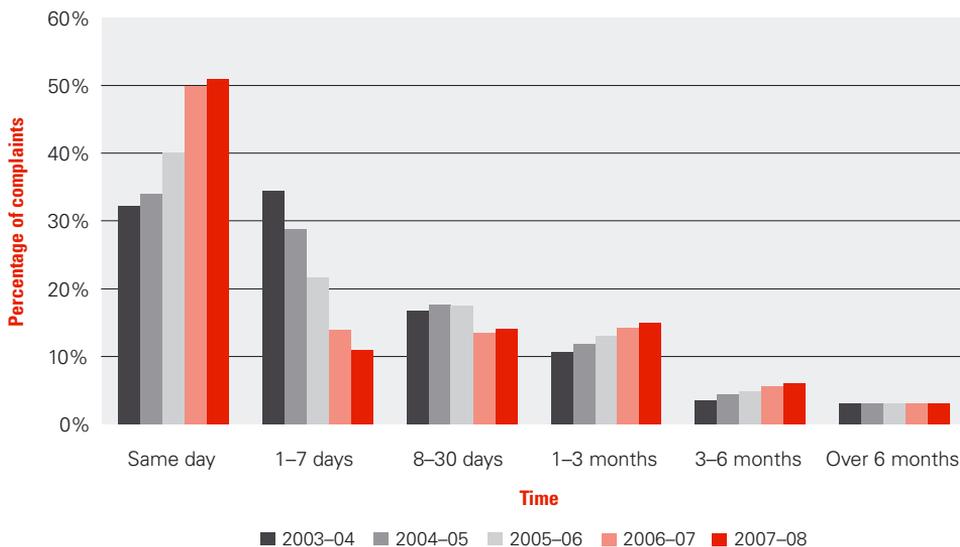
In 2007–08, we finalised 76% of all approaches and complaints within one month of receipt. Figure 3.1 shows the time taken to finalise all approaches and complaints for the periods 2003–04 to 2007–08. It should be noted that data from earlier years is not directly comparable because of changes in work practices.

In 2007–08, 25% of investigated complaints were finalised in one month and 69% were finalised in three months. This compares with 32% and 71% respectively in 2006–07. The decrease in timeliness is largely due to the increased number of investigations (up 11%, from 4,251 in 2006–07 to 4,700 in 2007–08) and the increased number of more complex investigations (up 23%, from 472 to 581). Table 3.3 shows some of the variation in the time it takes to finalise investigated complaints about different agencies.

### Remedies

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

**FIGURE 3.1** Time taken to finalise all approaches and complaints, 2003–04 to 2007–08



**TABLE 3.3** Time taken to finalise investigated complaints for selected agencies, 2007–08 (2006–07)

Agency	Number investigated	% finalised within one month	% finalised within three months
Australia Post	743 (706)	29 (38)	80 (86)
ATO	130 (187)	5 (14)	37 (63)
Centrelink	1,636 (1,197)	37 (50)	80 (85)
Child Support Agency	604 (508)	32 (35)	80 (78)
Defence agencies	200 (210)	18 (20)	53 (59)
DEEWR	176 (112)	3 (11)	45 (55)
DIAC	518 (577)	12 (21)	50 (60)

When an investigation establishes that an error has occurred (regardless of whether it is considered an administrative deficiency), the investigation officer will consider whether there is appropriate action the agency could take to remedy the problem. This could be a remedy for the complainant, and, if the problem appears to be broader, other remedial action (for example, a change to agency policy or procedures).

The most common remedy for complainants was the provision of a better explanation by an agency of its decision or action (28% of cases where a remedy was identified). Other major types of remedy were an explanation of the circumstances by the Ombudsman's office (23%), agency action being expedited (11%), a financial remedy (11%), agency decision changed or reconsidered (10%), and an apology being offered by an agency (8%).

A remedy was recommended in 75% of the complaints investigated (compared to 67% in 2006-07, 54% in 2005–06 and around 68% in the previous two years). A breakdown of remedies is provided in Appendix 3—Statistics.

'A remedy was recommended in 75% of the complaints investigated ...'

### Decisions not to investigate

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

The legislation administered by the Ombudsman gives the office a range of discretionary powers not to investigate complaints in particular circumstances. The most common reason for not investigating a complaint is that the person has not raised the matter with the agency involved. There are advantages for both the complainant and the agency if an issue is first raised at the source of the problem and an attempt made to resolve it before external intervention.

Many agencies have appropriate procedures in place to respond to dissatisfied clients. The Ombudsman is more likely to accept a complaint without the matter first being handled by the agency if:

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

This year we advised the complainant to take the matter up with the relevant agency in the first instance in 57% of the matters within the Ombudsman's jurisdiction (60% in 2006–07). While a large number of approaches and complaints are outside the Ombudsman's jurisdiction, or are not investigated, we endeavour to provide a high level of service to these people and refer them to more appropriate avenues to resolve their concerns wherever possible.

### 1.3—Assessment of feedback received from the public

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

designated review officer who is a more senior officer with no prior involvement in the complaint. The review officer will look at whether the processes our staff followed were fair and adequate, and whether the conclusions they reached were reasonable and properly explained to the complainant. Only in exceptional circumstances will more than one review be undertaken.

In 2007–08 we received 234 requests for internal review, 14% more than in 2006–07 (205). We did not agree to conduct a review in 15 cases for reasons such as the matter was out of jurisdiction, the matter had been reviewed already, the complainant did not provide any information that gave grounds for a review, or the complainant had not taken up our previous advice to raise the matter with the relevant agency in the first instance.

We finalised 210 reviews during the year, with some carried over from 2006–07 (Table 3.4). Of the finalised reviews, the original outcome was affirmed in 151 reviews (72%). This is a little lower than in recent years (80%

**TABLE 3.4** Internal review of Ombudsman action, requests and decisions, 2007–08

Complainant's reason for seeking review		Outcome affirmed	Outcome varied	Further investigation	Review withdrawn	Total
Decision/ action	Failed to address issue	51	2	20	3	76
	Misunderstood issue	17	1	5		23
	Wrong	64	2	17	2	85
	Bias	6				6
Advice	Failed to provide	1				1
	Misleading	1				1
Behaviour	Corrupt	1				1
	Incompetence	1				1
Practice and procedures	Unreasonable	1				1
Timeliness	Failure to act	1				1
	Delay				1	1
Other		7	3	3		13
<b>Total</b>		<b>151</b>	<b>8</b>	<b>45</b>	<b>6</b>	<b>210</b>

in 2006–07, 85% in 2005–06, 80% in 2004–05). The office decided to conduct additional investigation after 45 reviews (33 in 2006–07) and to change its decision on the original complaint in eight reviews (four in 2006–07). Six reviews were withdrawn by the complainant.

Of the 210 reviews finalised, 90% related to decisions or actions of an officer in the course of complaint investigations. The main reasons expressed by complainants for seeking a review were that they believed the decision we made was wrong or that we failed to address or misunderstood the issues.

Other feedback from complainants to this office is an effective way to identify where changes may need to be made. We are refining our processes to record, consider and report on such feedback office-wide.

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

The Ombudsman released public reports on 14 own motion and major investigations this year. The reports are listed in Chapter 6—*Promoting good administration*, and details of some reports are in Chapter 7—*Looking at the agencies*. The reports contained a total of 70 recommendations or major issues to be addressed. Of these, 56 were accepted in full or in principle, and three in part.

While most recommendations in all reports were accepted, the overall level of acceptance by agencies was lower than usual. Some of the recommendations that were not accepted had proposed that an agency change its procedures or policies. Reasons for not accepting the recommendation included that other action had been or would be taken by the agency to address the problem; that the recommendation raised a matter of policy that was either still under consideration or required a government response; or that the

agency disagreed with the recommendation as the preferred way of addressing the problem. Some other recommendations that were not accepted applied to several agencies and would have required agreement among agencies on the proposed change.

The majority of the recommendations that were accepted achieved a commitment from agencies to make substantial changes to improve public administration, as detailed further in Chapter 7.

Several own motion, systemic and major investigations will be completed in 2008–09. These include investigations into:

- the administration of the Compensation for Detriment caused by Defective Administration (CDDA) scheme by Centrelink, the ATO and the CSA
- the way agencies use interpreters to communicate with clients, focusing on DIAC, Centrelink, the AFP and DEEWR
- the ATO's use of unannounced access powers
- the exercise of responsibilities by ACT Policing under the *Intoxicated People (Care and Protection) Act 1994* (ACT)
- issues surrounding the carding process used by Australia Post to notify an addressee that a postal item can be collected at a designated post office or facility.

#### **1.5—Number of submissions to government**

During the year we made three submissions to Parliamentary Committees:

- the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into law enforcement integrity models
- the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into RAAF F–111 deseal/reseal workers and their families
- the House Standing Committee on Family, Community, Housing and Youth inquiry into better support for carers.

We also appeared before the Senate Standing Committee on Foreign Affairs, Defence and Trade in relation to its review of reforms to the military justice system.

In addition, we made submissions to:

- the independent Citizenship Test Review Committee appointed by the Minister for Immigration and Citizenship to examine the operation and effectiveness of the citizenship test
- the external reference group reviewing the statutory self-regulation of the migration advice profession
- the Department of Defence for the review of the Defence Inquiries Regulations 1985
- Treasury in relation to the Exposure Draft Tax Agent Services Bill, Related Regulations and Explanatory Material; and the discussion paper on a review of discretions in income tax laws.

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

In June 2005 the Australian Parliament amended the *Migration Act 1958* (Cth) to confer on the Ombudsman the role of reviewing the cases of people who had been in immigration detention for two years or more. During 2007–08 we received 158 reports from DIAC and provided 225 reports to the Minister. The Minister tabled responses on 237 reports during the year.

Given the limited information provided in some ministerial statements tabled during the year, it is not possible to report accurately on the proportion of recommendations accepted.

As described in the section on Immigration in Chapter 7—*Looking at the agencies*, in early 2008 the Minister for Immigration and Citizenship consulted with the Ombudsman on a review of the cases of people who had been in immigration detention for two years or more. The office was also represented on the task force which coordinated the

assessments of the people involved. The review led to 31 people being granted or considered for visas, 24 people to be removed from Australia, and 17 people remaining in detention pending resolution of their immigration status through other proceedings.

### 1.7— Number of outreach activities

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

#### Raising public awareness

We conducted 171 outreach activities during the year, covering all states and territories, an increase of 47% over the previous year. Indigenous people and communities affected by the Northern Territory Emergency Response were a key focus of the outreach activities. We also continued to contact community information ‘gatekeepers’, to inform them of our role and to listen to their concerns and observations about government service delivery.

Following the general election, we provided information on the role of the Ombudsman to all new and continuing federal members and senators.

#### Role of Ombudsmen in the Asia-Pacific region

We continued our involvement in strengthening mutual support among Ombudsmen in our region. Key areas for our international program involvement were Indonesia, Papua New Guinea, and other countries in the South Pacific, including those which do not currently have an Ombudsman or similar complaint-handling arrangement. The Australian Agency for International Development provided funding for these activities. Further details about our international program are in Chapter 6—*Promoting good administration*.

## OUTPUT 2—REVIEW OF STATUTORY COMPLIANCE IN SPECIFIED AREAS

### 2.1—Timely completion of the inspecting / reporting schedule

### 2.2— Government and agency acceptance of and satisfaction with the quality and relevance of inspection findings and recommendations

### 2.3— Number of inspections completed by category

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

After each inspection we forward a draft report to the agency for comment and those comments are considered in producing a final report. This procedure allows agencies to be heard before we make any findings or recommendations and, as a result, agencies are more likely to accept our position. We do not ask agencies to formally acknowledge any objections once they have received the final inspection report. We understand that all of the Ombudsman's recommendations in reports finalised in 2007–08 were accepted by the agencies.

#### Telecommunications records

Under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure telecommunications interception activities are in accordance with the provisions of the TIA Act. The Ombudsman is also required to inspect the records of these agencies and other agencies that access stored communications, to ensure their activities are in accordance with the Act. In 2007–08, we carried out four inspections each of the AFP and the ACC, and one each

of the New South Wales (NSW) Crime Commission, the NSW Police and the South Australia Police.

The TIA Act requires the Ombudsman to report to the Attorney-General in writing before 30 September each year on the results of the inspection of each agency during the preceding financial year. In accordance with this obligation, reports to the Minister were provided for the AFP and the ACC (the only agencies inspected in 2006–07) within the nominated timeframe.

#### Surveillance devices

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

The SD Act also requires the Ombudsman to report to the Attorney-General bi-annually on the results of the inspection of each agency. Reports were provided to the Attorney-General in August 2007 and February 2008 in accordance with our statutory obligation.

#### Controlled operations

Under Part 1AB of the *Crimes Act 1914* (Cth) (Crimes Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure compliance with Part 1AB. In 2007–08 we inspected the controlled operations records of the AFP on two occasions and the ACC once.

Part 1AB of the Crimes Act also requires the Ombudsman to report to the President of the Senate and the Speaker of the House of Representatives on the inspections carried out in the previous financial year and to brief the Parliamentary Joint Committee on the Australian Crime Commission. An annual report for 2006–07 was presented to Parliament in February 2008 and the briefing occurred in April 2008.

Further details on our inspections activity is contained in Chapter 7—*Looking at the agencies*.

# TRANSPARENCY AND ACCOUNTABILITY IN E-GOVERNMENT



30TH ANNIVERSARY SEMINAR—AUGUST 2007

The level of interaction between the general public and government has increased, and the ways in which people deal with government has changed markedly over the years. Technology has helped to improve public administration, allowing people to liaise with government agencies at their convenience. However, technology throws up new challenges.

Mr John Wood of Baljurda Comprehensive Consulting spoke of *Maintaining transparency and accountability in e-government*. He said the challenge for government is to ensure that those who are not computer literate, or have some form of limiting disability, are not discriminated against.

He observed that when government makes use of automated systems in decision-making, reviewers need to question whether that system has 'the capacity ... to consider all the circumstances applicable to a decision-making context'. To ensure this happens, no adverse decision should be finalised without human intervention.

Ms Kayelle Wiltshire of the Australian Government Information Management Office (AGIMO) commented that 'Accountability and transparency in



e-government is essential if we are going to gain, and maintain, the trust of citizens when they access services online and conduct transactions with government'. Ms Wiltshire spoke of AGIMO's strategy for an enhanced online service point, which will enable people to choose their preferred method of contact with government. If people access services this way, they must be confident that their details are secure and their privacy has been maintained. 'If we ensure accountability and transparency are inbuilt into our systems, they have the potential to improve the accuracy and consistency of decision-making processes.'

## CHAPTER 4 MANAGEMENT AND ACCOUNTABILITY

### CORPORATE GOVERNANCE

#### Senior executive and responsibilities

The Governor-General re-appointed the Commonwealth Ombudsman, Prof. John McMillan, to a second five-year term in March 2008. Mr Ron Brent, Deputy Ombudsman, was also re-appointed to a second five-year term in June 2008. Dr Vivienne Thom was appointed as Deputy Ombudsman in March 2006 for a five-year term.

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

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



Senior management team (standing from left) Ron Brent, Adam Stankevicius, Helen Fleming, Anna Clendinning, Diane Merryfull, Jill Jepson and George Masri; and (seated from left) John McMillan and Vivienne Thom.

At 30 June 2008, the office's senior management team and their areas of responsibility are:

Mr Ron Brent, Deputy Ombudsman—main areas of responsibility:

- Child Support Agency, International, Postal and State Offices—Mr Adam Stankevicius, Senior Assistant Ombudsman
  - specialised advice and complaint handling relating to the Child Support Agency
  - management of the office's International Program and related AusAID projects
  - specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme
  - management and oversight of our state offices (Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney) which handle complaints and undertake some specialist work.
- Corporate and Chief Finance Officer—Ms Jill Jepson, Senior Assistant Ombudsman
  - corporate services comprising finance, human resources, records management and governance
  - information technology and communications infrastructure
  - public affairs and outreach, including management of the office's intranet and internet sites
  - work practices and procedures, and business improvement.
- Indigenous, Legal and Social Support—Ms Helen Fleming, Senior Assistant Ombudsman
  - the office's Indigenous Unit, with staff located in Alice Springs, Canberra and Darwin, specialising in issues involving Indigenous people

- in-house legal advice and policy service to support staff in performing their functions
- specialised advice and complaint handling relating to the Department of Human Services (including Centrelink) and relevant policy departments.

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

- ACT, Defence and Public Contact—Ms Anna Clendinning, Senior Assistant Ombudsman
  - complaint handling relating to the ACT Ombudsman function
  - specialised advice and complaint handling relating to the Australian Defence Force, the Department of Defence, Defence Housing Australia and the Department of Veterans' Affairs
  - Public Contact Team, which provides a national point of contact for all approaches to the office made by telephone, email or online.
- Immigration—Mr George Masri, Senior Assistant Ombudsman
  - specialised advice and complaint handling relating to the Department of Immigration and Citizenship
  - reviewing the cases of detainees who have been held in immigration detention for two years or more.
- Inspections, Law Enforcement and Taxation—Ms Diane Merryfull, Senior Assistant Ombudsman
  - inspecting the records of law enforcement agencies for statutory compliance, adequacy, and comprehensiveness
  - complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies
  - specialised advice and complaint handling relating to the Australian Taxation Office.

### Corporate planning and review

During the year, the office's Strategic Plan was reviewed to build on achievements over the past three years and to reflect priorities for the period 2008 to 2011. Strategic priorities identified for 2008–09 are to:

- target outreach, relevant publications and communication activities to key stakeholders, particularly through intermediaries
- be responsive to areas of changing need in allocating resources
- build on the work practice and system changes to deliver improved timeliness, efficiency and effectiveness in managing complaints
- improve quality assurance and consistency in complaint handling
- improve staff training and development programs.

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

### Management committees

Management committees are set up to assist the Executive with decision making in key areas. The committees make recommendations to the Executive, which meets on a weekly basis.

#### Senior management

The Senior Assistant Ombudsmen, or their representatives, meet fortnightly with the Executive to discuss a broad range of issues relating to the work of the office.

#### Information Management Committee

In September 2007 the office created an Information Management Committee. The committee has an oversight function to ensure that the development of information

technology, work practices and governance strategies align with a whole-of-office approach to information management. The Committee is chaired by a Deputy Ombudsman and has representatives from relevant areas in the office, including the specialist investigation areas.

The committee has been active in guiding the coordination of a range of activities to support current and future office needs. The primary focus of the committee is to build on our existing information management framework to deliver more effective and efficient complaint handling, to improve service delivery over the internet, and to improve electronic records management. The committee met seven times during the year.

The office's Work Practices Steering Committee and Information Technology Steering Committee have been subsumed into the Information Management Committee.

#### Internal Audit Committee

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

At 30 June 2008 the membership of the committee comprised Dr Vivienne Thom, Deputy Ombudsman (Chair), Ms Helen Fleming, Senior Assistant Ombudsman, Ms Anna Clendinning, Senior Assistant Ombudsman, and Mr Joe D'Angelo, Chief Finance and Information Officer, Department of the Senate (independent external member). Representatives from the Australian National Audit Office (ANAO) attend committee meetings as observers, and the office's internal auditors, Walter Turnbull, and the Chief Finance Officer, attend meetings to report on particular matters.

During 2007–08 three internal audits were conducted by WalterTurnbull—information technology service delivery, contract management and records management. We are implementing the recommendations from the audits.

#### Occupational Health and Safety Committee

The office's Occupational Health and Safety (OH&S) Committee is made up of elected representatives from each state office and chaired by the Human Resources Manager who represents management. The committee met twice during the year. More detail on OH&S is provided later in this chapter.

#### Workplace Relations Committee

A Deputy Ombudsman chairs the Workplace Relations Committee. It consists of employee, management and union representatives, and is the main consultative body on workplace conditions within the office. The committee met eight times during the year, and considered matters such as staff survey action items, recruitment and selection guidelines, learning and development, collective agreement negotiations, accommodation and environmental management.

### Corporate governance practices

#### Risk management

The office's risk management activities are overseen by the Internal Audit Committee, and have been incorporated into the Ombudsman's planning and operations and the management of contractors. During the year the office updated its risk management framework and engaged WalterTurnbull to prepare a strategic risk management plan.

The office's risk management strategies include:

- applying risk management strategies across the office in a systematic, consistent and effective manner
- identifying and managing all high and significant risk exposures

- integrating risk management practices with other existing processes such as business improvement.

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

#### Business continuity planning

We finalised our Business Continuity Plan during the year. The plan utilises the strengths of a national office structure to respond to a potential outage in one or more of the office's nine sites.

The plan was tested in February 2008. The test highlighted the need for further work, after which we developed an implementation strategy. The plan documents a roll out of the communication strategy to all staff and a 'real time' test of the plan.

#### Fraud prevention and control

We regularly review our fraud control plan and fraud risk assessment. The office has prepared fraud risk assessments and fraud control plans, and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the office and comply with the *Commonwealth Fraud Control Guidelines* issued in May 2002. The risk of fraud remains low for the office.

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

#### Ethical standards

The Commonwealth Ombudsman Certified Agreement 2005–2008 includes the Australian Public Service Values, as specified in s 10 of the *Public Service Act 1999* (Cth) (Public Service Act), and the values adopted by the Commonwealth Ombudsman's office in its Strategic Plan 2008–2011. These standards will also underpin the collective agreement currently being negotiated with staff and the Community and Public Sector Union.

The importance of the values is outlined in induction documentation and training for staff, and in internal documents including the Workplace Diversity Framework and Plan, the Harassment Prevention Policy and the Work Practice Manual. It is reinforced on a continuous basis through mechanisms such as quality assurance processes and dealing with complaints about service delivery. We also gauge external perceptions of our ethical standards through major surveys, such as the agency survey and client survey described in Chapter 5.

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

### Commonwealth Disability Strategy

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

The office's operations encompass the activities of regulator, service provider and employer. The office's employer role activities are reported through the Australian Public Service Commission's State of the Service agency survey.

### Regulator

The Ombudsman does not directly enforce the disability discrimination legislation, but provides a complaint resolution service about Australian Government administrative actions. This assists in meeting the objectives of the Commonwealth Disability Strategy. This can include recommendations on enforcement of legislative obligations that apply to Australian Government agencies. Recommendations and remedies arising

from some complaint investigations may also be particularly relevant to people with a disability. The own motion investigation report *Implementation of job capacity assessments for the purposes of Welfare to Work initiatives* (Report No 5/2008) is one such example.

The Ombudsman seeks to promote awareness of services in all areas of the Australian community, and provides an online complaint lodgement facility on the office's website. Ombudsman staff liaise regularly with community organisations to promote awareness of the Ombudsman's services.

### Provider

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

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

### Environmental matters

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

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently and in an ecologically responsible manner. During 2007–08 we conducted an energy audit of all electrical equipment and the air conditioning system in our Canberra office.

The office's Environmental Management Policy and information material focus on the conservation of energy, including the use of light, computer equipment, water management, transport management and organic recycling. The office recycles toner/printer cartridges, paper and cardboard products, classified waste and cans, bottles and plastic. These strategies are communicated through the Workplace Relations Committee, the office intranet, and induction program. We are also introducing an electronic records management system, with one objective being to help reduce paper usage.

The Ombudsman office's estimated energy consumption per person per year decreased by 3% from 2005–06 to 2006–07, and in 2006–07 was below the government's target for 2011–12. Data for 2007–08 was not available at the time of preparation of this report. It should be noted that all our offices in the states and territories are shared with other tenants and, in the case of the largest location of staff in Canberra, in an aged office building. We are looking at ways we can improve our environmental reporting in future.

## EXTERNAL SCRUTINY

### Privacy legislation

The Ombudsman's office is subject to the *Privacy Act 1988* (Cth) (*Privacy Act*). The office takes seriously its obligations in obtaining, holding, using and disclosing the personal information of complainants and others.

The Ombudsman provided information to the Privacy Commissioner for inclusion in the Personal Information Digest. The Commissioner did not issue any reports about the actions or practices of the office

under s 30 of the *Privacy Act* in 2007–08. The Commissioner concluded an investigation into the actions of the Ombudsman's office, finding there had been no breach of privacy as had been alleged by the complainant.

Substantial parts of our submission to the Australian Law Reform Commission review of privacy legislation were broadly reflected in the Commission's discussion paper.

### Human Rights and Equal Opportunity Commission

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

The Commission completed its investigation of a complaint it had received about a decision of the Ombudsman's office not to accept telephone calls from a complainant for a period. This is a step the office sometimes takes to deal with callers who are unreasonably persistent or insulting in their contact with the office. The Commission did not criticise the Ombudsman's office and the office's restriction on such contact has expired.

### Litigation and legal issues

In 2007–08 the Ombudsman's office was the respondent in three matters brought to the Administrative Appeals Tribunal (AAT) by complainants who had made requests under the *Freedom of Information Act 1982* (Cth) (*FOI Act*). At the end of the reporting period, one application had been dismissed for want of jurisdiction and another had been heard but was awaiting further submissions by the applicant. The third matter was scheduled to be heard in August 2008.

In *Zoia v Commonwealth Ombudsman Department* [2007] FCAFC 143, the Full Federal Court dismissed an appeal from the Federal Court (in *Zoia v Commonwealth Ombudsman* [2007] FCA 245). The Court had affirmed a decision of the AAT to dismiss and not reinstate an application because the applicant failed to attend hearings scheduled by the AAT.

In December 2007 the High Court refused leave or special leave in a number of applications arising from a federal prisoner's custody by state authorities. One of the applications concerned a decision of the Ombudsman's office to decline to investigate following a complaint about the way in which state prison authorities managed the custody of a person who was, at times, a federal prisoner.

Section 35 of the Ombudsman Act provides that the office is not compellable to provide, to a court or tribunal, information or documents obtained by the office in discharging its functions. We customarily rely on that statutory non-compellability when required by subpoena or discovery to produce information for the purposes of a legal proceeding to which we are not a party. The office would be more likely to provide evidence in a matter about a serious and credible threat against life or public safety.

### Reports by the Auditor-General and parliamentary committee inquiries

There were no reports specific to the operation of the Ombudsman's office by the Auditor-General or by parliamentary committees. The Audit Committee examines all reports by the Auditor-General that may be relevant to the office (for example, 2007–08 Audit Report No 37 *Management of Credit Cards*) to identify any opportunities for improvements in office procedures.

## PEOPLE MANAGEMENT

During 2007–08 the Ombudsman's office managed its employees in accordance with the conditions of our Certified Agreement 2005–2008 and a number of Australian Workplace Agreements (AWAs), as well as within our obligations under the Public Service Act.

We developed, reviewed and promoted human resources policies and guidelines to reflect responses from the 2007 staff survey and changes in office procedures and practices. In particular, we focused on:

- the learning and development framework to improve organisational performance and build expertise and capability to meet current and future challenges
- recruitment and selection guidelines to provide flexibility with increased internal opportunities and to streamline recruitment processes to achieve more efficient and effective outcomes
- working from home guidelines to provide the right balance between work and personal life
- use and disclosure of personal information to ensure that workplace principles are embedded in our office culture
- harassment and bullying to further embed the office policy of zero tolerance.

### Workplace relations

The Certified Agreement 2005–2008 focuses on people, remuneration and employment arrangements, working environment and lifestyle, further streamlining of personnel practices and processes, and performance management and improvement to underpin salary increases. A total of 143 employees were covered under the office's Certified Agreement. Two staff were employed on AWAs with conditions closely aligned to the Certified Agreement. Conditions are provided for Senior Executive Service (SES) staff under AWAs.

The Certified Agreement does not make provision for performance pay. Salary advancement through pay points within each classification is linked to performance, in accordance with the policy parameters for agreement making in the Australian Public Service. The non-SES AWAs do not provide for performance-based pay. SES AWAs provide for annual salary advancement within the range based on performance, and do not make provision for performance pay. Non-salary benefits are not offered to employees.

The office's Workplace Relations Committee continues to provide a forum for discussion of issues surrounding implementation and

operation of the agreement. It also provides the consultative, advisory and information-sharing mechanism between management and employees on matters affecting employment conditions in the office.

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

### Staffing profile

As at 30 June 2008, the actual number of employees was 165, including the Ombudsman and two Deputy Ombudsmen. The number of full-time employees was 141 and 24 employees were part-time (15% of employees). All the staff employed on a part-time basis were ongoing employees.

During the year, 44 employees were engaged on an ongoing basis and 37 ongoing employees left the office, giving a turnover rate of 22% (compared to 19% in the previous year). Given the nature of the office's work, the completion of some major 2007–08 budgeted priorities and the restructuring of some specialist functions, the turnover is not disproportionate for this financial year.

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

### Career development and training

In response to the 2007 staff survey, the office's focus this year has been on learning and development. Our program centres on a performance management process which is designed to establish the needs of staff in relation to their corporate and core business training and development.

Our learning and development framework is based on three elements—leadership, corporate and core business programs. We have shifted our focus to tailored training

in-house to help improve the consistency and effectiveness of business activities. Eight core modules have been developed, and work on other modules is underway.

During the year particular attention was paid to leadership, relationship management, written communication, investigations and governance.

Key areas of learning and staff development delivered by the office included:

- leadership skills
- relationship management
- performance management
- recruitment and selection processes
- administrative law
- fraud, risk and financial management
- dealing with difficult complainants
- on-the-job investigation training
- written communication
- harassment and bullying awareness.

Staff representatives delivered a variety of information technology, financial and investigation workshops across all offices. This proved to be of great value with an increase in consistency in the use of the office's complaint management system, financial framework and recordkeeping compliance.

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

The office also supports staff who undertake relevant study at tertiary institutions. We offer staff assistance through study leave and/or financial assistance.

**TABLE 4.1** Staffing profile by level, gender and salary range at 30 June 2008 (at 30 June 2007)

APS classification and salary range	Men		Women		Total	
	Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1 \$35,620 – \$39,731	-	-	-	-	0 (0)	0 (0)
APS2 \$40,313 – \$44,704	-	-	-	-	0 (0)	0 (0)
APS3 \$45,918 – \$49,560	-	1	2	-	2 (1)	1 (3)
APS4 \$51,176 – \$55,565	5	2	19	4	24 (22)	6 (4)
APS5 \$57,080 – \$60,527	4	-	13	-	17 (17)	0 (0)
APS6 \$61,651 – \$70,819	16	-	25	2	41 (33)	2 (1)
EL1 \$79,033 – \$85,343	15	1	22	-	37 (35)	1 (2)
EL2 \$91,155 – \$103,345	9	1	15	-	24 (17)	1 (3)
SES \$119,035 – \$138,067	2	-	4	-	6 (5)	0 (0)
Statutory officers	2	-	1	-	3 (3)	0 (0)
<b>Total</b>	<b>53</b>	<b>5</b>	<b>101</b>	<b>6</b>	<b>154 (133)</b>	<b>11 (13)</b>

Note: under the Certified Agreement, officers moving to the office from a higher salary range may be maintained at that salary until increments in the Ombudsman office salary range exceed the salary differential.

**TABLE 4.2** Staffing profile by location at 30 June 2008

Location	Men	Women	Total
ACT	43	73	116
NSW	4	12	16
NT	-	3	3
QLD	1	7	8
SA	3	4	7
TAS	-	-	0
VIC	4	7	11
WA	3	1	4
<b>Total</b>	<b>58</b>	<b>107</b>	<b>165</b>

## Occupational health and safety

Health and safety management arrangements are set out in the office's Occupational Health and Safety Guidelines, agreed between the Ombudsman and staff representatives. The Ombudsman also reports against the targets set out in the Occupational Health and Safety and Rehabilitation Performance Improvement Targets for Commonwealth Premium Paying Employees (2002—2012) strategy.

During the year there were no accidents or injuries reportable under s 68 of the *Occupational Health and Safety Act 1991* (Cth) (OH&S Act) and there were no investigations conducted within the office under sections 29, 46 or 47 of the OH&S Act.

All new employees are advised of the importance and responsibilities of both staff and management for health and safety in the workplace during their induction. New employees are provided with a workplace assessment in the first week of commencement and familiarisation with their physical work environment.

### Occupational health and safety committee and representatives

A health and safety representative is located at each office site. The representatives manage OH&S matters either through the OH&S Committee that meets twice a year, regular staff meetings or by seeking assistance from the OH&S officer. Two health and safety representative vacancies were filled in accordance with the office's OH&S Agreement.

### Health and safety measures

During 2007–08 the office:

- met obligations for Comcare premiums—there was a significant reduction in the premium, reflecting in part the continuing success of our approach to OH&S
- managed compensation cases in accordance with approved guidelines
- arranged health assessments where necessary

- conducted individual workplace assessments
- facilitated eye examinations where necessary
- made first aid facilities and supplies available, and provided first aid training to First Aid Officers (refresher and senior first aid for new officers)
- provided OH&S training of representatives
- provided harassment and bullying prevention workshops
- conducted regular simulated emergency evacuations
- conducted two health and safety inspections
- targeted individual health awareness through health management initiatives such as providing flu shots to employees free of charge and disseminating a quarterly bulletin raising awareness on specific OH&S issues
- implemented a national Health Month that comprised a diverse range of health and wellbeing activities and information sessions
- introduced fortnightly reporting to the office Executive on absence management.

To promote a supportive working environment, the office provides staff with access to an employee assistance program that provides a confidential counselling service, facilitation of teamwork issues, career advice and the management of any work-related or personal issue.

These measures contribute to the maintenance of the very low rate of accidents and compensable injuries in the workplace. While our workers compensation record is good, we are concerned that unplanned leave rates are higher than public service norms. We are looking at this issue carefully to ensure we understand the causes and are responsive to staff health and welfare needs.

## FINANCIAL MANAGEMENT

### Financial performance

Revenue received from ordinary activities was \$19.394 million in 2007–08. The office received \$17.881 million in appropriation revenue, amounting to \$0.302 million more than received in 2006–07. The office received \$0.349 million in 2007–08, including \$0.149 million in capital funding, to provide services both to Indigenous communities and other people who may wish to make complaints about the actions of Northern Territory Emergency Response (NTER) agencies, and to NTER agencies to assist them to develop better complaint-handling procedures.

Total expenses for the office were \$20.072 million resulting in a deficit in 2007–08 of \$0.657 million, primarily due to the delay in implementing new initiatives in 2006–07 and the increased activity related to the NTER.

The office requested and received approval to budget for an operating loss in 2007–08 of \$0.500 million. The underlying reason for the budgeted loss was due to a timing difference. We received funding for immigration, Welfare to Work and law enforcement measures in the 2005–06 and 2006–07 Additional Estimates. The tight labour market meant there were delays in recruitment for this work. In addition, in August 2007 the office received funding to handle complaints arising from the NTER. The funding received did not anticipate the level of complaint activity. The office redirected its internal resources to handle the large numbers of complaints arising from this initiative.

Table 4.3 shows the resources for Ombudsman office outcomes for 2007–08 and the budget for 2008–09. The office has no administered expenses. Average staffing

**TABLE 4.3** Resources for Ombudsman office outcomes, 2007–08

	Budget 2007–08	Actual 2007–08	Budget 2008–09
<b>Output 1—Review of administrative action</b>			
Revenue from Government (appropriations)	\$16.877 m	\$16.873 m	\$16.834 m
Revenue from other sources	\$1.447 m	\$1.513 m	\$1.779 m
Total price of output 1	\$18.324 m	\$18.386 m	\$18.613 m
Expenses	\$19.050 m	\$19.028 m	\$18.613 m
<b>Output 2—Review of statutory compliance in specified areas</b>			
Revenue from Government (appropriations)	\$1.004 m	\$1.008 m	\$0.903 m
Revenue from other sources	–	–	–
Total price of output 2	\$1.004 m	\$1.008 m	\$0.903 m
Expenses	\$1.004 m	\$1.044 m	\$0.903 m
<b>Total for outcome 1—Administrative action by Australian Government agencies is fair and accountable</b>			
Revenue from Government (appropriations)	\$17.881 m	\$17.881 m	\$17.737 m
Revenue from other sources	\$1.447 m	\$1.513 m	\$1.779 m
Total price of outcome 1	\$19.328 m	\$19.394 m	\$19.516 m
Expenses	\$20.054 m	\$20.072 m	\$19.516 m

level in 2007–08 was 151, and the budgeted average staffing level for 2008–09 is 137.

### Financial position

The office's total equity—that is, sum of the office's assets less its liabilities—has decreased by \$0.588 million due mainly to the deficit and a revaluation of assets.

The office's total assets decreased to \$7.177 million in 2007–08 from \$7.611 million in 2006–07. The decreases arose primarily out of a decrease in non-financial assets, due to delays in capital acquisition.

The Ombudsman's office is a small office with a standard suite of assets, such as information technology items, which require no special management measures beyond those which are standard in an accrual-based budgeting framework. The office's assets by category at 30 June 2008 are:

- receivables (amounts due to be paid to the office—72% of total assets)
- infrastructure, plant and equipment (20%)
- intangibles (non-physical assets such as software—4%)
- other non-financial assets (relating to prepayments—2%)
- cash (2%).

The Balance Sheet shows cash holdings of \$0.160 million (\$0.059 million in 2006–07). The office's appropriation receivable increased by \$0.141 million, from \$4.691 million in 2006–07 to \$4.832 million in 2007–08. The office's non-financial assets decreased to \$1.873 million in 2007–08 (\$2.459 million in 2006–07), primarily due to a delay in purchasing assets.

Total liabilities increased by \$0.154 million to \$4.693 million in 2007–08 (\$4.539 million in 2006–07). The change in liabilities was primarily due to an increase in employee provisions.

### Purchasing

The Ombudsman's office is committed to achieving the best value for money in its procurement practices. Purchasing practices

and procedures are consistent with the Commonwealth Procurement Guidelines and are set out in the Ombudsman's Chief Executive Instructions.

The office published the Annual Procurement Plan on the AusTender website (as required under the Commonwealth Procurement Guidelines) to facilitate early procurement planning and draw businesses' attention to our planned procurement for the 2008–09 financial year. Information on expenditure on contracts and consultancies is also available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

### Consulting services

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

During 2007–08 the office entered into four new consultancy contracts involving total actual expenditure of \$121,990. In addition, four ongoing consultancy contracts were active during 2007–08, involving total actual expenditure of \$126,688. See Appendix 4 for details of new consultancy contracts.

Table 4.4 shows expenditure on consultancy contracts over the three most recent financial years.

### Contractual provisions allowing access by the Auditor-General

The office's standard contract templates include an ANAO audit clause. All contracts signed in the reporting period of \$100,000 or more (including GST) provided for the Auditor-General to have access to the contractor's premises.

**TABLE 4.4** Expenditure on consultancy contracts, 2005–06 to 2007–08

Year	Number of consultancy contracts	Total actual expenditure
2005–06	8	\$439,000
2006–07	7	\$104,395
2007–08	8	\$248,678

**Contracts exempt from AusTender**

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

**INFORMATION TECHNOLOGY**

We continued to improve the office's use and management of information technology to support the performance of its functions. In 2007–08 we commenced a whole-of-office strategic approach to information management. Mindful of the increasing reliance on information technology for both internal purposes and as a form of communication with the public, the office recognises the need for efficient and effective delivery of services for all stakeholders.

To this end the office established an Information Management Committee designed to oversee the management of information within the office. The committee endorsed a strategic plan to meet the office's future needs.

The committee also directed a number of projects including the consolidation of operating systems, the rollout to Microsoft Exchange, the commencement of an electronic records management system project, and the establishment of a business improvement team to review business practices within the office.

In 2008–09 we will continue to work on:

- implementing an electronic records management system
- improving information technology workflow and change management procedures
- replacing redundant hardware in a planned and measured fashion
- enhancing interoperability with other agencies
- improving internet service delivery.



Paul McInerney (Ombudsman's office) visiting National Ombudsman Commission of Indonesia to assist with information technology services.

# DEALING WITH COMPLAINTS

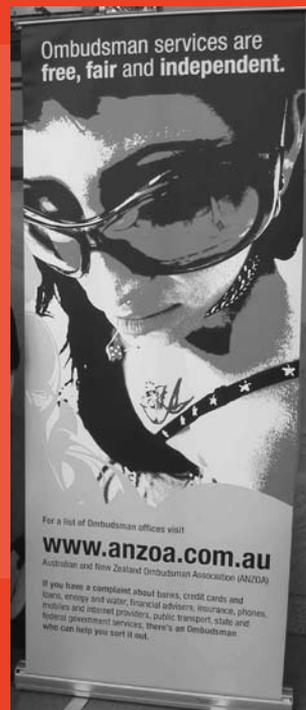


## 30TH ANNIVERSARY SEMINAR—AUGUST 2007

There are many issues to consider in developing effective complaint handling and improving the services provided to the public.

Members of the public are less likely to complain if they are unaware of the existence of a complaint resolution unit or agency. Mr Bill Dee of Compliance and Complaints Advisory Services urged agencies to make their contact details prominent in brochures, websites, telephone directories and at the point of service delivery. Information about the complaint-handling process should be easily accessible. A customer-focus is important too: 'Organisations should have a primary focus of the world from the user's perspective, not from the organisation's', he said.

Ms Clare Petre, the Energy and Water Ombudsman of NSW, spoke about *Reaching our target audience*. 'Communication with potential users of our services is a constant challenge', she noted. Ms Petre advised agencies to identify their target audience by analysing the available information, building relationships with key stakeholders and consulting widely to identify different ways to reach different groups. Information should be tailored to particular audiences.



Mr Hank Jongen of Centrelink commented that agencies should 'welcome feedback and use it to help improve the way they provide services to customers and the community'. It is important that agencies not discriminate against, or disadvantage, anyone who provides feedback or lodges a complaint. There should also be an escalation process for complex complaints, and procedures for dealing with difficult or persistent complainants.

## CHAPTER 5

# CHALLENGES IN COMPLAINT HANDLING

A continuing challenge for any Ombudsman's office is to remain adaptable, flexible and responsive. While the fundamentals of good complaint handling do not change, the nature and scale of the issues dealt with can change markedly, particularly when there are major new government initiatives, substantial legislative changes, or unforeseen difficulties in government administration.

Staff in the Ombudsman's office must be specially selected and properly trained to undertake their core complaint handling and investigation roles. Their skills need to be updated regularly to take account of new areas of expertise the office must develop to meet the requirements of the time.

'...the nature and scale of the issues dealt with can change markedly ...'

Work practices must be subject to continual evaluation and improvement. This helps ensure a high level of service for all complainants and stakeholders. It also enables the office to optimise the use of technology to manage complaints and provide efficiencies, and to draw out the intelligence from dealing with many thousands of individual complaints to improve public administration more broadly.

The office needs to be vigilant in identifying and reaching those people who may be most in need of our services. This target group can change over time, depending, for example, on the nature of particular government programs or community demographics. Often these people will be at

some disadvantage in dealing with government agencies, for reasons such as location, language, education levels or illness. In some cases it is best to make intermediaries aware of our services, so they can refer people to us when the need arises.

We also need to make sure that we use the most appropriate communication methods for different people. For example, we cannot assume that all people have access to the internet, email or a reliable telephone service.

This chapter describes some of our efforts in this regard during 2007–08. A particular focus of attention for the office has been dealing effectively with the issues arising from the implementation of the Northern Territory Emergency Response (NTER). This aspect of our work is described more fully in the section on Indigenous issues in Chapter 7—*Looking at the agencies*.

### RESPONDING TO COMPLAINT-HANDLING CHALLENGES

#### Work practice and system changes

One of the strategic priorities of the office is to build on the work practice and system changes of the past several years, to deliver improved timeliness, efficiency and effectiveness in managing complaints, conducting inspections and generating reports. In 2005–06 we introduced a raft of changes to our work practices to improve the consistency, effectiveness and efficiency of complaint handling. These changes were refined during 2006–07 and 2007–08.

The work practice changes that were introduced included:

- adopting a five-tier category structure for categorising and escalating complaints
- creating a Public Contact Team
- redeveloping the Work Practice Manual
- designing and implementing a new complaint management system
- changing the way we handle requests for review of our decisions.

During 2007–08 we conducted an external post-implementation review of the changes and convened an internal working party to consider whether complaint work can be managed more efficiently.

The consultant who conducted the external post-implementation review concluded that, due to the absence of appropriate performance data, it was not possible to determine whether many of the possible measures of success had been achieved in the office. In part this was not surprising, as due to the extent of the changes in many cases the systems and work practices in place prior to the introduction of the changes did not provide a good basis for comparison. Nevertheless, the consultant found that overall feedback from staff on the impact of the work practice changes was positive. The consultant concluded that the changes were effective and resulted in increased consistency in decision making.

The consultant identified a number of areas for further improvement, such as improving project management, ensuring that senior leaders in the office sponsored the change process on a continuous basis, and establishing meaningful performance measures and management information. In addition, a number of other detailed recommendations aimed at improving our complaint-management processes were made.

The internal working party also recommended some further changes to the way we manage complaints. In particular, they recommended changes to the organisational structure for handling complaints about agencies which generally

attract a small number of complaints, to provide us with a greater insight into current and emerging issues, and to facilitate the management of agency relationships.

The changes we have implemented in response to the reviews include:

- creating an Information Management Committee to ensure that the development of information technology, work practices and governance strategies align with a whole-of-office approach to information management
- reviewing the functionality of the interactive voice recognition system used by the Public Contact Team and starting a complete reconfiguration of the system to improve people's capacity to contact the office
- developing a new, risk-based quality assurance framework
- revising the process for identifying and recording administrative deficiency
- developing a suite of management reports for managers and the Executive
- starting work on implementing an electronic records management system
- refining our complaint management system, providing better information to staff on how to use it, and commencing a review of the structure and content of the Work Practice Manual
- centralising the handling of complaints about taxation and defence-related matters in Canberra, and transferring the Postal Industry Ombudsman specialist function to Melbourne and the Child Support Agency specialist function to Sydney
- moving to an arrangement where teams, rather than specific individuals, are responsible for managing the work relating to particular portfolios.

### **Relations with government agencies**

Our capacity to deal effectively with complaints, and to help improve public administration, is influenced by the nature of our relationship with government agencies. Where relations are good, most complaints

can be dealt with quickly with a minimum of formality, and individual or systemic problems can be resolved readily. Additional benefits are that the Ombudsman's office can provide early warning of any emerging problems, and can assist agencies by providing advice in our areas of specialty, such as improving complaint handling or public administration.

In order to gauge the state of our relationship with agencies and to identify areas for improvement, we commissioned an independent market research company to undertake a survey of Australian and ACT Government agencies on our behalf.

The survey results showed that the role of the office is accepted and well regarded, with most respondents agreeing on the importance of the office and its impartiality. For example:

- 86% of the respondents rated the performance of the office as good or better
- 87% rated their personal experience with the office as good or better
- 77% considered the office demonstrates the necessary professional skills, and 12% were neutral on the question
- 76% considered the office is independent and impartial, and 15% were neutral on the question.

Some specific areas for improvement noted were:

- the level and quality of our engagement with agencies about which we receive few complaints
- the extent to which recommendations are followed through by the agencies and, conversely, the extent to which our office follows up agency implementation of recommendations
- our timeliness and consistency in dealing with complaints
- our advice to agencies about progress with complaints and regular reporting
- our knowledge and understanding of some agencies and the environment in which they operate

- our role in providing information on general matters of public administration.

We are acting on these findings. While we are committed to improving our performance it is worth noting that the consultants who undertook the survey were impressed with the positive results that we achieved.

'...the role of the office is accepted and well regarded ...'

As noted earlier in this chapter, we have changed the allocation of responsibilities for dealing with complaints about those agencies which usually generate only a few complaints to the office. This should provide a greater depth of expertise about these agencies, a higher level of consistency in the way we deal with these complaints, a greater capacity to identify any systemic issues, and a better capacity to manage agency relationships.

In February 2008 we launched a series of Ombudsman e-bulletins, available from our website and through an email subscription. The purpose of this series is to relay to a wider audience, particularly staff in agencies, a sample of recent complaints and the lessons that can be drawn from them. We plan to produce three e-bulletins each year, describing some recent Ombudsman case studies. The central message in each case study is that a problem or complaint in a single case can point to a larger issue that may need to be addressed by an agency.

We have also sought to improve the quality and amount of information we provide to agencies about various aspects of the work of the Ombudsman's office. We developed a detailed guide on the work of the Ombudsman's office, aimed primarily at staff in agencies, to help people understand more about the range of work we do and how we go about it. In addition we developed a series of fact sheets to help explain particular aspects of our work in more detail. The detailed guide and the first two fact sheets were released early in 2008–09.

### Survey of complainants

Periodically the office surveys complainants as this is one way to measure our performance and to identify areas for improvement in service delivery. Such surveys also provide information which helps us better target our outreach activities.

Late in the reporting period we commissioned an independent market research company to undertake a survey of complainants. The survey aims to obtain information on three key aspects—access, demographics and quality of service. The survey is being conducted as a multi-stage process. In-depth interviews were conducted with ten complainants prior to 2000 complainants being surveyed in June 2008. We will report on the survey results in the 2008–2009 annual report.

### Difficult or unreasonable conduct by complainants

As discussed in the last two annual reports, we have been participating in a cross-agency project, coordinated by the New South Wales Ombudsman's office, to develop and trial management strategies for complainants who behave unreasonably. Earlier in the project, an interim practice manual was developed and training provided to staff in all Commonwealth, state and territory Ombudsman offices in Australia. Given the strong interest from staff in other agencies who deal with complaints, the manual and training are available widely. Data on the effectiveness of the management strategies has been collected and a final version of the practice manual will be released early in 2008–09.

### COMMUNITY ENGAGEMENT AND AWARENESS

Getting our message out to people in regional and rural Australia remains a key priority for the office. We aim to ensure that people receiving and accessing government services, and key stakeholders and community information 'gatekeepers', know who we are, what we do and how to contact us.

In 2007–08 our staff were involved in 171 outreach activities across all states and territories, continuing our aim of conducting or participating in an average of at least two focused outreach activities each week during the year. This was a 47% increase on the previous year, due mainly to our outreach work associated with the NTER.

Our outreach activities included:

- providing information on the role of the Ombudsman to all new and continuing federal members and senators in recognition of the role played by local members in resolving complaints about Australian Government agencies
- the Ombudsman and staff meeting with heads of agencies and senior staff in each capital city to emphasise the importance of working cooperatively to resolve complaints
- conducting roundtable discussions with migration agents, community groups and other immigration stakeholders in all state capital cities in our Immigration Ombudsman role
- conducting repeated outreach visits to Indigenous prescribed communities and town camps in the Northern Territory, utilising information and outreach items targeted at informing Indigenous people of the role of the office
- visiting Defence Force establishments to highlight the Defence Force Ombudsman role
- participating in joint activities with Australian Government agencies and other Ombudsman offices such as the Child Support Agency Community Information Sessions, the NSW Good Service Forum, and NAIDOC week
- presenting papers at conferences and forums such as the National Employment Services Association Conference and the International Conference of Information Commissioners
- distributing Commonwealth Ombudsman publications to relevant information outlets.



Visiting Indigenous communities by road ...

We work with other Ombudsmen to jointly promote our services. We participated in a joint program of information sessions at ten universities in Brisbane, Canberra, Hobart, Melbourne and Sydney during orientation week in February 2008. Staff from our office joined with representatives from the Banking and Financial Services Ombudsman, Energy Ombudsman Queensland, the Energy and Water Ombudsman NSW, Energy and Water Ombudsman Victoria, the Public Transport Ombudsman Victoria, the Tasmanian Ombudsman and the Telecommunications Industry Ombudsman.

The events provided the opportunity to engage with the student population, to explain the role of an Ombudsman, the types of issues students can complain about and to which office they should take their concerns.



... and by air

We also participated in a joint initiative of the Australian and New Zealand Ombudsman Association, to produce and distribute material targeted to the youth market.

In the coming year, a strategic priority for our office is to target outreach, relevant publications and communication activities to key stakeholders, particularly through intermediaries.

### **Jack Richardson Prize**

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

# PUBLIC AND PRIVATE SECTOR OMBUDSMEN



30TH ANNIVERSARY SEMINAR—AUGUST 2007

Public and private sector ombudsmen in Australia deal with complaints about federal and state governments, and administration and services provided by industries such as banking, energy and water, and telecommunications.

'At first glance, it appears the role of a private sector ombudsman might diverge significantly from the role of a government ombudsman,' said Banking and Financial Services Ombudsman, Mr Colin Neave. Due to changes in the legislative framework this is no longer necessarily the case. Under Corporations Act provisions, licensed financial services providers must belong to an external dispute resolution scheme approved by the Australian Securities and Investments Commission.

Mr Neave stated that the development and publication of benchmarks for alternative dispute resolution mechanisms in 1997 drew the roles of private and public sector ombudsmen much closer. The benchmarks contain five key principles: accessibility, independence, fairness, accountability, and efficiency. These benchmarks are relevant to both public and private sector ombudsmen, illustrating how little divergence there now is between the two sectors.

Telecommunications Industry Ombudsman, Ms Deirdre O'Donnell (pictured), said that some people see industry ombudsmen as having more



'teeth' than government ombudsmen because they have the power to make binding determinations. She pointed out that this is balanced by statutory ombudsmen having Royal Commission-like powers of investigation.

One distinguishing feature of industry ombudsman schemes is that members of the schemes agree to be bound by the Ombudsman's determination, whereas a disputant is not: they may reject the decision and take the matter to a court or tribunal.

Both public and private sector ombudsman schemes exist to promote confidence in the sector or industry to which they belong. The ombudsman's independence is essential so the office can speak with authority and credibility as well as achieve changes in industry or sector behaviour, and redress of grievance either on a system-wide or individual basis.

# CHAPTER 6

## PROMOTING GOOD ADMINISTRATION

A key objective of the Ombudsman's office is to foster good public administration that is accountable, lawful, fair, transparent and responsive. One way this is done is by looking at complaints to see if they raise issues that are systemic, either within an agency or across a number of agencies. Another way is by drawing on the office's lengthy experience in handling complaints across all areas of government administration, to identify particular issues that may arise, or have arisen, in public administration and to promote improvements.

This chapter outlines some of the mechanisms we use, such as submissions to parliamentary committee inquiries, publication of own motion investigation reports, and cooperation with other oversight and complaint-handling organisations.

### SUBMISSIONS, REVIEWS AND RESEARCH

#### Parliamentary committees and submissions

During 2007–08 we made three submissions to parliamentary committee inquiries:

- the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into law enforcement integrity models
- the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into RAAF F–111 desal/reseal workers and their families

- the House Standing Committee on Family, Community, Housing and Youth inquiry into better support for carers.

The Ombudsman, Deputy Ombudsman and other staff also appeared before the Senate Standing Committee on Foreign Affairs, Defence and Trade in relation to its review of reforms to Australia's military justice system.

#### Other submissions

We also make submissions to other inquiries and to reviews, such as where agencies are looking at the implications of potential major changes in the areas they administer. This is in addition to our ongoing dialogue with some agencies about their policy and administrative changes, described in more detail in Chapter 7—*Looking at the agencies*.

During the year we made submissions to:

- the independent Citizenship Test Review Committee appointed by the Minister for Immigration and Citizenship to examine the operation and effectiveness of the citizenship test
- the external reference group reviewing the statutory self-regulation of the migration advice profession
- the Department of Defence for the review of the Defence Inquiries Regulations 1985
- Treasury in relation to the Exposure Draft Tax Agent Services Bill, Related Regulations and Explanatory Material; and Treasury in relation to the discussion paper on a review of discretions in income tax laws.

### Legislative review

In March 2008 the Attorney-General appointed the Ombudsman to be a member of a committee to review the *Legislative Instruments Act 2003* (Cth). The other members of the committee are Mr Ian Govey and Mr Tony Blunn AO.

The Act established a comprehensive regime for the making, registration, publication, parliamentary scrutiny and sunseting of Commonwealth legislative instruments. The review is required under s 59 of the Act.

The committee has released an issues paper and met with a number of stakeholders at public meetings in Canberra and Sydney. The committee must report to the Attorney-General before 31 March 2009.

### Administrative Review Council

The Ombudsman is an ex officio member of the Administrative Review Council, established by the *Administrative Appeals Tribunal Act 1975* (Cth). The council provides advice to the Government on administrative law issues and reform. During the year the Ombudsman was a member of the council's sub-committee responsible for a report on coercive information-gathering powers of government agencies, tabled in Parliament in June 2008. He was also a member of the sub-committees responsible for a review of administrative decisions in areas of complex and specific business regulation, and for the development of a series of Best Practice Guides to Decision Making (launched in August 2007). The work of the council is covered more fully in its annual report.

### Whistleblowing project

In our last three annual reports we described how the Ombudsman's office has been playing a major role in a three-year collaborative project partly funded by the Australian Research Council *Whistling while they work: internal witness management in the Australian Public Sector*. The work, being led by Griffith University, has included workshops, three large surveys, and release

of an issues paper. The data collection phase of the project has been completed and a formal report from the project is to be released in September 2008. The project will identify and promote current best practice in workplace responses to public interest disclosures, and should provide a useful resource in framing or reviewing any related legislation.

### Immigration detention project

In 2007–08 the office commenced as a partner in another three-year collaborative project with Griffith University that has received Australian Research Council funding—*Dilemmas in non-citizen detention and removal: an international comparative study*. This project aims to map the nature and scope of non-citizen detention and removal in Australia, undertake a comparative analysis of strategies used in other countries, and develop policy proposals for an improved system. The project has a particular focus on people for whom the removal process is prolonged or problematic, such as where there is difficulty in determining their identity or obtaining travel documentation, or where there are concerns about their human rights or health if they are removed.

### Human rights in closed environments

We will also collaborate on a three-year project led by Monash University that has received Australian Research Council funding—*Applying human rights legislation in closed environments: a strategic framework for managing compliance*. The project, starting in 2008–09, will examine the application of human rights in environments such as prisons and immigration detention centres. The other partners and collaborating organisations in this project are the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission, the Victorian Office of the Public Advocate, the Victorian Office of Police Integrity and the Western Australian Office of the Inspector of Custodial Services.

## COOPERATION WITH OTHER AUSTRALIAN GOVERNMENT INTEGRITY AGENCIES

The Ombudsman's office is one part of an 'integrity' group in government, comprised of a number of independent statutory agencies that discharge a 'watchdog' role in relation to the public sector. Some of these agencies have a role similar to the Ombudsman of receiving and investigating complaints from the public, initiating enquiries into systemic issues in government administration, or auditing compliance by agencies with legislative requirements.

'The Ombudsman's office is one part of an 'integrity' group in government ...'

Given our similar objectives of overseeing and improving government administration, we continue to look for ways to work cooperatively with these agencies, to complement each other's work and to avoid unnecessary duplication of effort.

For example, during the year:

- the Ombudsman and the Inspector-General of Intelligence and Security met periodically to discuss common issues that arose in the handling of complaints about Australian Government agencies
- we met periodically with the Australian Commission for Law Enforcement Integrity to exchange information on corruption cases and clarify our respective responsibilities on cases of poor administration, misconduct and corruption where it may be difficult to define the boundaries
- we met with the Australian National Audit Office to discuss their draft work program and how it may relate to work we have underway or planned
- one of the office's staff was delegated powers under the *Privacy Act 1988* (Cth) by the Privacy Commissioner and completed an investigation—this was an example of close cooperation between our offices, and also an opportunity for the staff member to learn about different approaches to investigation.

## COOPERATION WITH OTHER AUSTRALIAN GOVERNMENT COMPLAINT-HANDLING BODIES

We cooperate with a range of other Australian Government organisations which have complaint handling as part or all of their focus. In some cases our jurisdictions overlap, and we seek to ensure that our work complements, rather than duplicates, each other's.

### Aged Care Commissioner

The Aged Care Complaints Investigation Scheme, established under the *Aged Care Act 1997* (Cth), investigates complaints about aged care services that are subsidised by the Australian Government. The Scheme is managed by the Office of Aged Care Quality and Compliance in the Department of Health and Ageing.

The Aged Care Commissioner is an independent statutory appointment. The Commissioner can review the way in which complaints are handled under the Scheme, either in general or in specific complaints. The Commissioner can also investigate complaints about the Aged Care Standards and Accreditation Agency Ltd.

In October 2007 the Ombudsman and the Commissioner, Ms Rhonda Parker, signed a memorandum of understanding on the handling of complaints. The memorandum aims to ensure that complaints are dealt with by the most appropriate body, there is no duplication of effort, and we share general information that is relevant to both our organisations. The Ombudsman also launched the Commissioner's website.

### CASA Industry Complaints Commissioner

The role of the Civil Aviation Safety Authority's (CASA) Industry Complaints Commissioner is to be the central coordinating point for all complaints about CASA, to ensure that they are examined and responded to expeditiously. The Commissioner can recommend changes to CASA's processes and procedures to prevent the recurrence of problems that give rise to complaints.

During the year the Ombudsman and other officers met with the Commissioner, Mr Michael Hart, to discuss effective cooperation in the management of complaints about CASA.

### Inspector-General of the Australian Defence Force

The Inspector-General of the Australian Defence Force (IGADF) is a statutory appointment under the *Defence Act 1903* (Cth). The IGADF provides general oversight of the health and effectiveness of the ADF military justice system, and is independent of the normal chain of command.

We have had a long cooperative working relationship with the IGADF, Mr Geoff Earley, both in dealing with matters related to our Defence Force Ombudsman role, and in working with regional partners to assist in the development of complaint-handling processes. For example, in the section *International cooperation and regional support* later in this chapter, we describe how we worked with the IGADF, the AFP, and partners in Papua New Guinea, on complaint-handling processes.

### Office of the Workplace Ombudsman

The Office of the Workplace Ombudsman is an independent statutory authority established under the *Workplace Relations Act 1996* (Cth). The Workplace Ombudsman is responsible for ensuring compliance with federal workplace relations law. During the year we had a number of discussions with the Workplace Ombudsman, Mr Nicholas Wilson, and his staff about our working relationships.

### OWN MOTION AND MAJOR INVESTIGATIONS

The Ombudsman can conduct an investigation in response to a complaint to the office or on his own motion. During 2008–09 we released 14 reports publicly on own motion or major investigations:

- August 2007—*Lessons for public administration: Ombudsman investigation of referred immigration cases* (Report No 11/2007)
- August 2007—*Commonwealth courts and tribunals: complaint-handling processes and the Ombudsman's jurisdiction* (Report No 12/2007)
- October 2007—*Department of Industry, Tourism and Resources: failure to provide adequate reasons for a decision refusing an R&D Start Grant application* (Report No 13/2007)
- October 2007—*Marriage-like relationships: policy guidelines for assessment under social security law* (Report No 14/2007)
- December 2007—*Department of Immigration and Citizenship: notification of decisions and review rights for unsuccessful visa applications* (Report No 15/2007)
- December 2007—*Application of penalties under Welfare to Work* (Report No 16/2007)
- December 2007—*Australia Post: investigation of a complaint about a Postal Delivery Officer* (Report No 17/2007)
- December 2007—*Comcare: identifying the rehabilitation authority of a former Australian Government employee* (Report No 18/2007)
- February 2008—*Centrelink: payment of independent rate of youth allowance to a young person* (Report No 1/2008)
- April 2008—*Department of Immigration and Citizenship: administration of detention debt waiver and write-off* (Report No 2/2008)
- April 2008—*Department of Defence: allegations concerning the HMAS Westralia fire* (Report No 3/2008)
- April 2008—*Damage caused to inbound international postal items: the roles of Australia Post, Australian Customs Service and Australian Quarantine and Inspection Service* (Report No 4/2008)

- June 2008—*Implementation of Job Capacity Assessments for the purposes of Welfare to Work initiatives: examination of administration of current work capacity assessment mechanisms* (Report No 5/2008)
- June 2008—*Department of Immigration and Citizenship: timeliness of decision making under the Freedom of Information Act 1982* (Report No 6/2008).

Further details on most of these reports are provided in Chapter 7—*Looking at the agencies* and Chapter 9—*Lessons and insights for government*, and all are available on our website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

Chapter 7 describes a number of other own motion investigations we intend to commence or finalise in 2008–09.

## INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

Over the last year, the continued support of the Australian Agency for International Development (AusAID) has enabled the office to work closely with Ombudsmen in the Pacific, Papua New Guinea (PNG) and Indonesia as they seek to respond to new challenges and opportunities in public administration in their countries. During the year AusAID arranged for our programs to be reviewed. They found that our activities are having increasing impact on good governance in a number of areas.

Placements, joint analyses and ongoing dialogue provided many opportunities to share skills and build competencies among our own staff and our international partners. The following highlights stand out from a busy twelve months.

### Papua New Guinea Twinning Program

The Twinning Program with the Ombudsman Commission of Papua New Guinea (OCPNG) commenced in 2004–05. During the past year a direct outcome of our joint work has been significant improvements in the relationship between key PNG law and justice sector agencies.

In June 2007 the OCPNG and Royal Papua New Guinea Constabulary (RPNGC) signed a Memorandum of Agreement (MOA) which established clear protocols and responsibilities for handling complaints against the RPNGC. It led to major prosecutions of three senior police staff and other joint OCPNG/RPNGC investigations of complaints against police. The success of the first year trial led to the re-signing of the MOA in June 2008 for a further three years.

This work arose directly from the placement of Mr John Hevie, an officer of the OCPNG who spent two months in Canberra working with Commonwealth Ombudsman staff on police and defence issues. Sadly, John passed away in January 2008, but the work he started continues strongly. The MOA has become a model for constructive working relationships between the OCPNG and other government agencies in PNG.

As part of the Twinning Program, our office contributed to a workshop on complaint handling for law enforcement and disciplined services in Port Moresby in September 2007. At the workshop the IGADF, the Commonwealth Ombudsman and a senior representative of the Australian Federal Police (AFP) outlined the grievance procedures for the Australian Defence Force (ADF) and AFP. They also held discussions with the PNG Defence Force (PNGDF) Commander and officers, the PNG Ombudsmen and senior staff, and the head and senior staff of the RPNGC and PNG Corrective Services, as well as other senior PNG bureaucrats.

We arranged publication and distribution of the workshop proceedings. Ombudsman staff later met with senior members of the PNGDF and OCPNG when they visited the ADF in Canberra to consider in more detail options for improving internal complaint-handling systems.

Following the success of the arrangements between the OCPNG and RPNGC, the Twinning Program will now focus more on the development of similar liaison and support arrangements between the PNGDF, the ADF, the OCPNG and the

Commonwealth Ombudsman's office to improve complaint handling.

The strong placement program also continued during 2007–08 with two PNG officers each spending two months working with us in Australia. In addition, Mr David Ward of our office returned to PNG at the request of the OCPNG for four months to continue to assist in implementing some recommendations of a comprehensive management review of the OCPNG.

### **Indonesian Australian Ombudsmen Linkages and Strengthening Project**

Our work on the Indonesian Australian Ombudsmen Linkages and Strengthening Project continued with the support of the AusAID Government Partnership Fund. The Western Australian Ombudsman and New South Wales Ombudsman are also partners in this project, to extend the breadth of expertise available to the Indonesian National Ombudsman Commission (NOC). They continued with shared placements with the NOC, with our office providing coordination support for the activities.

We also assisted the NOC to strengthen its information technology services. Two of our officers visited the NOC, helping to assess its information technology requirements for

the roll-out of a new complaint management system. As the decentralisation of government services continues across Indonesia, the new web-based system will offer much stronger and more secure linkages between the NOC's central office in Jakarta and its regional offices. This work has helped the NOC better link its information technology solutions to the business needs of a growing office, now and into the future.

### **Pacific Governance Support Program**

During the year we focused on supporting a Pacific Plan initiative for strengthening regional support for Pacific Ombudsmen. The plan, endorsed by all the Pacific Islands Forum leaders, promotes a new approach to the challenges faced by Pacific Island countries through strengthening regional cooperation and integration.

We worked with Ombudsmen from the Cook Islands, New South Wales, New Zealand, PNG, Tonga, Samoa, Solomon Islands and Vanuatu to develop new forms of regional cooperation that will strengthen existing Ombudsman offices. This work also addresses the needs of small island states that are currently without an Ombudsman, or ombudsman-like process for complaint handling, to improve transparency, accountability and good governance.



Vanuatu meeting of the Pacific Ombudsman Network.

AusAID has provided funding support for this initiative through its Pacific Governance Support Program.

A major meeting of stakeholders was held in Auckland in November 2007 where Pacific Ombudsmen, with representatives from Kiribati, Niue, the United Nations Development Program, the Pacific Islands Forum Secretariat and AusAID, worked on the possible form for a future regional Ombudsman support mechanism.

Subsequent meetings with government and non-government stakeholders in Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau and Tuvalu generated considerable discussion in those countries, raising the subject of complaint handling at senior levels of government. We helped develop papers on the current complaint-handling arrangements for each of these countries in preparation for a second major meeting in Vanuatu in May 2008. Representatives from every Pacific Island Forum country except Fiji attended this meeting, along with the attendees of the first meeting. The outcome was a proposal for a Pacific Island Ombudsman Regional Support Mechanism that should be completed in 2008–09.

### Other international cooperation

The Ombudsman participated in other international activities aimed at improving governance and sharing Ombudsman experience and knowledge.

In November 2007 the Ombudsman participated in a workshop hosted by the European Ombudsman. The focus of the workshop, *Good Administration and the European Ombudsman*, was to generate ideas and develop strategies on how the European Ombudsman can promote the principles of good administration within European Union institutions and bodies.

The Ombudsman also participated in the 5<sup>th</sup> International Conference of Information Commissioners in New Zealand in November 2007, where he gave a paper *Designing an effective FOI oversight body—Ombudsman or independent commissioner?* Over 170 information commissioners, public sector officials and individuals and representatives from organisations with a strong interest in freedom of information attended the four-day conference.

In May 2008 the Ombudsman attended an anti-corruption seminar in China under the China-Australia Human Rights Technical Cooperation Program. The three-day seminar, coordinated by the Human Rights and Equal Opportunity Commission and China's Supreme People's Procuratorate, brought together a number of Australian and Chinese public officials with a role in anti-corruption policies and practices. The Ombudsman gave two keynote presentations to the seminar—*Fighting corruption while safeguarding human rights*, and *An introduction to Australian anti-corruption law and policy*.



Attendees at anti-corruption seminar in China.

The office is a member of the International Ombudsman Institute (IOI), which is an international association of public sector Ombudsman offices. The members of the Australasian and Pacific Ombudsman region of the IOI held their annual meeting in Melbourne in March 2008, hosted by the Victorian Ombudsman. The Commonwealth Ombudsman presented a paper to the gathering—*The expanding Ombudsman Role: What fits? What doesn't?*

### COOPERATION AMONG AUSTRALIAN OMBUDSMEN

We have a close continuing working relationship with the large number of public and private sector Ombudsmen in Australia. This enables us to share insights and experiences in relation to different aspects of our roles, as well as work collaboratively on particular projects.

For example, as described in Chapter 5—*Challenges in complaint handling*, we have been cooperating with the state and territory Ombudsman offices on a project about dealing with difficult or unreasonable conduct by complainants. In addition, we have shared information on information technology issues such as the use of our complaint management systems and our experiences with web-based complaint lodgement, and have worked collaboratively on cross-jurisdictional issues. The offices are also considering whether, under our respective legislation, we can transfer complaints directly from one office to another so that they can be dealt with in the correct jurisdiction. At present we can only advise complainants of the contact details for the relevant Ombudsman.

In August 2007, in celebration of our thirtieth anniversary, we held a major seminar *Improving administration—the next 30 years: Complaint handling, investigation and good administration*. Speakers at the seminar included a number of private and public sector Ombudsmen, senior staff from Commonwealth and ACT government agencies, and representatives from some advocacy organisations.

The seminar was well attended, with about 200 participants from the government, private, not-for-profit, and education sectors. The presentations at the seminar covered issues such as lessons from the public and private divide, principles of effective complaint handling, complainant perspectives and investigating corruption. Most of the presentations are available on our website, and overviews of some of the sessions are the focus of feature pages in this report.

The Ombudsman is a member of the Australian and New Zealand Ombudsman Association Inc (ANZOA). ANZOA held its inaugural conference, *The role of the Ombudsman—yesterday, today and tomorrow*, in April 2008. The conference discussed broad themes about Ombudsman schemes and offices; standards and providing high quality services. The Commonwealth Ombudsman presented a paper *What's in a name? Use of the term Ombudsman*. Our staff also participate in various ANZOA sub-groups, looking at issues such as public relations and communications, learning and development, and information technology.



Outreach at the University of Queensland with other members of the Australian and New Zealand Ombudsman Association.

# OVERSIGHT OF AUSTRALIAN GOVERNMENT AGENCIES

**CHAPTER 7** PAGE 57  
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**CHAPTER 8** PAGE 119  
HELPING PEOPLE, IMPROVING  
GOVERNMENT

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LESSONS AND INSIGHTS FOR  
GOVERNMENT

# CONDUCTING INVESTIGATIONS



30TH ANNIVERSARY SEMINAR—AUGUST 2007

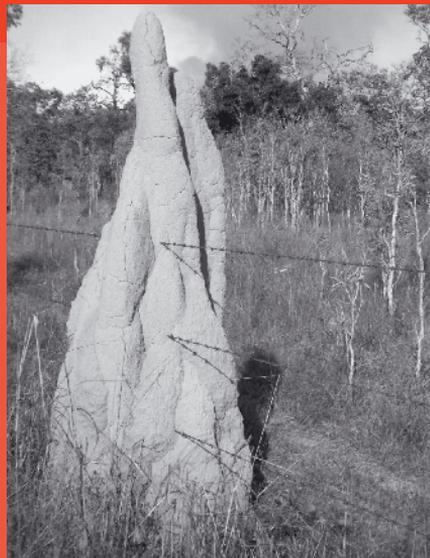
Conducting investigations is a major part of the work of any ombudsman office. The effectiveness and credibility of the office can depend upon the way it handles investigations and reports the outcomes.

Mr Bruce Barbour, New South Wales Ombudsman, spoke on the *Practical issues of effective investigation*. He remarked, 'The investigative powers provided to our office are the strongest, most compelling tools we have with which to resolve both one-off and systemic administrative failings ... it is important that we conduct the best possible investigations'.

Mr David Bevan, Queensland Ombudsman, noted that an investigation plan was the key to a good investigation. Points to consider:

- prepare an investigation plan before commencing investigation
- the plan should provide a road map—whom, what and how
- the plan will facilitate effective supervision, is part of good recordkeeping and promotes accountability and transparency.

No matter how well thought-out an investigation plan may be, remaining flexible is essential, as investigations



rarely proceed as planned. It is important to be prepared to revise the plan—follow the facts rather than try to make the facts fit the plan.

There should never be a 'one-size-fits-all' approach to investigation. The approach must depend upon the desired outcome, as well as the nature and scale of the subject matter. A small, targeted investigation relating to a specific issue will require a different approach and plan to a broader, systemic issue, which will require a greater degree of planning, resources and intensive investigation.

## CHAPTER 7

# LOOKING AT THE AGENCIES

The majority of approaches and complaints received about Australian Government agencies within the Ombudsman's jurisdiction (78%) concerned the six agencies listed below. This chapter provides detailed assessments of our work with these agencies in handling complaints and dealing with other broader issues during 2007–08.

- Centrelink—7,573 approaches and complaints
- Child Support Agency—2,208 approaches and complaints
- Australia Post—2,083 approaches and complaints
- Department of Immigration and Citizenship—1,528 approaches and complaints
- Australian Taxation Office—1,219 approaches and complaints
- Department of Education, Employment and Workplace Relations—721 approaches and complaints.

During the year we received 665 approaches and complaints about the Office of the Workplace Ombudsman. Many of these approaches were from people seeking contact details for the Office of the Workplace Ombudsman, or confusing our role with that of the Workplace Ombudsman.

This chapter also looks at other specialised areas of our work:

- dealing with complaints by current and former members of the Australian Defence Force, handled by the Ombudsman discharging the role of Defence Force Ombudsman

- dealing with complaints about the Australian Federal Police, including under the role of Law Enforcement Ombudsman
- the broader Postal Industry Ombudsman role
- dealing with Indigenous issues, and in particular approaches and complaints raised in the context of the Northern Territory Emergency Response
- the handling by agencies of freedom of information requests.

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

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

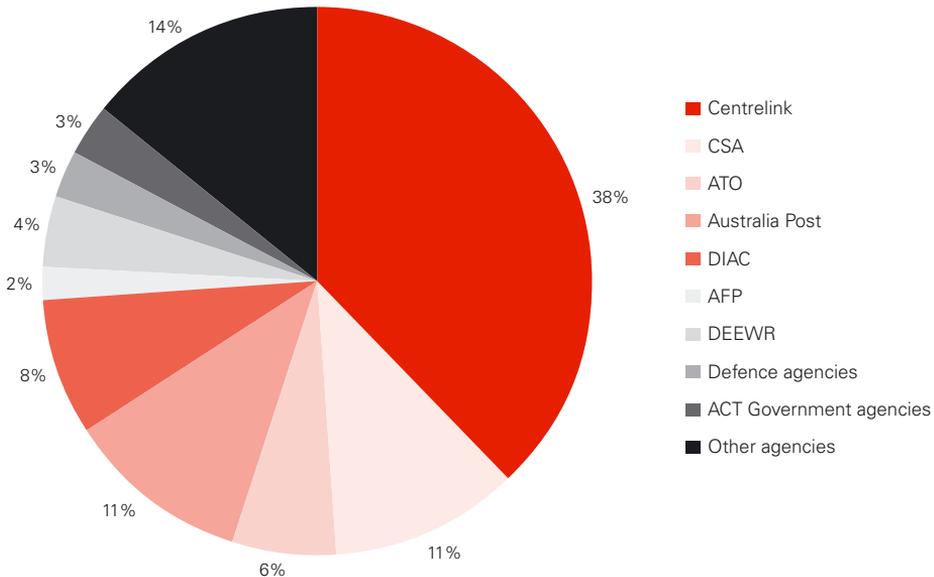
It should be noted that the figures provided for numbers of approaches and complaints about agencies that are within jurisdiction include a small number of which the subject matter is out of jurisdiction for the Ombudsman. In addition, for those agencies that were abolished as a result of the

Administrative Arrangement Orders issued on 3 December 2007, and about which we received a small number of approaches and complaints in 2007–08, we have counted these approaches and complaints against the agency which received the function that was the subject of the complaint. For example, education-related complaints recorded against the former Department of Education, Science and Training prior to 3 December 2007 have been counted against the Department of Education, Employment and Workplace Relations.

This approach has not been possible for agencies about which we received a larger number of complaints. Nor has it been possible to adjust for the transfer of functions between agencies.

Figure 7.1 shows the number of approaches and complaints received in 2007–08 about agencies within the Ombudsman’s jurisdiction. Detailed information by portfolio and agency is provided in Appendix 3–Statistics.

**FIGURE 7.1** Approaches and complaints received about within jurisdiction agencies, 2007–08



## AUSTRALIAN TAXATION OFFICE

The Commonwealth Ombudsman's office has over thirty years experience in investigating complaints about the Australian Taxation Office (ATO). In 1995 the Ombudsman was given the title of Taxation Ombudsman following a recommendation of the Joint Committee of Public Accounts. This change gave a special focus to the office's handling of tax complaints in recognition of the unequal position of taxpayers and the ATO.

In our report *Taxation Ombudsman Activities 2007* available on our website, we looked back at thirty years of taxation complaint handling. A strong message which arose from this perspective is that complaints often emerge from the unanticipated impacts of major legislative reforms and the associated administrative changes within an agency. Examples from a taxation perspective include the introduction of self-assessment, the superannuation guarantee system and the new tax system.

This historical perspective also illustrates the ways in which the ATO has improved its interaction with the community—for example, by the introduction of the *Taxpayers' Charter* in 1997, the annual publication of the *Compliance Program*, and the *Listening to the Community* program. Complaint handling within the ATO has also improved markedly over this time. The Ombudsman's office worked with the ATO in implementing best practice for complaint handling. The ATO's management of complaints is a good model and one from which other agencies can learn.

'The Ombudsman's office worked with the ATO in implementing best practice for complaint handling.'

The Taxation Ombudsman is assisted by a Senior Assistant Ombudsman and a specialist tax team. Previously tax complaints were handled by generalist complaint investigation teams in our state offices with assistance from the specialist tax team in Canberra. In 2007–08 we reviewed this approach. As a result, all tax complaints are now handled by the specialist tax team. This is assisting us to build a better understanding

of the underlying causes of complaints about tax administration.

While the number of complaints received about the ATO has declined slightly over the last year, the complexity of the cases we investigate has increased. Our practice is to encourage complainants to first seek to resolve their complaints directly with the ATO. Therefore the matters that we investigate can feature entrenched views or difficult issues which were not able to be resolved directly between the taxpayer and the ATO.

Centralised complaint handling enables us to have a more integrated approach to identification of potential and emerging systemic issues. The specialist tax team draws on this information in identifying tax administration issues to review and investigate.

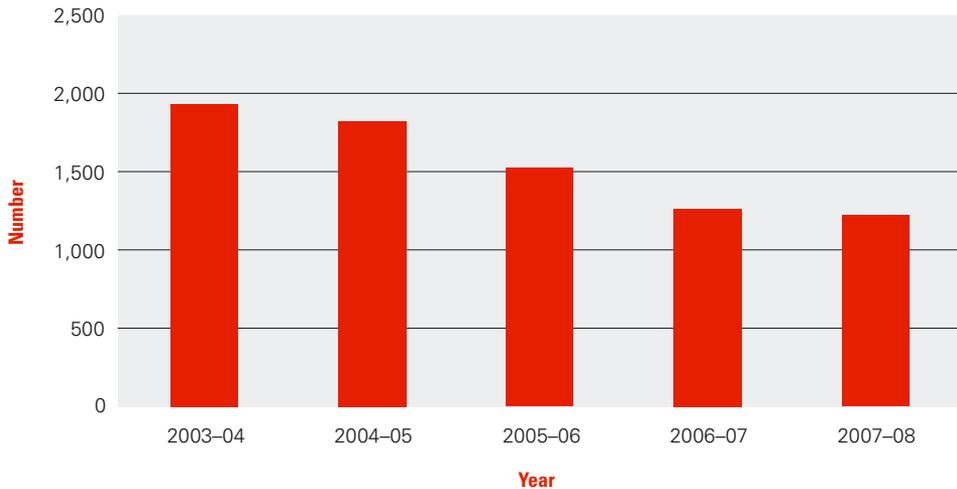
### COMPLAINTS OVERVIEW

In 2007–08 we received 1,219 approaches and complaints about the ATO, slightly lower than the 1,261 received in 2006–07. This continued the downward trend in complaints about the ATO of recent years, as shown in Figure 7.2. We attribute this continuing decrease to the effectiveness of the ATO's improved handling of taxpayer complaints and efforts to improve taxpayer dealings.

During the year we finalised 1,182 approaches and complaints, of which 130 (11%) were investigated.

The complaints we received covered a range of ATO activities and products. Common topics included lodgement and processing of tax forms (18% of complaints), debt collection (12%), superannuation (10%), taxpayer information (4%), imposition of penalties (3%) and audit activities (3%).

Complaints generally occur when people have been required to pay tax or are waiting to receive a refund or other money owed to them. The sources of complaint often appear to be taxpayer misunderstanding of ATO processes, concerns about delays by the ATO or problems with ATO communication.

**FIGURE 7.2** Australian Taxation Office approach and complaint trends, 2003–04 to 2007–08

The ATO often provides a better explanation, or expedites an action, as an outcome of our investigation. Even where our investigation does not change the substantive outcome, an independent review of the ATO's approach can be valuable. For example, we receive complaints about the ATO not pursuing a former spouse for failing to lodge tax returns. The returns are needed to help assess child support obligations accurately. We cannot provide personal information about the ATO's efforts to pursue third parties, but through our investigations we may be able to assure complainants that the ATO is taking appropriate action.

Overall, the declining number of complaints and the outcomes of our investigations indicate that the ATO's administration of the tax system is fundamentally sound.

### Lodgement and processing

Lodgement and processing continued to be the most common source of complaints, with 60% of such complaints about income tax returns. The complaints mainly related to delays in receiving a refund, ATO retention of tax credits to offset tax debts, confusion about the basis for assessment and ATO action to enforce lodgement. The case study *Whose spouse?* shows how we were able to assure a complainant that the ATO had

made a correct decision in his case, while the case study *Processing error resolved* shows how we were able to clarify the circumstances of a debt that had been raised correctly.

### Debt collection

The number of complaints about debt collection activities increased slightly from 2006–07. The most frequent issues were payment arrangements, waiver of debt and bankruptcy or other legal action taken by the ATO. Often people who come to us about debt collection issues are concerned that they are unable to pay, or that charges for late payment and penalties are unreasonable. If they have not paid outstanding tax debts, we encourage them to do so if they are able, or to contact the ATO about payment arrangements, to avoid further accumulation of charges for late payment. The ATO approach is to treat favourably taxpayers who demonstrate engagement with the tax system and a willingness to try to meet their obligations.

One debt collection issue raised in complaints was the re-raising and collection of debts which had previously been written off as uneconomic to pursue. While the total number of complaints is not large, it raises important tax administration issues.

**WHOSE SPOUSE?****CASE STUDY**

Mr A was concerned that the ATO's assessment of his income tax return regarding the spouse tax offset was incorrect, so he lodged an objection. When he received the decision on his objection, the name of his spouse was wrong. Mr A was worried that, because of this error, other facts considered by the ATO in determining his objection may also have been incorrect. He complained to the ATO but was not happy with the outcome.

As a result of our investigation, the ATO conducted a review of Mr A's objection. It determined that the decision was correct but, by error, the wrong name had been recorded as Mr A's spouse's name in the decision on his objection. The ATO apologised to Mr A for the mistake and gave him a corrected notice of decision. We were able to assist Mr A by further explaining the basis of the ATO decision.

**PROCESSING ERROR RESOLVED****CASE STUDY**

Ms B was overpaid almost \$3,000 as a result of a discrepancy in her 2006 income tax return. After the ATO discovered this discrepancy through a data-matching exercise, they asked Ms B to pay it back. The ATO also told her she must have made a mistake in her tax return. Ms B had a copy of her original tax return which showed that she had entered the correct information. She was unhappy that the ATO did not acknowledge its error. Ms B approached us, concerned that the ATO should take responsibility for its mistakes. She sought a refund of the money she had repaid.

Our investigation revealed that a series of processing errors had been made by the ATO at the data entry stage and were not detected in the checking stage, leading to the overpayment. As a result of our investigation, the ATO instigated processes to improve data entry and systems improvements to prevent this type of error from recurring. The ATO had been legally required to collect the overpaid amount so no refund was possible. However, the ATO undertook to apologise to Ms B and inform her about the actions it was taking in response to her case.

Complaints about written-off debts showed a lack of taxpayer awareness of the scope for a debt to be re-raised, and indicated some very old debts being re-raised. We have commenced an own motion investigation into this issue, to be finalised in 2008–09.

Another debt issue raised in some complaints was the collection of tax debts by private debt collection agencies. We are monitoring this issue to see if further investigation is required.

The most common outcome from investigations of debt collection complaints was to provide a better explanation and an objective view that the

case had not been handled inappropriately. In some cases though, our investigations yielded more substantive outcomes for complainants, as the case study *Debt relief provided* illustrates.

**Superannuation**

In 2007–08 we received 123 complaints about superannuation, a decrease from the 153 received in 2006–07. This decrease may reflect changes to the *Superannuation Guarantee (Administration) Act 1992* (Cth) (the SG Act) in April 2007.

The legislative changes addressed the problem that some taxpayers were unhappy with the amount of information the ATO

**DEBT RELIEF PROVIDED****CASE STUDY**

Ms C complained that her tax returns were being withheld by the ATO to offset a tax debt of almost \$40,000 accrued by her ex-husband's small business. Ms C was liable for the debt because it was incurred while she was a director of the business. Ms C stated that due to the breakdown of her marriage she was now in a difficult financial position and was dependent on her tax returns to meet the basic needs of her children.

As a result of our contact, the ATO reviewed Ms C's circumstances and changed their original decision not to return her tax refunds on hardship grounds. The ATO decided that Ms C met the hardship grounds and refunded her over \$3,000.

**DEBT NOTIFICATION****CASE STUDY**

Ms D complained about the ATO's inclusion of a General Interest Charge (GIC) for late payment of a debt on her Termination Payments Surcharge account. Ms D contended she did not even know she owed Termination Payments Surcharge money until she received a payment demand from the ATO for over \$30,000, including GIC of almost \$10,000.

Ms D had paid the amount promptly and then applied for remission of the GIC on the basis that she had not been notified about the debt. The ATO denied the request for remission of GIC because it had sent regular superannuation account statements and correspondence to Ms D's accountant. Ms D's accountant said they had only received a couple of statements but not the bulk of the correspondence.

Our investigation found that the ATO had sent regular correspondence to the accountant at their correct address. In response to our investigation, the ATO gave further consideration to the request for remission of GIC and decided in Ms D's favour. Her previous compliance history, prompt payment of the debt, and action to ensure that future correspondence was sent to her directly, contributed to this decision.

would provide about its efforts to recover unpaid superannuation money from employers. Changes to the SG Act widened the information the ATO could provide taxpayers about steps it had taken to investigate complaints and its actions to recover unpaid superannuation. This additional information is likely to have assisted in ATO complaint management and reduced the number of people who approach the Ombudsman's office.

Superannuation is a complex area for taxpayers to understand. Complaints often demonstrate that people have difficulty in understanding different obligations or the reasons for ATO actions. Our investigations

can result in a better explanation. In other cases we may be able to pursue further remedies such as remission of charges, as illustrated in the case study *Debt notification*.

**COMPLAINT ASSISTED TRANSFER PROJECT**

When a person complains to the Ombudsman's office, we usually suggest to them that they take up their concerns with the ATO in the first instance, if they have not already done so. This gives the ATO an opportunity to address the issues and can provide taxpayers with a direct outcome without the delays of having another party involved.

In early 2007 we trialed and then adopted a practice of directly assisting the transfer of tax complaints to the ATO. This process was introduced because of the low proportion of complainants who raised their concerns with the ATO after contacting our office. During 2007–08 we assisted in transferring 293 complaints to the ATO—25% of total ATO complaints received.

We consider this is a valuable service to assist people pursue their complaints through the most appropriate mechanism. We will review this process in 2008–09 to identify and implement any revisions necessary to ensure this service operates effectively.

## REVIEWING TAX ADMINISTRATION

The tax environment is complex and involves a broad range of individual taxpayers and businesses. There will always be a need for effective review and complaint-handling mechanisms to assist people who consider they have been wronged by the ATO, and to monitor the impact of tax administration on taxpayers.

The ATO has done much to establish and enhance fair and responsive remedial mechanisms that can remedy mistakes or systemic issues that occur. In addition to statutory objection and appeal rights regarding assessment and related decisions, the ATO's own complaint-handling mechanism operates to improve administration and service to taxpayers. The ATO works effectively with the Taxation Ombudsman and is receptive to issues raised and recommendations made.

Through our external project work, including own motion investigations and less formal approaches, we review the health of specific areas of tax administration and consider where improvements may be warranted.

'...we review the health of specific areas of tax administration ...'

With the change to centralised complaint handling we revisited our program of project work, and focused on three projects.

- We continued examining the ATO's administration of the superannuation guarantee. This project started in 2006–07 as a result of a number of complaints to the Ombudsman's office. Changes to superannuation legislation regarding information disclosure, discussed above, have addressed a common cause of complaint. We therefore kept a watching brief on the implementation of the new legislation and will finalise the investigation early in 2008–09.
- We commenced a new investigation into the re-raising of tax debts, as noted above.
- As discussed in the section on Centrelink in this chapter, we commenced a new cross-agency investigation into the administration of the Compensation for Detriment caused by Defective Administration (CDDA) scheme, involving the ATO, Centrelink and the Child Support Agency.

New projects to be undertaken in the coming year include:

- an own motion investigation into the ATO's use of unannounced access powers
- an own motion investigation into the complaint-handling practices and procedures of state Tax Agents' Boards
- a follow-up review of ATO actions arising from our own motion investigation into garnishee action (*Australian Taxation Office: Administration of garnishee action* (Report No 1/2007)).

## FUTURE DIRECTIONS

In 2008–09 we will continue the work of the last few years with a renewed focus on our program of external projects reviewing aspects of tax administration. We are also planning to expand our liaison with relevant groups.

Constructive engagement with the ATO and other external oversight bodies is an essential requirement for us to be most effective in resolving taxpayer complaints and supporting improved tax administration.

Our relationship with the ATO continues to be cooperative, with regular liaison and effective protocols for complaint resolution. The Senior Assistant Ombudsman, Taxation, sat on the ATO Integrity Advisory Committee and the Indigenous Tax Advisory Forum.

As part of our process of ensuring our complaint-handling systems complement each other, we will begin working with the ATO on aligning our classifications of complaints. This will enable better

identification and analysis of any systemic issues that may arise.

We will continue to work with the Inspector-General of Taxation and the Australian National Audit Office as other complementary external oversight bodies to improve tax administration. We aim to minimise overlap by focusing on the perspectives that are unique to the Taxation Ombudsman, such as our understanding of the impact that tax administration can have on individuals.

## CENTRELINK

In 2007–08 the Ombudsman’s office received 7,573 approaches and complaints about Centrelink, compared to 6,987 in 2006–07. This was the highest number of approaches received about any agency. This outcome was not unexpected given the volume, complexity and diversity of Centrelink’s workload. The number of approaches and complaints about Centrelink was the highest since 2004–05, as Figure 7.3 shows.

During 2007–08 we investigated 22% of the 7,382 approaches and complaints finalised. The most common themes identified in these investigations were claims for payment, debts, and suspension or cancellation of payment.

### WELFARE TO WORK

The Ombudsman Annual Report 2006–2007 discussed the impact of the introduction of the Welfare to Work reforms in July 2006. In particular, the report highlighted a number of key areas of concern regarding Centrelink’s application of penalties under the revised system, including:

- non-payment periods
- suspension of payments without a decision
- timeliness of decision making

- denial of appeal and review rights.

The Ombudsman released an own motion report *Application of penalties under Welfare to Work* (Report No 16/2007) in December 2007. The report encouraged Centrelink, the then Department of Employment and Workplace Relations and the Department of Human Services (DHS) to work collaboratively to address the issues identified. Centrelink has updated its processes in response to this report.

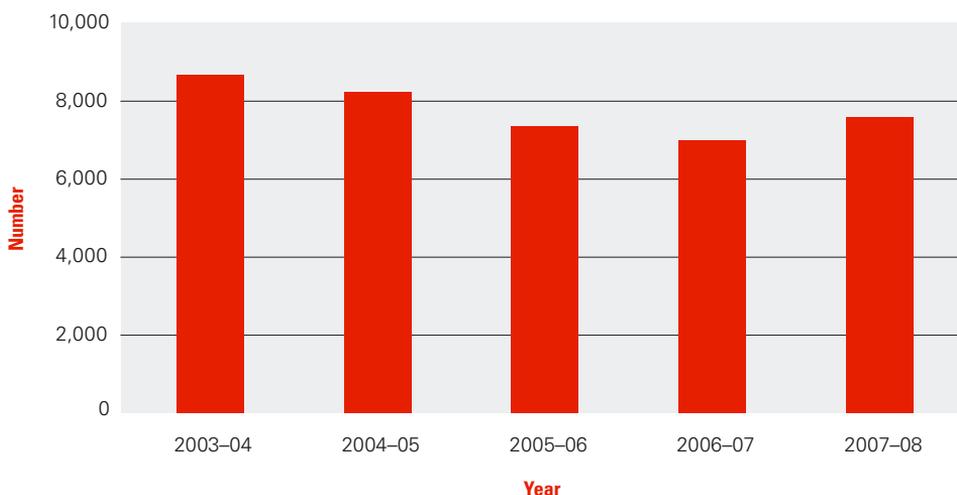
‘Centrelink has updated its processes in response to this report.’

A significant change brought about by the Welfare to Work reforms was tightened qualification criteria for certain payments, including disability support pension (DSP) and parenting payment, leading to a number of complaints to the office.

### Disability support pension

Previously, DSP was payable to a customer with a permanent condition that prevented them from working more than 30 hours per week. However, from 1 July 2006 a customer must have a permanent condition that prevents them from working more than 15 hours per week to qualify. A customer

**FIGURE 7.3** Centrelink approach and complaint trends, 2003–04 to 2007–08



who does not qualify can now access newstart allowance (NSA) as a person with a partial capacity to work, and receive a pensioner concession card and other supplementary payments, and have modified activity requirements.

As occurs with most legislative reform, the DSP changes resulted in many customers complaining to the Ombudsman about the impact on them. In most instances our office did not identify any basis on which to criticise Centrelink's actions, which stemmed from the changed legislation.

We also received complaints from people experiencing acute physical or mental illness, who had arguably 'fallen through the cracks' of the social security law. These customers, although obviously unwell, did not satisfy the strict DSP qualification criteria and, as such, their only option was to claim an activity-tested payment, such as NSA or parenting payment. Although there is some capacity for customers to be granted a temporary exemption from activity testing, there is still often a requirement to engage with Centrelink for reporting purposes. This is something that can be difficult, or arguably unreasonable, for a customer who is suffering acute illness or undergoing intensive treatment.

We will continue to monitor such complaints, and will consider whether a general investigation of this issue is warranted in 2008–09.

### Parenting payment

Customers who were in receipt of parenting payment prior to 1 July 2006 are able to retain that payment until their youngest child turns 16, but, since 1 July 2007, must fulfil participation requirements once their youngest child turns seven. This is a significant change for parents who were previously able to continue receiving payment until their youngest child turned 16 without any obligation to seek paid employment.

Customers who began to receive parenting payment since 1 July 2006 have participation requirements once their youngest child is six years old, and no longer qualify for parenting

payment once their youngest child turns six or eight (depending on the customer's relationship status).

The participation requirements imposed on parenting payment customers (and NSA customers with children aged 16 or younger) are generally less onerous than those for NSA customers. Nevertheless, the revised expectations have been a continuing source of complaints to the Ombudsman. The most common complaints included that:

- the policy failed to provide for adequate consideration of a customer's personal circumstances, such as the special needs of their children or irregular patterns of work
- Centrelink failed to properly advise customers of the impact of the Welfare to Work changes.

The case study *Lost in transition* illustrates how Centrelink's failure to advise a person properly caused difficulties.

The parenting payment changes represented a significant change in policy. As such, it is likely these types of complaints will continue to represent a considerable proportion of the approaches made to the Ombudsman about Centrelink. We will continue to monitor these matters to identify areas for feedback to Centrelink and the policy departments.

### COMMONWEALTH SENIORS HEALTH CARD

The Commonwealth Seniors Health Card (CSHC) is available to Australian residents of age pension age who meet income test requirements and do not receive a social security or veterans' pension. The CSHC can be used to obtain concessions on a number of products and services including health services, pharmaceutical products and travel.

In June and July 2007 the Ombudsman's office received a number of complaints from people whose CSHC had been cancelled. In each instance Centrelink had apparently told them this occurred because Centrelink did not have a record of their residential address.

## LOST IN TRANSITION

## CASE STUDY

Ms E was receiving parenting payment (single) at 1 July 2006. This meant she had 'transitional status' and, provided she maintained this status, was able to continue receiving parenting payment until her daughter reached 16.

Ms E commenced caring for her mother in early 2007 and transferred from parenting payment to carer payment. Carer payment was paid at the same rate as parenting payment but did not require Ms E to undertake any job search activities. When Ms E's mother passed away suddenly three weeks later, Centrelink continued to pay Ms E carer payment for another 14 weeks as a 'bereavement payment'. When Ms E then attempted to re-claim parenting payment she was told that, by transferring to another payment for more than 12 weeks, she had lost her transitional status. Ms E was assisted to claim another income support payment, but this was paid at a lower rate than parenting payment.

Ms E made a claim for compensation for the difference in her payment rates, stating that Centrelink had failed to advise her of the possible impact of transferring to carer payment. She complained to us when Centrelink refused her claim.

On investigating Ms E's complaint, we formed the view that Centrelink's refusal of her compensation claim was unreasonable. It appeared to have been based on assumptions about the advice provided to Ms E, rather than an assessment of the available evidence. At our request Centrelink agreed to reconsider Ms E's compensation claim, and decided to pay her compensation for the full amount of her lost entitlement.

We contacted Centrelink and were advised that a data integrity check in late-June 2007 had identified 1,892 CSHC holders for whom no residential address was recorded. Centrelink advised that, in the absence of a residential address, it could not be satisfied the cardholder met the residency criteria and therefore it was appropriate to cancel their card.

We suggested to Centrelink that the absence of a residential address did not necessarily demonstrate a cardholder was not an Australian resident. We considered that it would have been more appropriate for Centrelink to invite cardholders to provide their residential address. If they did not respond, Centrelink could then cancel the customer's card.

Centrelink advised us the cancellations had arisen as a result of an upgrade to its system, which required customers to have both a postal and residential address recorded. Previously the system only had space for one address so, even though Centrelink would have established the cardholder's residency

status at the time of grant, where a customer had different postal and residential addresses only the postal address would be recorded. Notwithstanding the customer's previous demonstration of their residency status, Centrelink considered its action to cancel the CSHCs was required by the social security law.

We subsequently wrote to Centrelink requesting that it give further consideration to this topic. Specifically, we sought Centrelink's comments with regard to our view that:

- the social security law did not authorise or require the cancellation of CSHCs in the situation described
- it was unreasonable to cancel an entitlement based only on a change to the Centrelink system
- it was open to Centrelink to seek updated information from cardholders prior to making a cancellation decision.

After further consideration, Centrelink accepted our view that it should have provided cardholders with the opportunity to

provide their residential address information before cancellation. Centrelink also undertook to restore any remaining CSHCs that had been cancelled as a result of the data integrity check and to seek updated address information from each cardholder.

### EQUINE INFLUENZA ASSISTANCE

In September 2007 the former Australian Government announced a financial assistance package for individuals and businesses affected by the equine influenza outbreak and associated movement restrictions. This package included:

- Equine Workers' Hardship Wage Supplement—a fortnightly income support payment available to people working in a horse-dependent occupation who had lost their main source of income as a result of the outbreak and associated movement restrictions
- Equine Influenza Business Assistance Grant—lump sum payment available to businesses working in the equine industry which had experienced a loss of business income as a result of the outbreak and associated movement restrictions
- Commercial Horse Assistance Package—a per-day per-horse allowance available to people who look after horses on a commercial basis, who were in work at the time of the outbreak but were unable to undertake that work subsequently.

Centrelink administered the Wage Supplement and Business Assistance Grant on behalf of the Departments of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and of Agriculture, Fisheries and Forestry (DAFF), while state-based racing bodies distributed the Commercial Horse Assistance package.

We received a number of complaints about Centrelink's decisions on claims for the Business Assistance Grant. Many of these complaints focused on Centrelink's determination that a business did not meet the eligibility criteria stipulated by DAFF because it was not part of an 'equine industry'.

In total we received 71 such complaints, of which we investigated 55. In addition to the individual investigations, we also conducted a broad examination of the payment guidelines and the way they were implemented. This investigation revealed that, while aspects of the implementation and administration of the package could have been improved, the urgency and impact of the outbreak meant that some inadequacies or oversights were probably explicable.

At the end of the reporting period we were still in discussion with Centrelink and DAFF on a number of aspects, and we will continue to monitor this issue.

### SYSTEMS PROBLEMS

The Ombudsman's office generally finds Centrelink to be very responsive in answering, and acting on, enquiries about complaints. However, during 2007–08 we became aware of a number of instances where Centrelink was unable to address complaint issues in a timely manner because of 'systems problems'.

In these cases Centrelink advised that it was aware of the error complained of (for example, incorrect debt, incorrect payment rate or the incorrect refusal of an advance payment) but it was unable to rectify the error in a timely manner because of problems with Centrelink's information technology system. In these instances Centrelink advised that the customer would have to wait until the systems error was resolved before the problem with the customer's debt, payment or claim could be rectified.

In one example, due to a systems error Centrelink mistakenly raised a debt against a person, and sent an automatically-generated letter to her to set up a repayment plan, despite knowing it was an error. In another case Centrelink took twelve weeks to process a person's claims for family tax benefit and carer payment because of systems problems. The case study *No action* illustrates another type of problem which arose during the year.

These cases highlighted a difficulty in Centrelink identifying a practical manual remedy to fix a known problem. Although we appreciate such 'work arounds' often require additional time and resources, in our view agencies should take all available action to minimise unnecessary financial difficulty or inconvenience to their customers. We would like to see an increase in early identification and resolution of these problems in the future without the need for ministerial intervention as in the case study *No action*.

## REVIEWS AND APPEALS

### Internal review

In previous annual reports we have noted ongoing concerns about Centrelink's internal review processes. These issues continue to be the subject of a number of complaints to the Ombudsman.

Last year's report discussed Centrelink's practice of requiring customers to undergo a review by the original decision maker before their matter is considered by an Authorised Review Officer (ARO). We commented that the Australian National Audit Office had released a report on Centrelink reviews, which recommended that customers be made aware they have a legal right to have a decision reviewed by an ARO without first having a review by the original decision maker. Centrelink agreed to this

recommendation. It was our hope that this would result in a greater proportion of matters being referred directly to an ARO, and would improve the timeliness and consistency of review decisions.

In 2007–08 this issue continued to be a source of complaints:

- Centrelink continues to send customer reviews to the original decision maker in some cases when a customer has indicated that they want it referred direct to an ARO
- customers are being advised they need to request an ARO review if they are dissatisfied with the outcome of the review conducted by the original decision maker—Centrelink does not automatically proceed to ARO review
- Centrelink review forms advise that, even if a customer asks to go directly to ARO review, their matter may be examined by the original decision maker first.

We are continuing to monitor this issue and giving consideration to further action that may be required.

### Implementation of external review decisions

This year we received a number of complaints from Centrelink customers about delays in having decisions from the SSAT and the Administrative Appeals Tribunal implemented. In some cases customers

## NO ACTION

## CASE STUDY

Mr F complained to us in September 2007 about a delay in Centrelink implementing a decision made on his case by the Social Security Appeals Tribunal (SSAT) in August 2007.

In response to our enquiries Centrelink advised a systems problem was preventing it from implementing the SSAT's decision, and explained it was attempting to identify a 'work around' for the problem. Our office continued to liaise with Centrelink for approximately eight weeks, regularly seeking updates on its attempts to identify a solution to the problems with Mr F's case.

In December 2007, in response to contact from the Minister's office, Centrelink identified a manual, interim solution that would allow it to implement the SSAT's decision. When finalising our investigation, we conveyed to Centrelink our frustration that it had been unable to find such a solution in response to our ongoing contacts on Mr F's matter.

waited for more than 60 days for such a decision to be given effect.

The case studies *Unsure* and *Unusual* show how some delays were caused by Centrelink being uncertain about how to implement a decision.

In some instances Centrelink advised that delays were a result of the need to assess whether it would appeal the tribunal's decision. We wrote to Centrelink, noting such considerations would not seem to impact on Centrelink's ability to implement a decision in the meantime, unless it had sought a stay order. We suggested Centrelink revisit its current processes to ensure that tribunal decisions are implemented in a more timely manner.

## NOMINEES

Under the social security law a customer can authorise another person or people to represent them in their dealings with Centrelink. Depending on the specific authority given to the representative, known

as a 'nominee', they can make enquiries, receive correspondence, receive payments, or a combination thereof. In certain situations a nominee arrangement can be put in place for a customer without their express permission. This generally occurs at the direction of a court or tribunal, when the customer is not capable of managing their own affairs.

Centrelink's administration of nominee arrangements has been an issue of interest to the Ombudsman's office over the past few years. During 2007–08 we became aware of at least two matters where Centrelink did not appear to have reviewed a nominee arrangement following a change in the circumstances of the customer or the nominee, as the case studies *No review*, *no correspondence* and *Gone interstate* show.

In early 2008 we met with Centrelink to highlight the need to monitor and update nominee arrangements. By doing so, Centrelink will ensure it fulfils its obligation to make certain that nominees continue to be able to act in the best interests of the customer.

## UNSURE

## CASE STUDY

Ms G complained to the Ombudsman's office that, despite the 28-day appeal period having expired, Centrelink had not yet implemented a decision made in her favour by the SSAT.

In response to our enquiries Centrelink acknowledged that it had not yet implemented the SSAT's decision. It advised that it was unsure how to interpret or implement the decision, and intended to seek advice from FaHCSIA.

Two months after the SSAT issued its decision, Centrelink implemented the decision and paid the outstanding arrears to Ms G.

## UNUSUAL

## CASE STUDY

Mr H complained that Centrelink was unreasonably delaying implementing a decision made by the SSAT. The effect of the decision, made six weeks earlier, was that Mr H was entitled to arrears of approximately \$4,000.

In response to our enquiries Centrelink confirmed that it had not yet implemented the decision. It implemented the decision promptly following our contact, explaining that the outcome directed by the SSAT was unusual and that, as such, Centrelink needed to consult a range of specialist areas before it could give effect to the tribunal's decision.

**NO REVIEW, NO CORRESPONDENCE****CASE STUDY**

Ms J complained to the Ombudsman's office that Centrelink had refused her request to change her authorised nominee, stating that it was unable to do so because the nominee, the Public Trustee, had been appointed by court order. She also complained that Centrelink had failed to provide her with a written explanation of the reasons why her request could not be carried out, saying that it could only provide letters to her correspondence nominee, but not to her.

Our investigation revealed that Ms J had a right to request the nominee arrangement be changed, but the decision was at the Secretary's discretion and to be decided on the basis of what was in Ms J's best interests. In addition, in most instances, unless there is a court, tribunal, guardianship or administration order in place that confirms the customer is incapable of managing their own affairs, copies of all correspondence should be sent to both the customer and the nominee.

Centrelink wrote to Ms J apologising for giving her incorrect advice about her right to request a review of the nominee arrangements, and undertook to send her a copy of any correspondence sent to her nominee.

**GONE INTERSTATE****CASE STUDY**

Mr K complained that Centrelink was 'illegally' paying his Centrelink benefit to the Office of the Protective Commissioner (OPC). He said that when he queried this with Centrelink, it advised it could not locate the written authority for this arrangement.

In the course of our investigation we identified that Centrelink's decision to commence paying Mr K's benefits to the OPC was not unreasonable, as it was based on a valid protection order. However, we also noted that Mr K lived in Queensland, while the NSW OPC was his nominee. This led us to question whether there were jurisdictional issues that meant, when it became aware Mr K had moved to another state, Centrelink should have reviewed the suitability of the existing nominee arrangement.

Centrelink acknowledged that, ordinarily, when it becomes aware a customer has moved interstate and a state-based authority is their nominee, it will undertake a review to ensure the nominee is still capable of acting in the customer's best interests. In Mr K's case, no review appeared to have been undertaken.

In response to our enquiries Centrelink conducted a review and confirmed that it remained of the view that the NSW OPC was able to act in Mr K's best interests, even though he had moved interstate. It advised that it was open to Mr K to seek a review of this decision if he wished to have the arrangement changed.

## CROSS-AGENCY ISSUES

Many complaints made to our office require us to make enquiries with more than one agency. This is particularly the case where one agency is responsible for delivering a product or service, while another has responsibility for the relevant policy or law.

In 2007–08 we became aware of a possible problem with the interaction between the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) and the social security law.

The SIS Regulations provide guidance to superannuation funds about a number of issues, including when it is appropriate to allow a member to obtain an early release of superannuation funds. One of the grounds for seeking an early release is ‘severe financial hardship’, which can be demonstrated by (among other things) providing evidence that the person has been in receipt of Commonwealth income support payments for a continuous period of 26 weeks.

As an agency responsible for administering Commonwealth income support payments, Centrelink is often requested to provide a statement that a customer has been in receipt of such payments for a continuous period of 26 weeks. Confusion arises, however, where a customer has been subject to a period of non-payment during the preceding 26-week period.

The problem is that, under the current social security law, a person can remain qualified for income support but, in some instances, will be unable to be paid income support due to a participation failure. In turn, Centrelink is unable to provide that customer with the statement required because they have not been in continuous receipt of payment.

In our view the regulations do not appear to have been drafted in contemplation that a person can be qualified for, but not in receipt of, income support payments. These people are arguably in greater need of access to other funds because their only form of income has been withheld.

In May 2008 the Ombudsman wrote to the Treasurer to suggest changes be made to the SIS Regulations to address this inconsistency. The Ombudsman also highlighted the issue with the Chairman of the Australian Prudential Regulation Authority and the Chief Executive Officer of Centrelink.

## OWN MOTION AND SYSTEMIC INVESTIGATIONS

During 2007–08 we completed a number of own motion investigations into agencies dealing with social security and its administration.

In October 2007 the Ombudsman released an own motion report *Marriage-like relationships—policy guidelines for assessment under social security law* (Report No 14/2007). This report was well received by the agencies involved and by other interested organisations. The agencies have taken action to implement the Ombudsman’s recommendations.

The Ombudsman issued an own motion report in December 2007 into the administration of non-payment periods under the Welfare to Work reforms. The report, *Application of penalties under Welfare to Work* (Report No 16/2007), identified a number of legal and procedural problems with Centrelink’s handling of these non-payment periods. It also provided comments on the underlying policy administered by DEEWR. In response, Centrelink, DEEWR and DHS agreed to work collaboratively to resolve the problems we identified.

‘This report was well received by the agencies involved and by other interested organisations.’

In June 2008 the Ombudsman released an own motion report into the administration of job capacity assessments (JCAs) for social security purposes (*Implementation of job capacity assessments for the purposes of Welfare to Work Initiatives*, Report No 5/2008). This report primarily dealt with matters administered by DHS, but was also

relevant to Centrelink, DEEWR and FaHCSIA.

Under the Welfare to Work program, people with illness, disability and/or barriers to work are required to undergo a comprehensive work capacity assessment. These assessments inform Centrelink for income support decisions and identify the most appropriate employment-related assistance for a person. The report focused on issues identified since the implementation of JCAs and their impact on the volume of complaints we receive. The four agencies involved have undertaken to continue liaising

with each other to address some of the issues highlighted in the report, which will require additional work.

During the year we commenced an investigation into the administration of the Compensation for Detriment caused by Defective Administration (CDDA) scheme. This investigation is examining the way in which claims are handled by Centrelink, the Australian Taxation Office and the Child Support Agency, with a particular focus on decision-making procedures and the treatment of evidence. We expect to issue a report on this investigation in late-2008.

## CHILD SUPPORT AGENCY

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CHAPTER 7 LOOKING AT THE AGENCIES—CHILD SUPPORT AGENCY

In 2007–08 we received 2,208 approaches and complaints about the Child Support Agency (CSA), an increase of 23% from the 1,790 approaches and complaints received in 2006–07. This is the largest number of approaches and complaints about the CSA that we have received in any year since 2002–03 when we received 2,515 approaches and complaints. The increase reflects the general increase in complaints to the office across the board, the CSA's preparatory work with its customers for the significant changes to the Child Support Scheme formula, discussed below, and an increased number of complaints claiming the CSA failed to collect child support. Figure 7.4 shows the trend in approaches and complaints about the CSA over the past five years.

The CSA makes administrative assessments of child support payable by separated parents for their children. The person entitled to receive child support under the assessment, the payee, can make their own arrangements to collect child support from the payer, or register the assessment with the CSA for collection. Once a case is registered, the CSA is responsible for collecting the child support from the payer and transferring it to the payee.

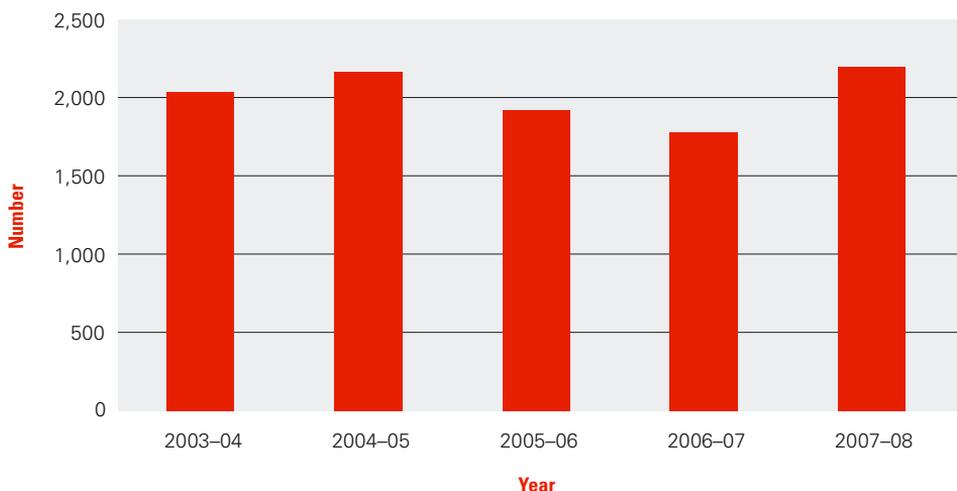
## IMPLEMENTING THE NEW CHILD SUPPORT FORMULA

The CSA assessment applies a legislative formula to the circumstances of the payer, the payee and the children. The formula had remained largely unchanged since 1989. A new formula came into effect from 1 July 2008, following the previous government's acceptance of the majority of recommendations contained in the 2005 report of the Ministerial Taskforce on Child Support. Other major changes were made to the Scheme in 2006 and 2007.

The new formula is described by the CSA as 'a more balanced way of calculating child support, with each parent's income being treated more equally, care being recognised as a contribution towards the cost of children and treating children from first and subsequent relationships in a similar way'.

The CSA's arrangements for introducing the new formula appear to have been thorough. It provided its customers with detailed written information about how the changes will affect them, well in advance of the start date. The CSA issued new assessment notices to all its customers in a staggered fashion, to help manage the volume of enquiries. Customers were invited to contact

**FIGURE 7.4** Child Support Agency approach and complaint trends, 2003–04 to 2007–08



the CSA if any of the information used to calculate child support was wrong.

The CSA publicised the changes through press, radio and internet advertising and information distributed via the media. It conducted a number of outreach activities, with community information sessions in metropolitan and regional areas, so that customers could speak to the CSA about their new assessment or other child support issues. The CSA also provided training for community groups in each capital city. We will closely monitor any complaints about the new formula.

## COMPLAINT THEMES

Five main themes that emerged from the CSA complaints we investigated in 2007–08 were:

- the CSA's failure to collect child support owed to the payee
- delays in the CSA's decision making
- the CSA's use of its power to make an order preventing a child support debtor from leaving Australia (a Departure Prohibition Order (DPO))
- problems in the CSA's relationships with other Australian Government agencies in administering the Child Support Scheme
- the CSA's response to allegations of customer fraud.

These themes are discussed below.

### Failure to collect child support

In 2007–08 we received a substantial number of complaints from payees about the CSA's failure to collect child support debts. This was the most common CSA issue we investigated, present in 18% of all investigated CSA complaints. The extent of the problem is demonstrated by the growing child support debt registered with the CSA for collection, which exceeded \$1 billion for the first time in June 2008. The growth in outstanding payments for international customers is a contributing factor.

The Minister for Human Services recently announced a new compliance strategy for

the CSA, aimed in part at improving the CSA's collection rate. We will monitor whether the new strategy leads to a reduction in complaints to this office, as well as a reduction in gross child support debt.

'We will monitor whether the new strategy leads to a reduction in complaints ...'

### Delays in decision making

We generally suggest that a person use the CSA's internal complaints service for a simple complaint about the CSA not yet having made a decision. However, some matters warrant investigation by this office, such as those where the delay seems excessive, where the person has already tried unsuccessfully to resolve the matter with the CSA, or where the delay has had unfair consequences for the complainant.

A customer may ask the CSA to reconsider a decision by lodging a written objection. The CSA has a statutory period of 60 days to make an objection decision, during which time the other parent in the case must be given an opportunity to respond to the objection. We found that the CSA had failed to meet this legislated timeframe in many of our investigated complaints.

We sought information from the CSA about the extent of the objection delays. In March 2008 the CSA advised us that since the beginning of the financial year, it had made an objection decision within 60 days in only 77% of cases. The timeliness figures varied dramatically across each of the CSA's state offices, ranging from 52% to 91% of objections being finalised within 60 days.

Following our investigation, the CSA has made inroads into reducing the backlog of objections. We are monitoring its performance in this area.

Another area of delay was in reconciling estimates of taxable income. The CSA initially calculates child support on a parent's past taxable income. If the parent's income has reduced by at least 15%, they can ask the CSA to base their future child support on

an estimate of their current income. At the end of the estimate period, the CSA must compare the parent's actual income with their estimated income. If the estimate was too low, the CSA must reassess child support, and a penalty can apply. The CSA's duty to reconcile a parent's estimate is an important protection for the other parent, who may have received too little child support for the period (if the payer lodged the estimate) or paid too much (if the payee lodged the estimate).

The CSA can reconcile an estimate as soon as the Australian Taxation Office (ATO) assesses the parent's income tax returns for the period covered by the estimate. Unlike an objection, there is no legislated period within which the CSA must complete its reconciliation.

Changes to the child support legislation that came into effect on 1 July 1999 made the task of reconciling an estimate much more complex. The CSA has not managed to deal with all the cases. As at 31 March 2008, there were more than 200,000 estimates to be reconciled. We understand the CSA has set up estimate reconciliation teams to deal with this backlog.

A number of complaints we received during the year concerned cases where the CSA had reconciled a payer's estimate many years after they lodged their tax returns, creating substantial debts, as the case study *Legal but fair?* shows.

The difficulty with such complaints is that, in most cases, the debt is correct. The complainant, however, is usually shocked to discover that they owe child support for a past period, and unhappy to be asked to pay the amount after such a long time. The CSA cannot offer to reduce the debt, because the money is legally owed and due to the payee for the support of the children.

We are monitoring the CSA's progress in dealing with the backlog of reconciliations.

### Departure Prohibition Orders

Under the *Child Support (Registration and Collection) Act 1988* (Cth), the CSA can make a DPO preventing a child support debtor leaving Australia. This is a discretionary power that may only be exercised in a case where the CSA is satisfied that:

- the person has unpaid child support which they have not made satisfactory arrangements to discharge

## LEGAL BUT FAIR?

## CASE STUDY

The CSA advised Mr L in June 2007 that he was required to pay about \$8,000 extra child support for the period October 1999 to December 2000. Mr L complained to this office about the CSA's decision. He was certain that he had settled all his liability for that period because he had entered into detailed negotiations with the CSA in 2004. This involved a recalculation of his child support from the beginning of the case and a final settlement figure which was deducted from his tax refund.

We contacted the CSA for an explanation of the debt. The CSA advised us that when it negotiated the settlement of Mr L's debt in 2004, it had not reconciled his estimated income. This was despite the fact that the ATO had already provided the CSA with details of Mr L's taxable income for the estimate period. The CSA's 2004 advice to Mr L, with detailed calculations of his child support, failed to mention that the CSA would reconcile his estimate at some stage in the future.

We advised the CSA that we agreed it was correct to reconcile Mr L's estimate. However, we were critical of the delay and its failure to perform the reconciliation before it gave Mr L the impression he had finalised his child support arrears in 2004. We have invited the CSA to consider what remedy may be appropriate for Mr L.

- the person has persistently and without reasonable grounds failed to pay their child support.

If these conditions are met, the CSA can make a DPO if it believes on reasonable grounds that it is desirable to prevent the person leaving Australia until they make a satisfactory arrangement to wholly discharge their child support debt.

DPOs appear to be an effective tool for collecting child support. However, a question arises as to whether they have been applied reasonably in all cases.

The CSA made 482 DPOs in 2005–06, collecting \$6.7 million. In 2006–07 it made 474 DPOs, collecting \$5.9 million. By 2010 the CSA intends issuing a further 4,500 DPOs.

We have received and investigated a number of complaints from people who have been unable to travel overseas on a short holiday or business trip because the CSA has issued a DPO. We are concerned that in some cases, the CSA may be making a DPO to encourage the person to make a suitable payment arrangement, without considering fully the circumstances of the case.

A person cannot use the CSA's objection process to seek a review of a DPO. Nor can they appeal to the Social Security Appeals Tribunal. They have a right to initiate judicial review of the DPO decision in the Federal Court or Federal Magistrates Court, or they can complain to the Ombudsman's office.

The child support legislation about DPOs is closely modelled on provisions in the income tax legislation and the courts have decided a number of challenges to DPOs made by the ATO. In those cases, the courts have stressed the basic democratic right of citizens in a free society to travel as they please. The courts have held that an ATO DPO is appropriate only if the person's planned departure from Australia would jeopardise the ATO's chances of collecting the taxation debt, even though this test is not expressly mentioned in the relevant tax legislation.

We consider it arguable that the same reasoning should apply to CSA DPOs. The CSA has advised us that it does not agree with our view. It noted that the one case in which the court had reviewed the CSA's decision to issue a DPO did not apply the test of whether the person's planned departure from Australia would jeopardise the CSA's chances of collecting the debt.

In 2008–09 we will further explore the CSA's policy for making DPOs through an own motion investigation that will review a sample of the CSA's DPO decisions. The CSA has indicated that it is keen to assist us with this investigation and, importantly, to resolve the different views about the appropriate test that it should apply.

We also noted some problems with the administration of DPOs in the complaints we investigated in 2007–08. The CSA must send notice of the DPO to the debtor and notify the Australian Federal Police (AFP), which records the details on a database that the Australian Customs Service (ACS) checks before it allows a person to leave Australia. The DPO remains in force until the CSA revokes it. However, the database alert is recorded for a fixed period. The AFP and the CSA have liaison arrangements to review and renew expiring alerts.

Several complaints revealed problems with these cross-agency administrative arrangements. In one case, the ACS prevented a person leaving Australia because they had a similar name to a CSA customer for whom a DPO had been made. When we contacted the CSA it advised us that it had informed the ACS this person was not the child support debtor. However, there was a delay of several days before the problem was resolved. It is not clear how the misidentification and subsequent delay arose. Two further complaints alleged that the child support debtor was able to leave the country despite the existence of a DPO. The case study *Inconsistent advice* illustrates such a situation.

## INCONSISTENT ADVICE

## CASE STUDY

Ms M, a child support payee, was aware that the CSA had issued a DPO in 2004 against Mr N, the payer. Ms M contacted the AFP one evening in 2005 to advise them that Mr N was leaving Australia that night. Mr N's child support debt at that time was over \$50,000.

The AFP advised Ms M that the alert for Mr N had expired two months earlier, and they had not received a response from the CSA when they enquired about a renewal. Accordingly, Mr N had been permitted to leave Australia.

Ms M contacted the CSA the next day. The CSA advised her that the DPO was still in place. The CSA told her its records showed that they had advised the AFP to renew the alert for Mr N, and this was confirmed to Ms M by an AFP officer. However, another AFP officer later restated the original advice to Ms M—that Mr N's alert had expired because the CSA had not advised the AFP to renew it.

Ms M had several phone conversations with senior CSA officers and was frustrated that she had been given contradictory information by the two agencies. A senior CSA officer advised her that the matter was being investigated, but no further information would be released to her, and the CSA would continue to attempt to collect child support from Mr N on her behalf.

This office is investigating Ms M's complaint about the CSA and the AFP. Ms M is seeking compensation from both agencies for the lost opportunity to collect her entitlement to child support. We have been advised that the AFP and CSA have reviewed their processes since these events in order to reduce the likelihood of similar problems.

### Other cross-agency issues

The CSA works with the ATO and Centrelink in administering the Child Support Scheme. The CSA relies on the ATO for information about a parent's income for a previous financial year. The CSA can require the ATO to pay a debtor's tax refund to the CSA, in payment of that person's child support debt.

The CSA exchanges information with Centrelink about a person's eligibility for Family Tax Benefit (FTB), the maintenance income test, and to arrange collection of child support from a payer's pension or benefit. In most cases the exchange of data occurs automatically and the information is correct. The case study *Lost arrears* illustrates that there can be serious repercussions if that information exchange is not accurate and timely and there is delay in agency actions.

### Customer fraud

A growing number of complaints raise concerns about the way in which the CSA responds to allegations that one of its

customers has provided false or misleading information. This is an offence under the child support legislation.

Our investigation of three complaints received this year revealed shortcomings in the way the CSA documents, assesses and follows up on reported customer fraud. We are concerned the CSA does not have adequate systems in place for dealing with these reports. We consider this is a systemic problem in the CSA's administration, as investigation and prosecution of fraud has an important deterrent effect and is vital for ensuring the integrity of the Child Support Scheme.

The CSA advised us that it was developing new arrangements for the investigation and prosecution of customer fraud. We intend providing a detailed report of our investigations to the CSA along with recommendations for the CSA to consider in early 2008–09.

Ms O received child support payments from her former partner through the CSA. Centrelink took account of these payments when calculating Ms O's FTB payments. In June 1998 the CSA decided to retrospectively end Ms O's child support assessment because it was satisfied her former partner had ceased to be a resident of Australia in February 1997. He had advised the CSA about his circumstances in early 1997, but the CSA had not acted on this information.

Ms O subsequently obtained a court order for child maintenance against her former partner. However, the CSA asked her to repay more than \$3,000 for child support she had received after February 1997. Ms O entered into an arrangement to settle this debt, but did not believe it was fair. She applied for a change of assessment, but the CSA had no power to vary the date from which it ended her child support assessment. Ms O sought a waiver of her debt from the then Department of Finance and Administration, but this was refused.

In July 1998, Ms O asked Centrelink to reassess her FTB to disregard the \$3,000 child support that it had taken into account, but that she now had to repay to the CSA. Centrelink could not do this because the reduced FTB payments were made more than three months before Ms O's request for arrears. It did not matter that Ms O had applied to Centrelink within three months of the CSA's retrospective decision to cancel her child support assessment.

Ms O applied to the CSA for compensation for missed Centrelink entitlements and general compensation. The CSA offered Ms O a small amount as compensation for her lost opportunity to receive FTB. Ms O then complained to this office that the amount was insufficient and did not properly take into account FTB amounts she could have been paid.

When we reviewed the information provided by CSA, it appeared there was a discrepancy between the dates that Centrelink provided and the dates the CSA used in calculating Ms O's lost entitlement. Further, no interest component had been considered on the FTB amounts even though a period of almost ten years had elapsed. We requested that the CSA clarify the discrepancy and consider whether an additional sum for interest would be appropriate in the circumstances. The CSA has now explained the apparent discrepancy and increased its compensation offer to include interest.

## DEFENCE

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CHAPTER 7 LOOKING AT THE AGENCIES—DEFENCE

The Ombudsman investigates complaints about a range of defence agencies, including the Department of Defence, the Australian Defence Force (ADF) (Royal Australian Navy, Australian Army, Royal Australian Air Force), the Department of Veterans' Affairs (DVA) and Defence Housing Australia (DHA).

We investigate these approaches as either the Commonwealth Ombudsman or the Defence Force Ombudsman (DFO). The DFO investigates complaints that arise out of a person's service in the ADF, covering employment-related matters such as pay and entitlements, terminations or promotions. As Commonwealth Ombudsman, we investigate other administrative actions of these agencies.

In 2007–08 we received 562 defence-related approaches and complaints, compared to 670 in 2006–07. This represents a 16% decrease in complaints.

### DEPARTMENT OF DEFENCE

We received 135 approaches and complaints about the Department of Defence, compared to 106 in 2006–07. As noted in previous annual reports, considering the size of the department, we receive relatively few complaints. Of the complaints we

investigated, the three main sources of complaint were contracting matters, the issue of honours and awards, and problems with recruitment into the ADF.

### HMAS *Westralia* investigation

In March 2007 allegations were made in the press and Parliament that Defence was warned in February 1998 that HMAS *Westralia* was in grave danger from the faulty fuel lines that caused the fire on 5 May 1998. The Minister for Defence wrote to the Ombudsman requesting that we consider an own motion investigation into the matter.

In April 2007 the Acting Ombudsman initiated an own motion investigation into the allegations of Defence's forewarning about the fire and the appropriateness of the Defence response. At the heart of the allegations was the appearance of an unsigned minute dated 6 February 1998 from Defence's Inspector-General Division (IGD) investigators. The minute reported allegations from Baileys Diesel Services about corruption and misconduct in Royal Australian Navy contracting and maintenance, including the use of non-genuine and sub-standard spare parts (the 6 February 1998 document). The minute cited HMAS *Westralia* as a ship that had

**TABLE 7.1** Defence-related approaches and complaints received, 2004–05 to 2007–08

Agency	2004–05	2005–06	2006–07	2007–08
Australian Army	190	169	145	138
Defence Housing Australia	28	29	36	28
Department of Defence	165	138	106	135
Department of Veterans' Affairs	216	276	256	139
Royal Australian Air Force	69	80	57	48
Royal Australian Navy	78	54	50	59
Other (see breakdown for 2007–08 in Appendix 3)	12	4	20	15
<b>Total</b>	<b>758</b>	<b>750</b>	<b>670</b>	<b>562</b>

recently suffered problems as a result of the use of such parts. Allegations also emerged that Baileys had raised safety concerns in 1997.

After an extensive investigation involving the examination of several thousand Defence documents, formal interviews with key witnesses, and consideration of statements from other witnesses, the Ombudsman released a report, *Department of Defence: allegations concerning the HMAS Westralia fire* (Report No 3/2008), in April 2008.

The report concluded that the press reports of February 2007 stating Defence was warned about the safety risk to HMAS *Westralia* and failed to act were wrong. The report also found:

- Baileys may have had concerns, in and/or around August 1997, about the use of non-genuine spare parts in the HMAS *Westralia*. However, our office was satisfied that Defence was not aware of any such concerns.
- Baileys did raise a number of allegations and concerns about Defence contracting and maintenance practices between August 1997 and 6 February 1998. However, none of Baileys' allegations or concerns could reasonably be interpreted as any kind of warning of the circumstances that contributed to the HMAS *Westralia* fire.
- The balance of evidence suggested that Baileys' concerns at a 6 February 1998 meeting with IGD investigators were about corruption, not safety, and this is how they were received and understood by IGD investigators. It was difficult to characterise Baileys' 6 February 1998

meeting with IGD as a 'warning of the circumstances' that contributed to the HMAS *Westralia* fire and Defence could not reasonably be said to have failed to act on any such warning.

- Defence's investigation into the February 2007 allegations that it had forewarning of the safety risk to HMAS *Westralia* was timely and thorough, and its conclusions were reasonable and had a sound evidentiary basis.
- Defence could have maintained better records and a clear audit trail of action it took in dealing with an anonymous allegation it received on the issue in 2000.

## AUSTRALIAN DEFENCE FORCE

We received 245 approaches and complaints from serving and former members about the actions and decisions of the Royal Australian Navy, Australian Army and the Royal Australian Air Force (compared to 252 in 2006–07).

The ADF is a large and complex organisation. It can be difficult for a person who has a problem to find the right area to get the problem fixed, or even to get an explanation of what has happened. During the year we helped serving members and their families make contact with the part of the ADF which could provide assistance, as the case study *Too much leave* shows.

As in previous years, a common cause of complaint was the length of time taken to make decisions. As the case studies *Leave not paid out* and *No lump sum* show, our involvement was able to expedite the necessary action or decision.

### TOO MUCH LEAVE

### CASE STUDY

Ms P's son discharged from the Army and his recreation leave was paid out. Five months later, he was told that he had been overpaid two days leave, and that he now had a debt to the ADF.

Over two months Ms P sent emails to the ADF and made phone calls, but was unable to contact anyone who could explain why the debt occurred. Our office was able to find the specific person who had made the decision, and put him directly in contact with Ms P to explain the nature of the debt, and give advice on how the debt would be recovered.

**LEAVE NOT PAID OUT****CASE STUDY**

Mr Q complained to our office that when he left the ADF he had not been paid for leave that he had accrued during his service. On investigation, Defence advised that Mr Q had indeed not been paid for his leave on discharge, as his leave audit had not been completed at the time. Defence further advised that our enquiries had helped to expedite the audit and Mr Q would receive close to \$10,000 in entitlements within two to three weeks. Mr Q was pleased with the outcome.

**NO LUMP SUM****CASE STUDY**

Under the *Military Superannuation and Benefits Act 1991* (Cth), an eligible member who has served in the ADF for fifteen years, and who undertakes to serve for a further five years, is entitled to a lump sum retention payment equal to one year's salary.

Ms R became eligible for the retention benefit payment in late 2005. The relevant authority confirmed her eligibility in January 2006 and advised she would receive the payment between June and August 2006. This did not happen and she was subsequently advised that her payment would not be made in 2006 at all. No explanation for the delay was given.

Ms R attempted to follow up on the payment through her chain of command and was advised that the payment would be made by May 2007. When this did not occur, she complained to us. Another member in the same situation also approached our office.

Following our investigation, Defence conceded that there had been a lack of understanding within the relevant area about how to deal with the processing of this type of payment, and this had contributed to the long delays. Defence advised that it is in the process of getting the Attorney-General's Department to redraft the necessary instrument to make it clearer and easier to use in the future. Ms R received her payment in November 2007.

**Outreach activities to ADF members**

Our office makes regular presentations to ADF members to promote awareness of our role and to ensure that members are aware of their right to complain to the Ombudsman's office. We have appreciated Defence's continued invitations to various ADF leadership and administrative training courses. At these courses we give our views on best practice administrative procedures and provide information on how our role interacts with internal ADF complaint-handling mechanisms. In 2007–08 we presented at seven courses. We also gave two presentations to the service groups with responsibility for personnel decisions. During the year articles on the Defence Force Ombudsman appeared in all three service papers.

**Implementation of review recommendations**

Our office has appeared before the Senate Foreign Affairs, Defence and Trade Committee on a number of occasions in relation to the committee's inquiry into reforms to the Australian military justice system. This inquiry followed an earlier committee inquiry into the effectiveness of the system. In addition, in 2004 we conducted a joint review into the Redress of Grievance (ROG) system with Defence (*Review of Australian Defence Force Redress of Grievance System 2004* (Report No 1/2005)).

Defence has managed the implementation of recommendations from both these reviews together. We are satisfied that Defence has demonstrated a commitment to implementing the accepted recommendations as quickly as practicable.

The implementation of the committee inquiry recommendations will be the subject of an independent review in 2008–09.

We have also been pleased to see improvements in the way ROG applications are processed, leading to a marked reduction in the number of complaints made to our office about delays. Further improvements should flow from amendments to the legislation that governs the ROG process, which took effect on 3 May 2008.

## DEPARTMENT OF VETERANS' AFFAIRS

The Department of Veterans' Affairs provides a wide range of services to nearly 450,000 Australians. The single biggest group of DVA's clients are World War II veterans and their families, followed by a substantial number of Vietnam veterans. The demographic of DVA's clients will change over the next twenty years, reflecting the ADF's recent engagement in international operations.

During 2007–08 we received 139 approaches and complaints about DVA, compared to 256 in 2006–07. This represents a 46% decrease. Two-thirds of the decrease was due to the decline in complaints in relation to the F-111 deseal/reseal process (see *Deseal/reseal ex-gratia lump sum payment scheme* below).

We have been pleased that DVA is generally responding to our investigation enquiries in a more timely manner than has previously been the case. DVA is demonstrating an increasing willingness to be frank and open and to admit mistakes or errors when they have occurred. In many instances DVA takes the initiative to offer an apology or other appropriate remedy to a complainant in their response to our office. We have also observed DVA staff going to considerable lengths to deliver a comprehensive personalised service to individuals.

### DVA complaint-handling review

During the past year we have met with the Veterans' Services team in DVA on several occasions to discuss DVA's review of its

internal complaint-handling mechanism. We understand DVA intends to develop a centralised complaint-handling area, supported by a complaint management system to record and track all complaints received by DVA.

We strongly support the development of a centralised complaint-handling system. Currently, in the absence of such a system, our office is unable to refer complainants back to DVA to attempt to resolve their complaint with DVA in the first instance. As a result, we investigate a large proportion of the complaints made about DVA. We hope that the development of a robust, centralised complaint-handling system will allow us to refer more complainants back to DVA. This should facilitate the resolution of many complaints at agency level, with only a smaller number requiring the involvement of the Ombudsman's office.

### Compensation claims processing times

A common cause of complaints in military compensation matters is delay. Our office met regularly with DVA's Military Rehabilitation and Compensation Group to monitor the progress of various initiatives aimed at improving claims processing times and reducing the backlog of older cases.

We have been pleased to see a reduction in the number of older cases and declining processing times for new cases. DVA's Single Access Mechanism is continuing to obtain service records from Defence within days or a few weeks on average, rather than the many months previously taken.

DVA has also advised they are expanding other successful initiatives to additional DVA offices, to increase the benefits for veterans in other states and territories. This includes the Screening Team, which ensures claims are assessed under the correct legislation, and a multiple needs approach, which deals holistically with the needs of clients who have multiple needs and claims. We are continuing to monitor processing times and the progress of initiatives in this area.

We continue to investigate complaints from veterans whose claims have not been processed in a timely manner, as the case study *No pay* shows.

### **Deseal/reseal ex-gratia lump sum payment scheme**

In last year's annual report we reported on complaints to our office about the F-111 deseal/reseal ex gratia payment scheme. Our office received a further five complaints about DVA decisions on deseal/reseal claims in 2007-08.

The majority of deseal/reseal claims were decided by DVA in 2006-07, with only a small number of new claims made in the last financial year. As a result, DVA has reduced the staffing available to assess claims. This has delayed our investigation of the new complaints we have received.

The Joint Standing Committee on Foreign Affairs, Defence and Trade commenced an inquiry into RAAF F-111 deseal/reseal workers and their families in May 2008. The office made a submission to this inquiry, and the Acting Ombudsman appeared before the committee early in 2008-09.

### **DEFENCE HOUSING AUSTRALIA**

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

Over the last 12 months we received 28 approaches and complaints about DHA (compared to 36 in 2006-07). Of the few complaints we received, the biggest area of complaint was about the nature or quality of the accommodation that DHA offered to members and their families.

We receive very few complaints about DHA considering the size of its client base and the sensitivity of the issues around family housing and relocation. We attribute this to the effective internal complaint-handling process DHA has in place, which addresses issues as they arise.

#### **NO PAY**

#### **CASE STUDY**

Mr S became ill while serving on an overseas deployment. He was medically discharged following his repatriation to Australia. Mr S lodged a compensation claim with DVA, including a claim for incapacity payments to replace the income and allowances he had lost due to his illness.

After several months DVA approved Mr S's compensation claim and advised his file would be forwarded to the incapacity team to calculate his entitlements. However, after three months Mr S had not received his money. Mr S was also advised that his file had accidentally been filed away as 'closed' and the amount of his payments was yet to be calculated. At this stage, his wife complained to our office.

As a result of our investigation, Mr S received his incapacity payments within a couple of weeks.

# EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

Under the Administrative Arrangements Orders issued on 3 December 2007, the then Department of Employment and Workplace Relations (DEWR) was abolished, and a new Department of Education, Employment and Workplace Relations (DEEWR) was established. DEEWR took on many of the functions of DEWR. It also gained responsibility for child care programs from the former Department of Families, Community Services and Indigenous Affairs and education-related matters from the former Department of Education, Science and Training (DEST). Responsibility for the disability support pension program, which had rested with DEWR, moved to the new Department of Families, Housing, Community Services and Indigenous Affairs.

We received 721 approaches and complaints about DEWR (407), DEEWR (288) and the education-related components of DEST (26) in 2007–08, compared to 567 in 2006–07 for DEWR. Figure 7.5 shows the trend in approaches and complaints about DEWR/DEEWR over the past five years.

The approaches and complaints we received during 2007–08 mainly related to DEEWR's

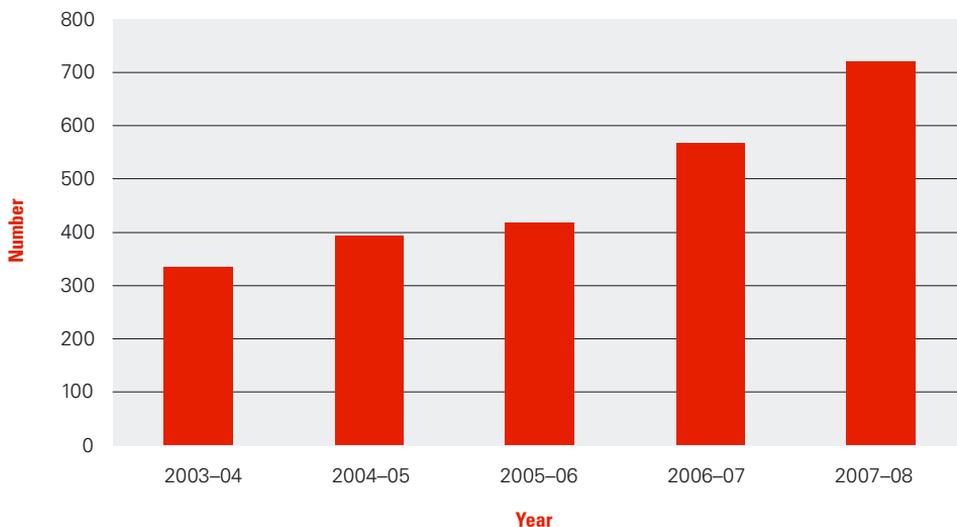
responsibilities for the Welfare to Work program, and the majority of complaints involved the actions of the Job Network. There was also a slight increase in the number of complaints about Trades Recognition Australia (TRA), a program administered by DEEWR. TRA provides occupational skills assessment services for people intending to migrate to Australia and domestic skills assessments for Australian residents.

Part of the reason for the increase in complaints about TRA was the decision to close Pathway D—a skills assessment based solely on the person's work experience—from 4 September 2007, before announcing the change publicly. Close liaison between DEEWR and our office meant we were able to manage the consequent increase in complaints relatively smoothly.

Across the spectrum of DEEWR we identified the following key areas of concern in complaints we investigated:

- complaint management
- adequacy of notification advices
- recordkeeping practices.

**FIGURE 7.5** Department of Education, Employment and Workplace Relations approach and complaint trends, 2003–04 to 2007–08



Note: the data for 2003–04 to 2006–07 is for the Department of Employment and Workplace Relations.

These issues arose across different DEEWR programs and are discussed further below. Another issue which has general application, but is particularly relevant to the TRA program, concerns the use of interpreters, also discussed below.

We acknowledge that DEEWR has made significant progress in addressing these issues. In June 2008 DEEWR released revised guidelines *Employment and Related Services: Guide to managing client feedback* (the Guide), which replaced its *Complaints Management Guidelines*. The Guide was developed for DEEWR staff involved in complaint handling. We note that the Guide has revised and expanded the level of procedural detail for all the issues outlined below.

### COMPLAINT MANAGEMENT

The majority of complaints we investigate relate to the actions of Job Network Members (JNMs). In line with better practice principles, most complaints are first investigated by DEEWR as the responsible agency. Our investigations found inconsistencies in the quality of DEEWR investigations. Some contained all the elements of a good investigation. Others were less satisfactory in terms of the records kept, the notification of the outcome to the complainant, and a tendency to rely on the JNM's performance overall rather than in the particular case in question.

We observed that, where the relationship between a job seeker and their JNM became strained due to aggression, different JNMs managed the issue inconsistently.

The Ombudsman's 2006–07 annual report noted an instance where a job seeker's relationship with the JNM had deteriorated to such an extent that the person wished to transfer to another provider. Under irrevocable breakdown procedures, a job seeker can be transferred if the relationship

has deteriorated to the point that it has become unproductive. In this case, even though the JNM had taken legal action against the job seeker in relation to an incident of violence, the provider refused to institute irrevocable breakdown transfer procedures. Instead the JNM continued to attempt to assist the job seeker to no avail. Our intervention resulted in DEEWR ensuring that if the job seeker has to reconnect with the Job Network in the future, he will not be sent back to that provider.

'The majority of complaints we investigate relate to the actions of Job Network Members ...'

Conversely, we recently investigated a case involving a job seeker registered with a different JNM where there was a breakdown in the relationship. In this case, the JNM had the job seeker suspended from Job Network services for 12 months without following all the relevant procedures, such as formal notification that the behaviour was unacceptable and the possible consequences if the behaviour continued. These procedures are intended to address the aggressive behaviour in the first instance.

These examples illustrate inconsistencies in how JNMs manage aggressive job seekers. The outcome for some aggressive job seekers might not be very different given that such behaviour can be related to mental illness which is often left untreated. Even then, it is important to provide every opportunity for the job seeker to modify their behaviour, given the limited services available for the mentally ill and concerns that some people with mental illness remain undiagnosed, or unwilling to accept a diagnosis. It also appears to be more difficult for an aggrieved job seeker-initiated transfer to succeed than it is for a JNM to have a job seeker transferred, or have the job seeker's access to Job Network services suspended.

## NOTIFICATION OF DECISIONS

A number of complaints we investigated raised concerns about the adequacy of decision notices DEEWR sends to its clients. The letters we examined did not provide a statement of reasons that would allow the client to understand the basis for the decision. Although this occurred in a number of DEEWR programs, we identified it as a more significant issue for TRA, particularly in view of the costs to applicants for assessment or review.

When TRA notifies an applicant of an unfavourable decision, the person often relies on the information provided to decide if it is worth paying a further \$300 for an internal review of the decision. In most complaints we investigated, the TRA notices did not provide sufficient reasons to enable the applicant to know what additional information they could usefully provide as part of an appeal. The case study *Troubling assessment* illustrates one such case.

After discussing this matter with the agency, TRA has undertaken to review the content of their decision letters. TRA also reviewed its assessment procedures, including the pre-application information available for applicants and the standard wording that is included in notification advices.

## RECORDKEEPING

In the course of investigating complaints about JNMs, our office normally obtains copies of DEEWR's complaint management system records. A trend we have observed is the inadequate level of detail recorded about DEEWR's investigations of job seeker complaints. In the better DEEWR investigations, the records indicate substantial time was spent discussing the areas of concern with the complainant, as well as the Job Network Member. Those records also provided a brief summary of the topics that had been discussed with the complainant.

By contrast, other records only contained the basic details of the contact, such as the date and time a phone call was made to the customer, without any information about what was discussed. In those cases, it was often recorded that the complainant was happy with the outcome of the complaint. However, based on the complainant's immediate contact with this office about DEEWR, it was evident they were not happy. We note these issues have been covered in depth in revised procedures in the Guide.

### TROUBLING ASSESSMENT

### CASE STUDY

Mr U applied to TRA to have his trade qualifications recognised. He was teaching the trade at a TAFE. Shortly after submitting his application, TRA wrote to him rejecting his application. The reasons for the rejection were not clearly explained. The letter advised he could seek review at a cost of \$300, and he could obtain direct feedback regarding his application from the TRA assessor.

Mr U had reservations about paying the review fee when he was unsure of the reasons for the original decision. During the course of our investigation, we noted there was a difference between the assessment details provided to Mr U and those provided to this office. We were also unable to tell from the available records if the assessor had taken into account all the information provided by Mr U.

The investigation provided the opportunity for TRA to reconsider its earlier decision, which resulted in Mr U's application being approved.

## USE OF INTERPRETERS

A complaint we investigated raised concerns about the appropriate use of interpreters by TRA. TRA had rejected a person's application to have their skills as a hairdresser recognised on the basis of their work experience in that profession. The application was rejected because TRA was unable to verify if the person had performed other duties as well as hairdressing during the period of employment claimed to establish that they qualified as a hairdresser.

Our investigation revealed that TRA had contacted the person's employer by phone to clarify the nature of their employment. The employer was not able to speak English confidently and asked for an interpreter. As a suitable interpreter was not available at the time, the employer's request was refused and the enquiry continued without the use of an interpreter.

After we approached TRA, they undertook a review, using an interpreter. Although this did not provide a different outcome for the

applicant, there would have been more confidence in the initial assessment had an interpreter been used when one was specifically requested.

We recognise that the use of interpreters might involve additional expense and complexity and we discussed the issues with TRA. TRA has now reviewed its use of interpreter services. It has promulgated new guidelines for using interpreters to ensure a consistent and defensible approach is taken in deciding whether or not interpreter services should be used. TRA is in the process of incorporating the guidelines into relevant training and other guidance material.

As noted in the section on Immigration in this chapter, we have commenced a cross-agency investigation into the way agencies use interpreters to communicate effectively with clients. The investigation includes the use of interpreters by DEEWR.

## IMMIGRATION

Complaints to the Commonwealth Ombudsman about immigration administration have always been a prominent part of the office's work. There was a substantial broadening in the activities of the office from 2005, when the Ombudsman was given statutory responsibility to review the circumstances of people held in immigration detention for two years or more. In 2005 and 2006 the Ombudsman was asked to investigate 247 cases where people had been held in immigration detention and released when it was found they were not unlawful. In light of the problems in immigration administration, the Ombudsman was also given the title Immigration Ombudsman and additional funding to enable the office to be more proactive in identifying and addressing problems in the immigration area.

The Ombudsman's office now takes a comprehensive, integrated approach to the review of immigration administration through:

- investigating complaints
- assessing the appropriateness of the arrangements for a person's detention when they have been in detention for two years or more
- inspecting detention centres and immigration compliance and removal activities
- undertaking a broad range of own motion investigations
- examining systemic immigration issues
- maintaining frequent dialogue with the Department of Immigration and Citizenship (DIAC) on a range of issues
- engaging in various DIAC client forums.

'The Ombudsman's office now takes a comprehensive, integrated approach to the review of immigration administration ...'

This integrated approach is proving successful in the early identification and resolution of problem areas in immigration administration.

## COMPLAINT HANDLING

### Changes to DIAC's internal complaint-handling processes

For some years the Ombudsman's office has investigated a higher proportion of complaints about DIAC than for other agencies, as there was concern about the efficacy of DIAC's internal complaint-handling processes.

As part of its reform program, DIAC undertook a range of measures to improve its complaint-handling capacity. The department introduced a new compliments and complaints policy in July 2007. Other significant steps included an improved service charter and the use of the Global Feedback Unit (GFU). The GFU is the key point of contact for customer service complaints and aims to resolve most complaints at the first point of contact. In late 2007–08 we commenced a closer examination of DIAC's complaint-handling processes with a view to determining whether we could refer more immigration complaints to DIAC in the first instance.

An example of DIAC's proactive response to a complaint is shown in the case study *Misled*. This shows how good complaint handling can resolve issues that may affect a number of people.

### Complaints overview

In 2007–08 we received 1,528 approaches and complaints about DIAC, an 11% increase over the 1,379 received in 2006–07. Figure 7.6 shows the number of approaches and complaints received from 2003–04 to 2007–08.

Complaints to our office point to areas requiring improvement in DIAC. These include:

- the resolution of more complex matters
- processes and consistency in assessing visa applications
- reducing delays and keeping people informed of the status of their cases
- processing requests made under the *Freedom of Information Act 1982* (FOI Act) within the statutory 30-day timeframe.

## MISLED

## CASE STUDY

Mr V complained that DIAC in Indonesia was ‘forcing’ him to submit his application for a visa through a third party service provider. He said this was unfair as it increased the application costs and breached his privacy.

When we contacted DIAC they acknowledged that information about the use of third party service providers given by staff in some overseas posts, and on some websites managed by those posts, was misleading. It was not made clear that the use of service providers was optional rather than mandatory.

DIAC advised they would review and amend the websites and train staff on the use of third party service providers. DIAC also apologised to Mr V and reimbursed him the additional costs he incurred through using the third party service provider.

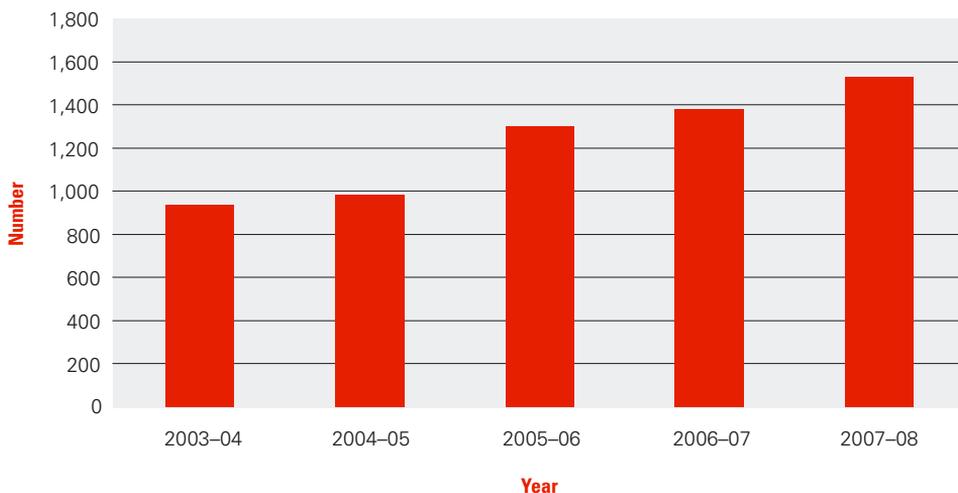
Each year we receive numerous complaints about delay in finalising visa applications. In many cases the complaint would not have arisen if DIAC had kept the applicant informed of progress. Delays occur for many reasons. The case study *Testing* illustrates how logistical issues had the potential to cause further delay for a visa applicant.

We investigated several complaints about visa cancellation decisions made under s 501 of the *Migration Act 1958* (Cth) (Migration Act) (character grounds). We consider DIAC has improved the consistency, quality and procedural fairness of its decision-making

processes, following the release of the Ombudsman’s 2006 report *Department of Immigration and Multicultural Affairs: Administration of s 501 of the Migration Act 1958 as it applies to long-term residents* (Report No 1/2006).

One of the recommendations of that report was that the department review the specific cases considered, and all other cases where the visa of a long-term permanent resident had been cancelled under s 501 and the person was still in immigration detention or awaiting removal from Australia.

**FIGURE 7.6** Department of Immigration and Citizenship approach and complaint trends, 2003–04 to 2007–08



## TESTING

## CASE STUDY

Ms W complained to us in January 2008 about a delay in assessing her 10-year-old son's application for a visa. Ms W's son was living in Mozambique with his father and grandmother and applied for a visa in July 2007. In November 2007 DIAC requested that Ms W and her son provide DNA samples to verify she was the boy's mother.

For integrity reasons, DNA samples must be provided in the presence of an Australian Government officer. Ms W paid for the DNA testing but was concerned DIAC had indicated her son would need to travel to Pretoria to provide the sample. When we asked about the arrangements, DIAC advised they did not have the staffing or financial resources to send an Australian officer from Pretoria to Mozambique to supervise collection of one DNA sample.

Following our enquiries, DIAC advised that an Australian Government officer from another agency would be travelling to Mozambique in several weeks and had agreed to supervise the collection of the DNA sample.

DIAC completed the review in 2007–08. It has advised that, of the 91 cases subject to review, all but one did not meet the highest level of procedural fairness. In 37 cases there was a legal basis to set the decision aside, including on account of some court decisions subsequent to the publication of the report. In 54 cases, the issues were not serious enough to provide a legal basis to set aside the cancellation decision, and the circumstances of each person were considered further. The range of individual outcomes has varied for the 91 cases, from people having visas re-instated or granted, some with warnings, to re-assessment under the character provisions and visas being re-cancelled.

DIAC is also examining the policy underpinning the s 501 visa cancellation powers, in line with a recommendation in that report.

In June 2007 the Ombudsman published a number of reports arising from the investigation of the 247 referred immigration detention cases. One of the reports, *Department of Immigration and Citizenship—Report into referred immigration cases: Other legal issues* (Report No 10/2007) recommended DIAC conduct a review of unexecuted deportation orders where the person concerned is no longer in prison. DIAC agreed with this recommendation. The case study *Deportation order* illustrates how DIAC dealt with one such person after we investigated a complaint from him.

As described further in the section on own motion investigations, in many cases DIAC has failed to meet the 30-day statutory timeframe for processing FOI requests. The case study *Decision without a decision* shows how a failure to meet this

## DEPORTATION ORDER

## CASE STUDY

In August 2007 Mr X complained to us that he was the subject of a 1999 deportation order and had been taken into detention in May 2007.

We reviewed the files concerning the decision to deport Mr X and identified significant problems in the process leading to the decision to issue a deportation order and in the years following that decision.

DIAC took these matters into account when it conducted its deportation review. As a result, the deportation order was revoked and Mr X was released from detention holding the permanent visa he had initially been granted in 1994.

timeframe can exacerbate other problems for a visa applicant.

We continue to receive a number of complaints about immigration detention. One source of complaints from detainees has been an alleged lack of response from the police to reports of assaults and other acts of violence occurring in immigration detention centres (IDCs), particularly Villawood IDC.

While the Australian Federal Police (AFP) and the NSW Police both have discretion under their legislation to respond to and investigate allegations of assault in the IDC, neither has an obligation to do so. As a result, there is a lack of clarity about who is responsible for policing IDCs and it appears not all complaints have been investigated fully. Our office is working with the NSW Ombudsman's office to highlight the need for a resolution of this issue and to press for the finalisation of a memorandum of understanding between DIAC, the NSW Police and the AFP.

### OWN MOTION INVESTIGATIONS

In 2007–08 the Ombudsman published three own motion investigation reports about DIAC.

In December 2007 the Ombudsman released an investigation report *Department of Immigration and Citizenship: Notification of reasons for decisions and review rights for unsuccessful visa applications* (Report No 15/2007). The Ombudsman found that DIAC's notification of adverse decisions was not well coordinated or consistent, with many notification letters falling short of best practice standards.

The report recommended DIAC introduce quality assurance measures and consistent letter templates, use plain English in letters, improve the description of review rights and adopt minimum standards for explaining the reasons for decisions. DIAC accepted the recommendations.

In April 2008 the Ombudsman published a report *Department of Immigration and Citizenship: Administration of detention debt waiver and write-off* (Report No 2/2008). Under the Migration Act a non-citizen who is detained is liable to pay the Australian Government the costs of their detention. The Ombudsman found there was scope for improvement in DIAC's timeliness and prioritisation in processing cases, the consistency and reasonableness of decisions on debt waiver and write-off, and in recordkeeping and communication with clients.

The report recommended DIAC should provide clear and consistent information about a person's options and regular updates on the amount of their debt while in detention. DIAC accepted the recommendations.

The third report, released in June 2008, was *Department of Immigration and Citizenship: Timeliness of decision making under the Freedom of Information Act 1982* (Report No 6/2008). The office had been monitoring DIAC's FOI administration since 2005 and identified a growing problem in DIAC not meeting the statutory timeframes for processing FOI requests.

### DECISION WITHOUT A DECISION

### CASE STUDY

Ms Y complained that a DIAC officer had agreed not to make a decision on her client's visa application until after the applicant had obtained documents requested under the FOI Act. However, the officer did not wait and finalised the case, refusing the application.

When we contacted DIAC, they agreed the officer had given the undertaking. DIAC also acknowledged that the FOI request had not been completed within the statutory 30 days.

DIAC agreed to seek the visa applicant's approval to reopen the decision and invite them to submit further information to support their claims.

The report recommended DIAC conduct a wide-ranging review of its FOI and information disclosure processes, having regard to the specific recommendations in the report. DIAC accepted the recommendations. DIAC has made significant improvements in FOI processing and the provision of information to its clients. It reduced its backlog of FOI cases substantially by the end of 2007–08.

We are conducting our own motion investigations into DIAC's Safeguards System and into DIAC's and other agencies' use of interpreters.

The Safeguards System is used to prompt DIAC decision makers to make specific checks on a visa application or consider certain information that may be relevant to the visa application (for example, about fraud trends in the applicant's country of residence). The investigation is examining whether the system is being used appropriately and whether there are checks and balances in place to ensure transparency and accountability. The report of this investigation will be released early in 2008–09.

The office also commenced an investigation into the way agencies use interpreters to communicate with clients, focusing on DIAC, Centrelink, the AFP and DEEWR. This investigation follows a number of complaints regarding lack of access to an interpreter or instances where communication problems led to poor administrative decision making. The investigation is examining agency policies and training on the use of interpreters, use of bilingual staff, and arrangements for handling complaints about the use of interpreters. We will report on the investigation in 2008–09.

### MONITORING AND INSPECTION OF DIAC'S DETENTION, COMPLIANCE AND REMOVAL ACTIVITIES

During 2007–08 we implemented a full program of monitoring and inspection of immigration detention and DIAC's

compliance and removal activities. This has enabled us to monitor key systemic issues and provide feedback to DIAC.

#### Detention

Our program of inspection visits to IDCs and other places of immigration detention aims to monitor the conditions within detention centres and the services provided to detainees, and to assess whether those services comply with agreed Immigration Detention Standards. We undertake visits on an 'unannounced' basis, advising staff of DIAC and Global Solutions Limited (GSL—the main detention service provider) of the visits approximately 30 minutes in advance.

During the year we conducted inspections at all IDCs. We provided DIAC with feedback on a range of issues, including:

- documentation and review of decisions to transfer people to the management unit and the adequacy of services provided to people in the unit
- conditions in observation rooms in Stage 1 of Villawood IDC
- management of the mess in Stage 2 of Villawood IDC
- administration of the Purchasing Allowance Scheme
- access to activities while in detention
- administration of property records
- the quality of incident reports and adequacy of action taken to respond to allegations of assault.

The visits enable us to focus on specific issues which arise in complaints. For example, loss of personal property following a transfer between IDCs or within an IDC is a common cause of complaint from people in detention. The lack of accurate and accessible records often means resolution of such complaints takes a long time, and in some cases the matter cannot be resolved. An example of the problem is shown in the case study *Gone missing*.

Ombudsman staff inspected property records at Villawood IDC in a February 2008 visit. We advised DIAC that the records were

difficult to verify given there was no consolidated record for an individual. We noted that in the cases examined, the property record had not been updated on the most recent transfer. We suggested DIAC consider auditing individual property records, particularly for people who have been in detention for some time and have not been relocated, as they may have acquired or disposed of a considerable quantity of property over that period.

### Compliance and removals

The emphasis of our compliance monitoring has been on DIAC's location and identification of unlawful non-citizens and those who have breached their visa conditions. Our removals inspection work has focused on DIAC's use and accuracy of information when deciding to remove unlawful non-citizens from Australia.

During the year Ombudsman staff conducted extensive file reviews and onsite inspections at DIAC's state offices. This allowed us to identify issues and monitor the practical application of policy. Our staff also visited a number of Australian international airports to observe DIAC officers liaising with incoming passengers and interviewing passengers suspected of breaching their visa conditions.

'... Ombudsman staff conducted extensive file reviews and onsite inspections ...'

Through this monitoring we examine whether decision makers adhere to legislative requirements as well as to DIAC policy and procedures, and make recommendations on improvements. We also comment on any gaps in policy guidance.

It is evident from the compliance and removals monitoring that these areas of immigration administration have improved significantly, particularly in areas such as the recording of decisions, instructions to staff, the level of review and quality assurance, and training.

However, we identified some areas requiring further attention, such as:

- ensuring nationally consistent practices in the compliance area
- better compliance with policy and procedural instructions in removals and search warrant practices
- development of policies and procedures on the use of search warrants during compliance activity
- changes to the policy surrounding consent visits to businesses and residences
- policy gaps in compliance-related practices surrounding joint operations with other agencies.

DIAC has amended and developed policies and training modules in response to some of this feedback.

## GONE MISSING

## CASE STUDY

In December 2006 Mr Z was transferred from Baxter IDC and placed in alternative detention in an interstate private hospital for psychiatric treatment. He said he was transferred with only a few clothes and no toiletries. He complained to the office because he had not received all his property.

Following our initial enquiries DIAC advised us in March 2007 that Mr Z had received all his property, which had been delayed in transit.

However, Mr Z told us he had not received about 90 DVDs, papers and documents relating to his legal appeal, and a number of other items. After about a year, DIAC found records that confirmed Mr Z had had the property and it was now missing. The delays were caused in part by the need for DIAC staff to search through boxes of property records from Baxter IDC, which had ceased operating. DIAC wrote to GSL asking them to reimburse Mr Z for 90 DVDs and other missing items.

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

Under the Migration Act the Ombudsman is required to review the cases of people held in immigration detention for two years or more. Section 486N of the Act requires DIAC to provide the Ombudsman with a report within 21 days of a person having been in detention for two years. If the person remains in detention DIAC must provide new reports to the Ombudsman at six-monthly intervals.

The Ombudsman provides the Minister with an assessment of the appropriateness of the person's detention arrangements under s 486O.

We have observed a number of themes through the two-year detention review function, including:

- an increase in mental health issues as time in detention increases
- concerns that some mentally ill detainees may not have the capacity to conduct their own affairs and make rational decisions regarding their immigration future
- the boredom associated with detention, including for those in community detention, which has a negative impact on their quality of life
- inadequate facilities for people requiring suicide and self-harm observations
- the changing nature of detention, with greater use of residential housing and community detention arrangements enabling people to be released from IDCs.

Table 7.2 shows the number of s 486N reports the Ombudsman received from DIAC in 2007–08 (158). This is a significant reduction from the 222 reports received in 2006–07. The table also shows the number of s 486O reports the Ombudsman provided to the Minister. The Minister tabled 237 reports in Parliament.

In March 2008 the Minister for Immigration and Citizenship announced a major review of the cases of people who had been detained for more than two years. The review involved 72 people.

The Ombudsman met with the Minister to discuss the review. A task force, which included representation from DIAC and the Ombudsman's office, was set up to coordinate the assessments of detainees. The task force provided the Minister with background information including each person's immigration history, health status and family and community links in Australia.

'The Ombudsman met with the Minister to discuss the review.'

The Minister announced the review outcome in May 2008. Thirty-one people were granted visas or considered for visa grants subject to the completion of public interest criteria checks. The Minister decided to move some of the people awaiting their checks to lower security detention arrangements such as community detention. The Minister also decided 24 people would be removed from Australia and 17 people, who were subject to ongoing proceedings, were to remain in detention pending resolution of their immigration status.

The Ombudsman was pleased that key areas within DIAC were directly involved in

**TABLE 7.2** Reports under s 486N and s 486O of the Migration Act, 2007–08

	1st	2nd	3rd	4th	5th	6th	7th	Total
s 486N reports received from DIAC	51	43	24	16	9	9	6	158
s 486O reports sent to the Minister	109	45	34	17	11	9	-	225

**SOLE CARER****CASE STUDY**

Ms A is a citizen of Tonga. Her six children were born in Australia and two became Australian citizens when they turned ten. Ms A's husband, Mr B, was removed to Tonga in February 2004. The family was detained in October 2004. They spent nine months in Villawood IDC and two years in community detention.

The Ombudsman's report 205/07 of June 2007 raised concerns over DIAC's processes surrounding the execution of a search warrant on the family's home, the cancellation of the family's visas and subsequent detention, and Mr B's removal. The decision to remove Mr B did not seem to have taken into account the best interests of the children. The Ombudsman also noted the impact on Ms A of detention, her husband's removal and the burden of becoming sole carer to six children. Ms A had developed major depression. The Ombudsman recommended the family be granted substantive visas on humanitarian grounds. The Minister's response in August 2007 stated that 'this family has a Ministerial Intervention request before my Department'.

The family was granted remaining relative visas in October 2007 and Mr B returned to Australia on a spouse visa in 2008.

**STATELESS****CASE STUDY**

Mr C is a stateless person, born in Kuwait to Sudanese parents but not recognised as a national by Sudanese authorities. He was detained in October 2000 and released in August 2005 on a Removal Pending Bridging Visa.

In detention Mr C was diagnosed with major depression and suffered from trauma symptoms and suicidal ideation. In December 2003 DIAC removed Mr C to Tanzania on the understanding that he could then be repatriated to Sudan. However, Mr C's Sudanese nationality had not been confirmed and the Sudanese consulate in Dar es Salaam refused to issue him Sudanese travel documents. Mr C was returned to Australia. Mr C raised concerns with us over his removal to Tanzania, saying he was removed without warning and sat for three days in an airport without food and other necessities.

Our investigation found that DIAC did not pursue all possibilities to establish Mr C's nationality and ensure that Sudan would accept him as a Sudanese national. For example DIAC did not pursue documents from Kuwait that could have proven Mr C's nationality until late 2004. DIAC was not able to obtain Sudanese travel documents for Mr C, and acknowledged that removal to Sudan is 'unlikely due to the political unrest in that country'. Removal to Kuwait is also not an option, as Kuwaiti authorities have found that Mr C is not a Kuwaiti citizen.

The Ombudsman's report 277/07 recommended that Mr C be granted a permanent visa on compassionate grounds given that he apparently cannot be removed for nationality reasons, the length of his detention and diagnosis with major depression, and his demonstrated skills in settling into the Australian community. Mr C remains on a Removal Pending Bridging Visa.

## DETERIORATION

## CASE STUDY

Mr D is a 32-year-old Turkish national who was detained in July 2004.

The Ombudsman's first report, 143/07 of April 2007, detailed major deterioration in Mr D's mental health as a result of detention. Mr D was diagnosed with major depression and at risk of suicide. An independent psychiatrist's report stated that Mr D's mental illness was a 'direct outcome of his detention experience'. Separate medical, psychological and psychiatric assessments concurred that Mr D's condition would best be managed outside detention. The Ombudsman recommended the Minister consider alternatives to Mr D's detention at Port Augusta Immigration Residential Housing (IRH), including a suitable visa with work rights. The Minister responded that DIAC was currently finalising submissions relating to Mr D.

In January 2007 Mr D was placed in alternative detention in Adelaide, and in March 2007 returned to Port Augusta IRH. A psychiatric report found that Mr D's depressive symptoms are likely to have been exacerbated by his return to Port Augusta as Mr D had a good support network and activities in Adelaide. In August 2007 Mr D was moved to Maribyrnong IDC following the closure of the Port Augusta IRH, causing him great distress and resulting in his admission to a psychiatric hospital. In November the Minister intervened to allow Mr D to lodge a fresh protection visa application.

The Ombudsman's second report, 361/08 of 17 January 2008, noted that the case for releasing Mr D was now stronger than at the time of the first report due to the deterioration in Mr D's mental health. The Ombudsman recommended a visa with work rights and that DIAC may need to consider how it could assist him with psychiatric and medical support if released.

Mr D was granted a permanent protection visa on 18 January 2008.

the assessments of the individual cases. The more focused attention on these long-term detention cases is encouraging. It should reduce the time people spend in immigration detention and avoid, where possible, long-term detention.

The case studies *Sole carer*, *Stateless* and *Deterioration* show some of the facets of our work in this area.

### INPUT INTO DEPARTMENTAL PROCESSES AND PROCEDURES

DIAC regularly invites the Ombudsman's office to comment on draft departmental policy. We have provided comments in areas such as s 501 visa cancellation policy and procedures, policy relating to the use of force in compliance and removals activity, guidelines on non-warrant compliance activity, removals policy and GSLs processing procedures relating to detention staff and visitors.

The office continues to be an observer on DIAC's Detention Health Advisory Group, which provides a forum to comment on detention health issues and policies. Dr Vivienne Thom, a Deputy Ombudsman, is a member of DIAC's Values and Standards Committee.

Ombudsman representatives attend DIAC consultative forums including:

- Community Consultative Group meetings—detention-specific consultation sessions held in Adelaide, Brisbane, Darwin, Melbourne, Perth and Sydney with community representatives
- as observers at various detainee liaison meetings at Maribyrnong IDC, Perth IDC and Villawood IDC
- Client Reference Group meetings held in each capital city, where a broad range of issues relating to immigration administration is discussed.

## SYSTEMIC ISSUES

We have worked with DIAC to address many of the systemic issues identified through our complaint investigations, inspections and monitoring work, and assessment of long-term detention cases. We are also working more closely with DIAC to follow up on the implementation of recommendations stemming from Ombudsman investigations into systemic matters.

Two systemic issues we are pursuing are medical entitlements for particular visa holders and issues surrounding security bonds.

The rules governing which DIAC clients can access Medicare benefits are complex as they involve interactions between the Migration Act, the *Health Insurance Act 1973* (Cth), treaties with other nations covering reciprocal health care and tax issues such as

the Medicare Levy Exemption Certificate. We have received a number of complaints illustrating confusion about the rules and difficulties in providing proof of immigration status that is acceptable to Medicare Australia staff. We are discussing these issues with DIAC and Medicare Australia.

Section 269 of the Migration Act gives authorised officers a broad discretionary power to request a security bond where additional assurance is required that a visa holder will comply with the conditions of their visa. Complaints to the office raise concerns about delays in DIAC refunding security bonds and failing to keep clients informed during the processing of the refund. There is also wide discretion in setting the amount of a security bond. We are examining this issue to ensure the processes in place are open and transparent and DIAC is dealing with clients in a fair and reasonable manner.

## INDIGENOUS ISSUES

In the last two annual reports we reported on our efforts to provide a better service to Aboriginal and Torres Strait Islander people, communities and organisations. A working group in the office developed strategies to refine our consultation processes, undertake own motion investigations in areas of specific concern to Indigenous people and communities, and develop partnerships with existing contact networks in Indigenous communities. We started implementing these strategies in 2007.

Following the announcement by the former Australian Government of the Northern Territory Emergency Response (NTER), we decided we could deal more effectively with Indigenous issues by establishing a dedicated Indigenous Unit to provide assistance to all staff in the office in dealing with complaints from Indigenous people and communities. We also increased our outreach activity and complaint-handling capacity substantially.

The Indigenous Unit was established in August 2007 and at the end of 2007–08 had a staff of seven. The unit has three key roles:

- handling all complaints related to the NTER measures, with a particular focus on the 73 prescribed communities and town camps
- providing feedback to agencies on systemic issues that are identified from complaints and working with agencies to improve public administration
- providing complaint-handling training for agencies, focused specifically on issues arising from NTER-affected areas—this helps agencies and service providers to put in place appropriate mechanisms to deal with complaints.

### REACHING INDIGENOUS PEOPLE

Indigenous people have been a key target group in our outreach program since 2004. The Indigenous Unit has proved particularly successful in reaching Indigenous audiences. The office has received a substantial increase in the number of complaints, related to both NTER and non-NTER matters,

from Indigenous people, communities and organisations.

The unit serves as a first point of contact for Indigenous complainants who do not feel entirely comfortable using a non-Indigenous-specific service, and investigates complaints related to the NTER. It also provides advice to other teams in the office on the best way to approach complaints from Indigenous people. Some of the measures taken to assist Indigenous complainants include the following.

- We expanded our presence in the NT by establishing an office in Alice Springs, and making our Darwin office part of the Indigenous Unit. The Alice Springs office has been staffed by an Indigenous officer who speaks several of the local languages and is aware of the broader issues affecting the local communities. This greatly assisted outreach in Alice Springs and surrounding areas.
- Repeated outreach visits to prescribed communities and town camps have been particularly important to instil trust. The primary objective of the visits is to increase Indigenous awareness of, and access to, the Ombudsman's services. During these visits, staff speak with community members to provide information and take complaints. The unit has also met with Australian Government officers working in these communities to discuss the role of the office and to offer assistance in dealing with complaints.
- We established a 1-800 number to provide ready access to our office and to reduce the financial burden associated with costly telephone calls.
- Appropriate outreach material has been designed, which includes printed materials with Indigenous designs and original Indigenous artwork. We distributed flyers, posters and information sheets targeted specifically at informing Indigenous people of the role of our office. Our outreach materials include Ombudsman pens, calico bags and football-shaped stress balls to appeal to younger people (and their parents).



Deputy Ombudsman Ron Brent and renowned artist Romolo Tipiloura.

Working with Indigenous complainants has required the unit to develop new work practices and models to ensure that we respond in culturally appropriate ways. Many Indigenous complainants living in the prescribed areas have limited access to mail services, telephones, the internet and fax machines. Our experience has shown that face-to-face interaction is the most effective method of communication.

## ISSUES ARISING FROM THE NTER

### Income management

A major feature of the NTER measures is income management of Centrelink payments to eligible customers living in the prescribed communities. Half of all Centrelink income support payments and family tax benefits are subject to income management, while the remainder is paid to the individual in the usual

manner. This measure was introduced as a means of ensuring that half of Centrelink payments are put towards basic essentials such as food, rent, utilities, clothing and footwear, and to curb the amount spent on alcohol and gambling.

The amount of income managed is 50% of a person's gross entitlement less any compulsory deductions. Compulsory deductions include child support payments, debts to the Commonwealth such as Centrelink overpayment debts, and recovery of advances of lump sums.

In order to access the quarantined funds, a person must, in conjunction with Centrelink, determine their priority needs (for example food, clothing, shelter and the school nutrition program) and which stores or third party organisations will receive the quarantined payment. The money is transferred to the store through direct funds

transfer from Centrelink, or is issued in the form of store value cards for the larger stores such as Coles, Woolworths and K-Mart.

While our office has heard positive feedback from many people on income management, this measure continues to be the area about which we receive most complaints. Issues that have been raised in complaints to the office include:

- communication with clients about how income management works
- issues associated with store cards, such as security, theft/barter, misuse, proof of identity, and ease of access to customer service centres for the elderly and disabled
- the ability of nominees to access income-managed funds on behalf of elderly or disabled relatives
- the availability of material and information in specific Indigenous languages
- the time taken for income-managed funds to be transferred from Centrelink to service providers.

### Cross-agency issues

The NTER measures involve the simultaneous implementation of numerous policy initiatives by many Australian and NT government departments and agencies. The complex multi-agency, multi-jurisdictional measures present a particular challenge for our office in investigating complaints about the NTER. Lines of responsibility and accountability for a particular policy and/or service delivery can, at times, be blurred and span several agencies. This requires us to identify which facet of a problem belongs to which agency. Often this involves identifying which aspects of a problem arise from the policy settings and which from the implementation of that policy—the responsibilities for each may lie with different agencies.

Another challenge for the office is that while agencies like Centrelink understand the role of the Ombudsman and have longstanding and effective relationships with us, many of the agency officers involved in the NTER are



Ombudsman staff holding a complaint clinic.

less familiar with our role. This has caused delays in responses to our enquiries. While this problem has not been insurmountable, it has required our staff to take on an educational role before they are able to obtain the information required to resolve a complaint.

### Community Development Employment Projects (CDEP) changes

Prior to the Government's announcement on 10 December 2007 of a moratorium on the removal of the CDEP program, we received numerous complaints about the changes to CDEP. Many of the complaints were from prescribed communities that had relied on CDEP participants for delivery of essential municipal services and tourism ventures such as art centres.

We have also received complaints about the implementation of employment preparation programs and the 'work for the dole' schemes. Complaints identified the lack of structured programs in some communities and the unclear supervision arrangements of the work for the dole participants. For example, we received a complaint from a community where the work for the dole program was the refurbishment of a house

in the community that would be used as a women's centre from which the school nutrition program would be run. Three community based organisations were each funded for different facets of the program. Work had to be suspended due to confusion as to who had responsibility for which particular aspect of the refurbishment. Through our involvement, the organisations resolved their differences and work on the centre is now near completion.

### Cultural awareness

We have received complaints alleging a lack of cultural sensitivity by Australian Government agency staff working in the NTER. Whenever a situation involves cultural interaction, issues of cultural awareness will arise. While most agency officers working in the NTER have received cultural awareness training, there have been instances where

officers have used individual practices without considering whether or not these may breach privacy and confidentiality principles, or unnecessarily transgress cultural sensitivities.

The case study *Public address* shows the type of issues that can arise.

### OUTLOOK

We will continue our program of visits and outreach activities in 2008–09. We are also working on having all our relevant information produced in the most widely used Indigenous languages.

With the establishment of the Indigenous Unit bedded down and complaint work progressing, we plan to shift more attention to addressing systemic issues.

## PUBLIC ADDRESS

## CASE STUDY

Mr E was concerned about the use of a community public address (PA) system to summon interviewees to appointments. He was concerned that it violated the privacy of interviewees, and also resulted in people not hearing their names and missing their appointments.

We were advised that the community had an established practice of using the PA system to call people for meetings or relay messages. This arrangement was well regarded and welcomed by interviewees. The agency assumed that, by using accepted community practices, interviewees were being made aware of their appointments—even if they did not happen to be in the community at the time.

As a result of our investigation, the PA system is no longer the sole method of notification for interviewees. The agency also sends a written notification one week in advance. To fully accommodate local limitations, we have recommended that a written notification be sent three weeks in advance, given the lack of mail service to the particular community.

## LAW ENFORCEMENT

The Commonwealth Ombudsman has a comprehensive role in oversight of Australian Government law enforcement agencies. The Ombudsman deals with complaints made against the Australian Federal Police (AFP) and the Australian Crime Commission (ACC), and reviews the complaint-handling arrangements of the AFP. This section describes the Ombudsman’s office’s work in relation to complaint handling.

The Ombudsman also has statutory responsibility to inspect the records of law enforcement agencies and other agencies to ensure compliance with legislative requirements applying to selected law enforcement and regulatory activities.

This work is described in the later section *Monitoring and inspections*.

A complete list of the relevant legislation is contained in Table 7.3.

### AUSTRALIAN FEDERAL POLICE

Most of the Ombudsman’s law enforcement work in 2007–08 related to dealing with complaints made by members of the public about the actions of members of the AFP.

Before 30 December 2006 complaints about the AFP were handled by the AFP and oversighted by the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act). There are still a number of unresolved cases in this category.

**TABLE 7.3** Legislative basis for Commonwealth Ombudsman oversight of law enforcement activities

Legislation	Function
<b>Investigations</b>	
<i>Australian Security Intelligence Organisation Act 1979</i>	Investigate complaints about AFP members relating to detention of suspected terrorists and about questioning warrants
<i>Complaints (Australian Federal Police) Act 1981</i>	Oversight complaints lodged prior to 2007 about AFP members in international, national and community policing roles
<i>Ombudsman Act 1976</i>	Investigate complaints about the AFP, ACC and CrimTrac
<i>Witness Protection Act 1994</i>	Investigate complaints from people placed on the National Witness Protection Program or from unsuccessful applicants
<b>Review</b>	
<i>Australian Federal Police Act 1979</i>	Report to the Parliament on the AFP’s complaint handling, with comments on its adequacy and comprehensiveness Receive notification of serious misconduct matters from the AFP
<b>Inspections</b>	
<i>Australian Crime Commission Act 2002</i>	Report to the Parliamentary Joint Committee on the Australian Crime Commission about the ACC’s involvement in controlled operations
<i>Crimes Act 1914</i>	Report to Parliament on the adequacy and comprehensiveness of controlled operations records
<i>Surveillance Devices Act 2004</i>	Inspect records for compliance with the Act
<i>Telecommunications (Interception and Access) Act 1979</i>	Inspect compliance with the recordkeeping requirements of the Act

Complaints about the AFP made since 30 December 2006 are dealt with by the AFP under the *Australian Federal Police Act 1979* (Cth) (AFP Act) and may also be investigated by the Ombudsman under the *Ombudsman Act 1976* (Cth). The Ombudsman does not oversight the handling of every complaint, but is notified by the AFP of complaints it receives which are categorised as serious conduct issues (category 3 issues). The Ombudsman also periodically reviews the AFP's complaint handling. Hence the Ombudsman now investigates AFP actions on the same basis as the actions of other agencies are investigated.

### Review of complaint handling

As the Law Enforcement Ombudsman, the Ombudsman has a responsibility under s 40XA of the AFP Act to review the administration of the AFP's handling of complaints, through inspection of AFP records. The Ombudsman reports to the Australian Parliament on reviews conducted during the year, commenting on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues, as well as its handling of inquiries ordered by the relevant minister.

The office completed the first review of the AFP's administration of complaint handling under Part V of the AFP Act in October 2007 and the second review in June 2008. The Ombudsman will report to Parliament on the outcome of these reviews in early 2008–09.

### Complaints received

The AFP notified us of nine complaints made before 30 December 2006 for oversight by the Ombudsman. These complaints were dealt with under Complaints Act procedures.

During 2007–08 we received a total of 353 approaches and complaints, raising 394 separate issues, about the AFP. The complaints related to the work of the AFP in national and international operations, as well as the AFP's community policing function in the ACT.

The most common issues raised included:

- inadequate advice and service
- inappropriate behaviour and harassment
- failure to act and inadequate investigation
- serious misconduct, including use of force.

Nearly half (48%) of the issues raised in complaints were about AFP members acting in their ACT community policing role. Our work in this area is described in more detail in the ACT Ombudsman Annual Report 2007–2008, available at [www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au).

### Complaints finalised under the Complaints Act

We completed the oversight of 126 cases under the Complaints Act, containing 193 complaint issues. This included the nine Complaints Act cases received for oversight during the year.

Of the 193 issues oversights, 69 had been referred to the AFP's workplace resolution or conciliation process. This process allows members of the public to provide feedback about their interaction with police; provides AFP members with the opportunity to clarify misunderstandings; and facilitates a more timely and flexible response to complaint issues than does formal investigation.

Conciliation was successful in 32 of these cases, and two were withdrawn. The AFP forwarded reports to the Ombudsman for consideration in relation to the remaining 35 issues where the complainant was not satisfied with the AFP's attempts to conciliate the matter. We questioned the appropriateness of conciliation in some cases where we considered there were issues that warranted investigation—for example where excessive use of force or misuse of authority was alleged—but generally accepted the outcomes reached by the AFP.

We decided that investigation was not warranted for 19 issues after considering the AFP's initial evaluation of the complaint.

Eighty-five complaint issues, including 15 issues where the Ombudsman requested investigation or further investigation, were investigated by the AFP and reviewed by the Ombudsman's office. Of these issues, the Ombudsman accepted the AFP's findings in the majority of cases. However, there were a number of matters where we did not accept the AFP's findings. The AFP's approach to one matter which dealt with allegations of inappropriate behaviour by an AFP officer was of particular concern, as described in the case study *Inappropriate relationship*. This case emphasised the importance of the AFP judging the behaviour of its members by appropriate community standards.

A similar issue about appropriate standards arose in a complaint finalised just after the end of 2007–08, as shown in the case study *False statements*.

Of the other issues finalised during 2007–08, the AFP agreed with the office's recommendations for eight issues investigated, and disagreed on another eight issues investigated. We also completed one joint investigation during the year and the findings were agreed by the AFP and the Ombudsman.

The AFP has now provided investigation reports for all outstanding cases under the Complaints Act not involving criminal prosecution. These are being considered by the Ombudsman in accordance with Complaints Act procedures.

### Complaints finalised under the Ombudsman Act

We finalised 330 approaches and complaints containing 363 issues under the Ombudsman Act. Of these, we advised the

## INAPPROPRIATE RELATIONSHIP

## CASE STUDY

A complaint was made that an AFP officer had conducted a long-term sexual relationship with a person whom he had originally met as an informant during an investigation into drug smuggling. The complainant also alleged that the police officer had divulged confidential information.

The complaint was investigated by AFP Professional Standards and oversights by the Ombudsman's office. There was no evidence that any AFP information had been released by the police officer and this aspect of the complaint was unsubstantiated. The officer admitted to one sexual encounter with the person and to having conversations of a sexual nature with the person while on duty over a number of years. A substantiated finding was made that engaging in these conversations from AFP premises while on duty was inappropriate behaviour, and the officer was counselled in relation to this aspect of the complaint.

A third aspect of the complaint was described as maintaining an inappropriate long-term sexual relationship. This part of the complaint was considered unsubstantiated by Professional Standards, primarily because the relationship was consensual, the person had not provided useful information and was not a 'registered informant'. In these circumstances, Professional Standards considered the relationship was not inappropriate.

We disagreed with the assessment by Professional Standards. In our view, it was inappropriate for the police officer to use contact details obtained officially to initiate and then maintain a personal relationship with someone who had approached the AFP to provide information in relation to a criminal investigation. We were concerned that if this behaviour was not judged to be inappropriate, Professional Standards was setting a standard of behaviour for police officers lower than that expected of the AFP by the general community.

The AFP acknowledged our concerns in relation to the standard by which the member's behaviour had been judged and advised that senior staff would deliver presentations on values to all AFP staff during the year.

## FALSE STATEMENTS

## CASE STUDY

A person complained that a number of police officers appeared to have wrongly declared in passport applications that they had known another officer for a designated period. The officers were being deployed overseas on an AFP mission and the false statements appeared to have been made in order to expedite their applications for official passports.

Professional Standards investigated the matter. A 'substantiated' finding was made against an officer who told the other officers it was acceptable to make the false statements. However, the findings in relation to the officers who made the statements were 'unsubstantiated'. It was considered they had not brought discredit to the AFP's reputation as they had acted in accordance with an instruction given by a more experienced AFP member.

We disagreed with the AFP's handling of the matter. During the Professional Standards investigation, all but one of the officers disclosed that they had knowingly made a false statement. We wrote to the AFP Commissioner expressing our disquiet that if this standard applied when assessing AFP officers' behaviour, it could undermine the public's perception of the AFP's commitment to integrity.

The acting Commissioner acknowledged it is not acceptable for a police officer to act inappropriately or illegally, even if directed to do so by another officer. He noted individual members are accountable for their own actions, and this issue would be addressed further in the presentations on AFP values.

complainant to take up the matter with the AFP in the first instance in 203 cases, covering 236 issues. This is the policy that we take with other agencies covered under the Ombudsman Act—that in general a complainant should take up their concerns with the relevant agency before we will investigate. We referred complainants to other agencies and oversight bodies for a small number of complaints and treated some as information enquiries. We investigated 18 issues, including six relating to FOI requests. In two cases this resulted in a better outcome for the complainant and more appropriate administrative action from the AFP.

The median time for finalising all complaints about the AFP under the Ombudsman Act was two days, reflecting the large number of approaches able to be dealt with expeditiously by phone. Overall, 87% of all AFP complaints under the Ombudsman Act were finalised within three months of receipt and 94% were finalised within six months.

### Own motion investigations

A joint AFP/Ombudsman review of ACT Policing's Watchhouse operations was released in June 2007. The report is available on our website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

The AFP accepted all the recommendations in the report, with one being a matter for consideration by the ACT Government. In November 2007 the joint review team commenced a survey of the extent to which the recommendations had been implemented. The team completed its survey in June 2008 and was preparing a submission for presentation to the Steering Committee set up under the original review arrangements. It is expected that the follow-up of the recommendations will be completed in the first half of 2008–09.

We have been undertaking an own motion investigation to review the exercise of responsibilities by ACT Policing under the *Intoxicated People (Care and Protection)*

*Act 1994* (ACT). This followed an investigation we conducted into the matter in 2001. The report of the investigation is to be released in early 2008–09.

### Special investigations

Ombudsman staff finalised two special investigations under the Complaints Act. One of the special investigations examined whether AFP members had reasonable grounds to arrest a person whom they believed had committed an offence. The investigation found the AFP members had reasonable grounds to believe that proceeding by way of summons against the person would not ensure the person's appearance before a court in relation to the alleged offence. We therefore considered the person's arrest was in accordance with the grounds for arrest without warrant as set out in the *Crimes Act 1914* (Cth).

The second special investigation concerned the interview techniques used by some AFP Professional Standards officers when investigating conduct issues. The AFP and the Ombudsman's office conducted this investigation jointly and agreed on the recommendations. The recommendations included that certain officers be reminded of their obligations when conducting interviews, and that the distinction between administrative and disciplinary investigations

be clarified and explained to AFP members. The AFP Commissioner advised the Ombudsman in January 2008 that all the recommendations had been implemented and had been notified to the Minister for Home Affairs.

### AUSTRALIAN CRIME COMMISSION

Complaints about the ACC are managed under the Ombudsman Act. The ACC is not required to notify the Ombudsman's office of complaints it receives directly. However, the ACC notifies the office about significant matters, allowing us to consider whether further investigation by Ombudsman staff is warranted.

In 2007–08, we received four approaches and complaints about the ACC, compared to nine in 2006–07. We finalised five approaches and complaints and one remained open at the end of the reporting period.

### AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

The Ombudsman can refer allegations of corruption against law enforcement officers to the Integrity Commissioner. In 2007–08 the office referred three such allegations to the Commissioner.

## POSTAL INDUSTRY

7

CHAPTER 7 LOOKING AT THE AGENCIES—POSTAL INDUSTRY

The Commonwealth Ombudsman took on the role of Postal Industry Ombudsman (PIO) in 2006, and 2007–08 marked the first full year of PIO operation.

Before the establishment of the PIO, the Commonwealth Ombudsman investigated complaints about Australia Post. The addition of the PIO role extended the Ombudsman's jurisdiction to matters relating to the provision of postal or similar services by private postal operators (PPOs) who voluntarily join the scheme. At 30 June 2008 the members of the scheme were:

- Australia Post (mandatory member)
- Cheque-Mates Pty Ltd
- D & D Mailing Services
- Dependable Couriers & Taxi Trucks Sydney Pty Ltd
- Federal Express (Australia) Pty Ltd
- The Mailing House
- Mailroom Express Pty Ltd
- Universal Express Australia Pty Ltd
- Australian Air Express Pty Ltd.

Most complaints received by the PIO are about Australia Post, which has its corporate headquarters in Melbourne. The significance of Australia Post in the work of the PIO was recognised in July 2007, when the Ombudsman's Postal Industry specialist team transferred from Canberra to Melbourne.

## PIO COMPLAINTS OVERVIEW

In 2007–08 the PIO received 1,900 approaches and complaints. Table 7.4 shows the number of approaches and complaints received, and investigations commenced and completed.

The PIO can only investigate complaints relating to the provision of postal or similar services. Complaints about Australia Post that do not relate to mail—for example, banking or money transfer services, or non-mail-related sales—are handled under the Commonwealth Ombudsman jurisdiction.

The PIO can decide to deal with a complaint as Commonwealth Ombudsman if this is considered more appropriate. Because we receive complaints for both PIO and Commonwealth Ombudsman jurisdictions through a central point of contact, there is usually no need for a formal decision to be made about changing jurisdiction. Complaints are assigned to the most appropriate jurisdiction.

In 2007–08 one complaint addressed specifically to the PIO was dealt with instead under the Commonwealth Ombudsman jurisdiction. The complaint related to Australia Post's performance of an agreement to deliver unaddressed publicity material, which we consider is not a 'postal or similar service'. We notified the complainant formally how the complaint was being handled.

**TABLE 7.4** Approaches and complaints received, and investigations, by the PIO, 2007–08

	Australia Post	Private Postal Operators	Total
Approaches and complaints received	1,896	4	1,900
Investigations commenced	739	1	740
Investigations completed	689	2	691

The PIO commenced two own motion investigations in 2007–08, both of which are ongoing. There were no occasions on which the PIO made a requirement of a person to provide information or documents under s 9 of the *Ombudsman Act 1976*.

We receive only a small number of approaches and complaints about private postal operators. This may reflect the competitive commercial environment of the courier and bulk mail industries, which provides impetus for the rapid resolution of customer complaints on a commercial basis. We will look further at this issue in 2008–09, to identify whether there are other reasons for the low number of complaints received.

### Activities

During 2007–08 our office worked on raising awareness of the PIO in and beyond the postal industry. Ombudsman staff met with representatives of Australia’s major courier companies, and an existing campaign of contacting all state, territory and federal parliamentarians was completed. The Ombudsman gave a presentation to the annual Post Office Agents Association Limited conference in March 2008 about the work of the PIO.

‘...our office worked on raising awareness of the PIO ...’

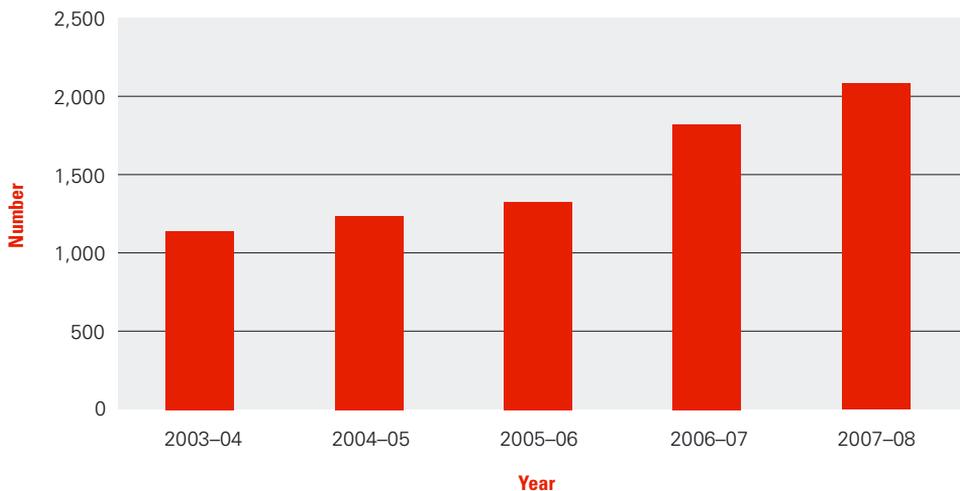
## AUSTRALIA POST COMPLAINTS OVERVIEW

During the year the office received a total of 2,083 approaches and complaints about Australia Post, of which 1,896 were PIO complaints and 187 (9%) were non-PIO complaints. Figure 7.7 shows the trend in approaches and complaints about Australia Post received over the period 2003–04 to 2007–08, covering both PIO jurisdiction (from 2006–07) and Commonwealth Ombudsman jurisdiction.

### Mail delivery

In December 2007 the Ombudsman published a report under s 19V of the Ombudsman Act into Australia Post’s investigation of a complaint about a street mail delivery contractor—*Australia Post: investigation of a complaint about a postal delivery officer* (Report No 17/2007). The report identified some weaknesses in Australia Post’s investigation of the complaint that, amongst other things, had led to an unwarranted breach of the complainant’s privacy.

**FIGURE 7.7** Australia Post approach and complaint trends, 2003–04 to 2007–08



The report made two recommendations—that Australia Post should:

- review its complaint-handling systems with a view to providing clearer guidelines on assessment and management of complaints, and establishing a centralised complaint-management system accessible to all complaint-handling officers
- ensure that guidelines are available to staff on maintaining the confidentiality of complainants.

Australia Post accepted these recommendations and advised that its national skilling manager would be asked to identify any relevant lessons from the complaint and how these might be applied to the work of its Customer Contact Centres.

One important way in which we can add value is to look beyond individual complaints and identify broader systemic issues that need to be addressed. An example of how we did this for a whole community is described in the case study *Life on the border*.

### Damage caused to inbound international postal items

In April 2008 the Ombudsman released a report on the responsibility of border agencies when postal items are damaged at inbound international mail processing facilities in Australia. The report, *Damage caused to inbound international postal items: the roles of Australia Post, Australian Customs Service, and Australian Quarantine and Inspection Service* (Report No 4/2008), looked at the responsibilities of the three agencies involved in the processing of inbound international mail.

Although we receive only a small number of complaints about this issue, a recurring theme was uncertainty about which agency was responsible for dealing with complaints about damage to inbound postal items. With the volume of international mail increasing each year, and a growing number of complaints about international mail, we identified this as an area which would become steadily more important over time.

The report highlighted areas in which the agencies could work collaboratively to facilitate complaint handling, and also identified some process improvements that may help reduce the incidence of damage. The agencies responded positively to the recommendations.

## LIFE ON THE BORDER

## CASE STUDY

Australia Post decided that the residents of a small rural community straddling the NSW-Victoria border should change their postal address from Victoria to NSW, but retain the same postcode.

Although residents attempted to change their addresses with potential mail senders, over the next two years many discovered that mail items had been returned to sender or to the Dead Letter Office as a result of being addressed to the 'wrong' state. This caused a number of problems, including shares not being renewed or offers lapsing, licences being cancelled, fines not being paid and personal mail not being received.

After numerous approaches by the residents to Australia Post failed to resolve their concerns, they sent a petition with over a hundred signatures to the Ombudsman asking for help.

The intervention of our office prompted Australia Post to call a meeting of key staff who analysed all the problems and their causes. Australia Post put in place a raft of initiatives to assist residents and ensure that mail sorting centres improved delivery accuracy to acceptable levels.

### **Delays in processing inbound international mail**

For some time we have received complaints about delays in clearing inbound international mail through border screening processes, particularly at peak periods such as Christmas. Analysis of these complaints indicated that the most significant single cause of delay arose in the screening of items by the Australian Quarantine and Inspection Service (AQIS).

Our investigation showed that the issue was primarily one of capacity in AQIS' screening processes. AQIS has addressed the issue by obtaining extra funding and recruiting staff to ease capacity constraints. Backlogs of mail awaiting screening are now at manageable levels. We will continue to monitor developments in this area.

### **Polling method**

Each year we receive complaints from residents who wish to have a mail delivery service extended to their street or town. Australia Post uses a polling method to ascertain whether there is sufficient community support to warrant extending the current mail delivery route.

Complainants have questioned the method used for the polling process. We are conducting an own motion investigation into this issue, and are reviewing the methodology adopted by Australia Post.

### **Use of notification cards**

When a parcel cannot be delivered, Australia Post leaves a card to notify the mail addressee that the item can be collected at a designated post office or facility. During 2007–08 we received an increased number of complaints relating to articles which were, or should have been, 'carded'. Complaints were made that items were missing after being left at the mail address instead of being carded, that items were carded with no attempt at delivery, or someone other than the addressee had collected a carded item.

We are conducting an own motion investigation into issues surrounding the carding process, and expect to report on this in 2008–09.

### **Customer Contact Centres**

The handling of matters by Customer Contact Centres (CCCs) continued to be a source of complaints in 2007–08. Complainants raised concerns about the responsiveness of Australia Post's complaint-handling staff, the quality of information provided, and the provision of follow-up information. These issues featured in approximately 6% of complaints received and 11% of those investigated.

CCCs are run on a state basis and in practice there is no national standard for complaint handling. Staff turnover can also be an issue for CCCs, sometimes resulting in inconsistent information being provided to callers on the same matter. Another cause of frustration was when CCC staff committed to calling the complainant with an update and failed to do so.

In 2007–08 Ombudsman staff met with CCC representatives from each state to discuss issues of mutual concern. We are confident that our good working relationship with Australia Post CCCs means that feedback from our complaint-handling experience is taken into consideration by CCC managers in their efforts to improve the service they provide to the public.



### Redirection service

Issues relating to the redirection or holding of mail form a significant proportion of complaints received, comprising 7% of complaints received and 12% of investigated complaints in 2007–08. This proportion is similar to that recorded last year. Issues ranged from redirection orders not being activated, to redirections repeatedly failing. In most cases the complainants had attempted to have Australia Post resolve the problems, without success.

A failure in the redirection service can disadvantage members of the public who rely on it to forward bills, official notices and personal items. Often, a failure of the service will leave a customer uncertain about whether mail has been returned to sender or even lost.

In the coming year we will consider further whether the complaints we receive indicate systemic problems with the redirection service.

### 'To the door' delivery

From time to time we receive complaints about Australia Post declining requests from

residents to have their mail delivered 'to the door'. These requests usually are for a change in delivery to individual residences in retirement villages or other enclosed estate properties, rather than to a bank of mail boxes at the entrance to, or placed around, the development.

One particular complaint highlighted an ambiguity in the guidelines applied by Australia Post for eligibility for delivery to individual units in private roads. Our office was able to work with Australia Post to clarify its criteria, as shown in the case study *Where the streets have no name*.

### Lost items

Complaints about items being lost in the post are a recurring theme in the Ombudsman's work. Australia Post handles some 5.5 billion items per year, delivering to almost 10.5 million delivery points around Australia. We recognise that it is unrealistic to expect no losses, given the volume involved. Nevertheless, loss of postal items can be a source of distress to senders and addressees, particularly when they have entrusted items to the postal service that may be of no great monetary value, but have sentimental or other significance.

## WHERE THE STREETS HAVE NO NAME

## CASE STUDY

The elderly residents of a small development applied to Australia Post to have their mail delivered to each house in the development, rather than to a bank of letter boxes at the entry to their private access road. The conditions for extending the roadside mail delivery appeared to comply with Australia Post guidelines, including the fact that the local council had extended their rubbish collection along the access way to each residence.

The application was rejected and the residents complained to their local Member of Parliament, who forwarded the complaint to our office.

Our investigation clarified that the application had been declined because the access road was not named and signposted, as required by Australia Post's published guidelines. We also clarified with Australia Post that 'named' in this context was intended to mean officially named within the meaning of local laws.

We confirmed that Australia Post was entitled to devise a policy on when it would deliver to the door, and the policy it had adopted was not unreasonable. We suggested, however, that the published guidance should specify that the official naming of a road was a prerequisite to delivery. We clarified for the residents the reasons for Australia Post's decision.

## SEEK AND YE SHALL FIND

## CASE STUDY

Ms F had some irreplaceable family documents sent to her by international registered post.

After receiving a notice to collect her mail from the local delivery centre, she telephoned and arranged for it to be transferred to the local post office. However, when she called at the local post office the item could not be found.

Ms F telephoned Australia Post's Customer Contact Centre but was told that her item was lost. Ms F contacted the Ombudsman for help.

After we made enquiries of Australia Post, the delivery centre manager searched the local post office, where he found Ms F's item. He delivered it to her personally with an apology for the inconvenience caused.

Where information is available about the last known location of a lost item, we expect Australia Post to carry out a reasonable search of that location, and any likely onward destination, to establish whether the item can be found. This can sometimes be successful, as the case study *Seek and ye shall find* shows.

For mail items sent in the ordinary post, there may be insufficient information available about the likely whereabouts of an item to justify a search. There may come a

time when customers have to accept that an item cannot be found, and their entitlement will be to such compensation as is provided for in Australia Post's terms and conditions.

To minimise the possibility of loss, customers should ensure that items sent through the mail are correctly addressed. Where an item is of value, they should ask about the availability of insurance, and the advisability of using a service such as registered post, if they are concerned about the possibility of the item going missing.

## FREEDOM OF INFORMATION

7

CHAPTER 7 LOOKING AT THE AGENCIES—FREEDOM OF INFORMATION

The purpose of the *Freedom of Information Act 1982* (FOI Act) is to extend, as far as possible, the legal right of individuals to obtain access to documents held by Australian Government agencies. In addition, the Act enables individuals to seek amendment of records that contain inaccurate personal information.

The FOI Act expressly empowers the Ombudsman to investigate complaints about the actions of Australian Government agencies under the FOI Act (s 57). The Act also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters (s 26).

The Ombudsman's role under the FOI Act reflects the more general role of the office in promoting transparency and accountability in government administration.

### COMPLAINT TRENDS

In 2007–08 we received 206 approaches and complaints about FOI requests, with 165 about access to personal documents, and 41 about access to general documents. The majority of complaints were about Centrelink (23%) and DIAC (21%). During the year we finalised 221 complaints about FOI.

The main issue raised by complainants continues to be delay in processing requests, which comprises about 34% of all complaints. Another 31% of complaints relate to the correctness of an agency's primary decision.

### DELAY

The FOI Act has strict timeframes for responding to requests for information. The Act also provides for an extension of time in certain circumstances, such as where third party consultation is required, with notification to the applicant of the extension. We have noticed in some cases that agencies do not formally invoke the provisions in the Act for extending the timeframe, and simply breach the statutory timeframes.

We acknowledge that agencies sometimes have difficulty in managing requests, for reasons that include limited resources, the complexity of a request or because a request involves making a decision on many individual documents, some of which may require consultation with third parties. While statutory timeframes should be adhered to, the frustration experienced by applicants with delay can be lessened by keeping them informed. Agencies should contact applicants when delays are expected. In many cases an applicant will be satisfied with an update and will wait without contacting our office.

In June 2008 the Ombudsman released a report *Department of Immigration and Citizenship: timeliness of decision making under the Freedom of Information Act 1982* (Report No 6/2008). The investigation considered the systemic delays in FOI processing experienced by the department. Further details are provided in the section on Immigration in this chapter.

The issues discussed in the report have broader relevance to all Australian Government agencies. In particular, the report noted:

- FOI can impose complex demands on an agency and require a high level response
- FOI is a core business activity that will only be undertaken adequately if it receives appropriate managerial attention and resourcing
- commitment to high quality FOI administration requires cultural as well as managerial devotion.

### ASSISTING A PERSON MAKE A REQUEST

Section 15(3) of the FOI Act provides that an agency must take reasonable steps to assist a person to make a valid request. In some complaints we investigated, agencies did not meet this obligation. For example, agencies did not assist an applicant when an FOI request was invalid, or the agency suggested that a request be handled informally. While handling a request for documents on an informal basis can be helpful and efficient,

the FOI Act provides applicants with enforceable rights, such as the right to internal review. The Act also obliges an agency to meet timeframes and provide reasons for decisions.

## ACCESS TO PERSONNEL RECORDS

Section 15A of the Act allows an agency to establish procedures for providing current or former employees with access to their personnel records. An employee wishing to obtain access to personnel records must use these established procedures in the first instance, rather than the other provisions of the FOI Act.

A number of cases have demonstrated that the application of s 15A can be helpful when used correctly, and problematic when a person has expectations that cannot be met by the definition of 'personnel records'. For example, a person attempted to use s 15A to access personnel records, but the agency said that s 15A did not apply as the agency did not have established procedures for giving access under s 15A. Nevertheless, the agency agreed to provide the documents informally and outside the FOI Act. The person was dissatisfied with the outcome of the informal disclosure of documents as the agency did not provide the sorts of documents the person believed should be contained on their personnel records. As the decision had not been made under the FOI Act, the person had no formal right of review. The person then made a formal request under s 15 of the FOI Act.

## EDUCATING STAFF

All agency officers who make decisions under the FOI Act should be educated properly about the agency's obligations under the Act. It is apparent that in some agencies, staff in line areas without appropriate training make FOI decisions on documents and advise FOI or legal staff who coordinate the final response. While resourcing may make it difficult for every agency to have dedicated FOI staff, it is important that all staff dealing with FOI requests are aware of the requirements of

the Act. Ongoing training may be helpful in achieving this.

It is important that staff are properly trained in the FOI timeframes. There are few options open to an applicant to combat delay, other than to complain to the Ombudsman or treat the delay as a deemed refusal.

## FOI REFORM

The Australian Government has signalled its interest in reforming FOI, and the Ombudsman's office has been involved in discussions surrounding this issue. The office's years of experience in dealing with matters arising under the FOI Act suggest there is a need for a body to take on a leadership role in relation to the Act. In the early days of FOI, the Attorney-General's Department took on this role, but there is now a groundswell of support for an independent FOI Commissioner to perform the role. The Ombudsman has suggested to government that another option is to make the FOI Commissioner function a statutory role discharged by the Ombudsman.

'It is important that staff are properly trained in the FOI timeframes.'

Some of the Commissioner's functions could include advising government on FOI policy and administrative issues; investigating and resolving complaints about FOI; conducting other investigations and enquiries into FOI-related issues; and providing information, advice and assistance in respect of FOI requests.

The Ombudsman's 2006 own motion report *Scrutinising Government: administration of the Freedom of Information Act 1982 in Australian Government agencies* (Report No 2/2006) covers many of the relevant issues. The Ombudsman also addressed these issues in a paper '*Designing an effective FOI oversight body—Ombudsman or independent Commissioner?*' to the 5<sup>th</sup> International Conference of Information Commissioners in November 2007. The paper is available on our website ([www.ombudsman.gov.au](http://www.ombudsman.gov.au)).

## MONITORING AND INSPECTIONS

## 7

## CHAPTER 7 LOOKING AT THE AGENCIES—MONITORING AND INSPECTIONS

### EXPANSION OF OMBUDSMAN'S MONITORING AND INSPECTION ROLE

The Ombudsman's responsibility for inspecting the records of law enforcement and other enforcement agencies, and reporting on those inspections, continued to expand in 2007–08. Our role currently includes inspecting records related to:

- telecommunications intercepts by the AFP, the ACC and ACLEI
- access to stored communications by Commonwealth law enforcement agencies (AFP, ACC, ACLEI), other enforcement agencies (such as the Australian Customs Service) and state agencies including state law enforcement agencies
- use of surveillance devices by the AFP, the ACC and ACLEI, and by state and territory law enforcement agencies under Commonwealth legislation
- controlled (covert) operations undertaken by the AFP, the ACC and ACLEI.

There was an increase in activity across all these regimes, with a commensurate increase in the number of records requiring inspection. During 2007–08 we carried out a total of 19 inspections.

Of particular note, changes made to the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) in 2006, which permitted access to stored communications, required inspection of state law enforcement agencies for the first time. Indications at this stage are that the number of agencies utilising these provisions, and therefore the number of records to be inspected, will continue to grow.

'There was an increase in ... the number of records requiring inspection.'

We also provided comments to the Attorney-General's Department on the development and review of a bill proposed by the previous government to amend the *Crimes Act 1914* (Cth) (the Crimes Act) in relation to controlled operations and the introduction of delayed notification search warrants.

Across all regimes, it was pleasing to note the attention given by agencies to improving compliance with the statutory requirements.

The agencies continue to develop practices and procedures to assist their investigators in meeting their obligations. In addition, the agency teams that coordinate and manage the relevant recordkeeping have been proactive and willing to work with this office in their efforts to achieve and maintain a high level of compliance.

### TELECOMMUNICATIONS INTERCEPTIONS

Under the TIA Act, the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI twice a year to ensure their records comply with the requirements of the Act. We provide a report on each inspection to the agency involved, and present an annual report to the Minister on the results of inspections carried out each financial year. We presented reports on the results of inspections of the AFP and the ACC undertaken in 2006–07 to the Attorney-General in September 2007.

We carried out two inspections each of AFP and ACC records in 2007–08. ACLEI did not have any relevant activity requiring inspection of records. The reports, which were provided to the agencies after each inspection, concluded that there was general compliance with the detailed recordkeeping requirements of the TIA Act, although we made a number of recommendations after each inspection to improve recordkeeping. The recommendations were generally accepted by both the AFP and the ACC. They have since implemented a range of measures and initiatives to improve recordkeeping.

We also noted an increased utilisation of warrants under s 46A of the TIA Act. These warrants are generally referred to as 'named person warrants' and permit interception of more than one telecommunications line if it can be reasonably shown that each line belongs to, or is used by, the person named in the warrant. The increase in these warrants appears to be a direct response by law enforcement agencies to the growing sophistication of criminals in this area and their attempts to avoid telephone interceptions by using multiple lines, many of which are not registered in their own name.

## STORED COMMUNICATIONS

Under Chapter 3 of the TIA Act, the Ombudsman is required to inspect the records of enforcement agencies in relation to their accessing of stored communications, to ensure the records comply with the relevant provisions of the Act. During the year we carried out seven inspections, two each of the AFP and ACC, and one each of the New South Wales Crime Commission, the New South Wales Police and the South Australia Police.

Given the relatively recent introduction of access to stored communications, it was not surprising that we generally found the agencies to be in the process of developing and ‘bedding-down’ procedures to ensure compliance and good administrative practice. It was also clear, particularly in inspections that occurred late in 2007–08, that much progress has been made.

Generally speaking, there was a satisfactory level of compliance by each agency, although discussions are ongoing with the AFP, the ACC and state law enforcement agencies to settle the integrity of their processes when obtaining stored communications from telecommunications carriers.

## SURVEILLANCE DEVICES

The *Surveillance Devices Act 2004* (Cth) (SD Act) came into operation in December 2004. In 2005 we commenced a program of two inspections each year of AFP and ACC records to coincide with the Ombudsman’s bi-annual requirement to report to the Attorney-General. We conducted two inspections each of the AFP and the ACC during 2007–08. ACLEI did not have any relevant activity requiring inspection of records. As the New South Wales Police had also utilised provisions within the SD Act, we inspected their records.

We provided reports to the Attorney-General in August 2007 and February 2008 for tabling in Parliament. These reports contained the results of inspections finalised during the preceding six-month period (January to June and July to December, respectively).

Overall, we assessed the agencies as being generally compliant with the Act. The areas where improvement could be made varied, but generally related to reporting and recordkeeping requirements. Perhaps the most consistent issue to arise from the inspections is the timeliness and accuracy of the reports that agencies are required to provide to the Attorney-General under s 49 of the SD Act after each warrant or authorisation has ceased to be in force.

## CONTROLLED OPERATIONS

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

The Ombudsman has an oversight role in ensuring that controlled operations are approved, that records are maintained in accordance with Part 1AB of the Crimes Act, and that information supplied by agencies about controlled operations in reports to the Minister and Ombudsman is adequate.

During the year we conducted three inspections of controlled operations records—two at the AFP and one at the ACC. The inspections concluded that both agencies are generally compliant with the legislative requirements and provide comprehensive information in their formal reports. We provided reports on the inspections to both agencies, and a briefing to the Parliamentary Joint Committee on the ACC as required under the *Australian Crime Commission Act 2002* (Cth). An annual report for 2006–07 was presented to Parliament in February 2008.

Of note, the number of controlled operations records requiring our inspection in 2007–08 more than doubled from 2006–07 (from 27 to 64 records). It is pleasing that this increase has been accompanied by improved recordkeeping and compliance.

# MALADMINISTRATION OR CORRUPTION?



30TH ANNIVERSARY SEMINAR—AUGUST 2007

Corruption and maladministration both pose a threat to integrity in government, as noted by Mr Robert Needham, Chairperson of the Queensland Crime and Misconduct Commission. Investigation of corruption allegations and malpractice requires cooperation between Ombudsman offices and anti-corruption agencies: 'It's only through working together that both agencies can best utilise resources and powers', he said.

Some issues may be appropriate for investigation by either body—'a decision which advantages one party and disadvantages another', or 'a breach of the trust placed in [a] public official as the holder of a public office'. Investigation of some other issues may require the use of special investigation powers that are not held by an Ombudsman's office, such as coercive hearings, search warrant powers or surveillance powers.

Alternatives to investigation and criminal prosecution need also to be considered. An example mentioned by Mr Needham was the appointment of a financial controller where financial malpractice in a local council is suspected but is difficult to prove.



Dr A J Brown of Griffith University Law School, looking at Commonwealth arrangements for investigation of corruption, noted that 'The Ombudsman currently is the primary integrity pillar ... the Commonwealth's only true "general purpose" independent integrity agency'. He predicted that in coming years the Ombudsman's role will be enhanced, but it '... won't be alone as a pillar of the Commonwealth anti-corruption system'.

Dr Brown talked of how poor decisions, systems or leadership, a negative culture or lack of supervision can lead to a higher risk of corruption.

## CHAPTER 8

# HELPING PEOPLE, IMPROVING GOVERNMENT

Ombudsman work has a dual focus on resolving individual complaints and improving public administration. The two are often connected. An individual complaint will frequently highlight a recurring problem in agency administration. In these cases, the focus of the Ombudsman's office is on providing a remedy to the individual complainant and on prompting the agency to prevent similar problems from recurring.

That theme is taken up in this chapter. The first part of the chapter looks at some of the remedies provided to complainants as a result of Ombudsman investigations. Among the remedies that are discussed are providing a more helpful explanation of adverse agency action, variation or reconsideration of a decision, financial compensation, and apologies. A unifying theme in the discussion is the importance of selecting an appropriate remedy to resolve a person's grievance.

The second part of the chapter looks at some of the improvements in agency administration that have resulted from Ombudsman investigations in the reporting year, often arising from a single complaint. The improvements include providing better general information to the public, treating people equitably, and improving administrative procedures, especially when exceptional circumstances require a change from standard practices.

Many of the complaints discussed in this chapter related to minor lapses in agency administration or service delivery. Each complaint was nevertheless a genuine grievance, and in many instances concerned a matter of significant financial or lifestyle consequence for the complainant. This

makes it all the more important for agencies to treat complaints seriously, and to recognise that they provide a valuable source of intelligence on the soundness of agency operations.

### REMEDIES

The Australian community has the right to expect high standards of administration by Australian Government agencies. They expect agencies to act legally, fairly, in a timely manner and with integrity; to show respect for the individual and deal with them professionally; and to be accountable, ethical and transparent in their dealings with the public.

Millions of transactions occur each day between the community and agencies, and inevitably some things go wrong. When that happens, it is essential that the problem is resolved quickly and fairly, so that individuals do not suffer further.

In investigating complaints, a key factor we keep in mind is whether there is a suitable remedy for the complainant. We consider what the complainant is seeking and what is reasonable in the circumstances, whether the agency has offered a remedy, and whether a better remedy might be available through another mechanism such as a merits review tribunal.

The guiding principle in choosing a remedy is to put a person in the position they would have been had no administrative problem occurred. If that is not possible other appropriate action should be taken to remedy the disadvantage suffered by that person. For example, the agency might agree to consider a fresh application for a

particular benefit or concession and waive some or all of the application fee. In addition, as a matter of general courtesy and good public administration, an agency should apologise and provide an explanation to a person when an error has occurred.

### Improving communication

Legislation and government programs are generally very complex, and the decisions made by government agencies are often not easily understood by members of the public. If someone cannot understand a decision that adversely affects them, they are more likely to doubt the correctness or fairness of the decision. Their inability to understand the decision can itself become a source of grievance.

Providing a clear explanation of a decision is itself an important remedy. This can assuage a person's grievance, even if the decision cannot be altered. The reasons for a decision can also provide practical assistance to a person. It can, for example, enable them to decide whether to make a fresh application, or seek review or reconsideration of the decision after providing additional information or explanation.

The importance of clearly explaining a decision in a way that the person can understand is illustrated in the case study *Pension reduction*.

This same issue is illustrated by other complaints where an agency agreed to provide a better explanation of a decision.

- The complainant was concerned that an agency had withheld some refunds he was due. The matter involved complex legislation relating to foreign pensions, and stretched over a number of years. The agency explained the circumstances and gave the person advice about how to seek refunds for the earlier years.
- A person complained after an agency rejected his claim for a living away from home allowance. The agency provided a detailed explanation for the decision, including all the relevant policy guidelines. The complainant was satisfied with this explanation.

### Actions and decisions

#### Changing or reconsidering a decision

Some complaints reveal that an agency has made a decision based on incomplete information, or has given undue weight to some information and ignored other relevant information. In other cases the principles of natural justice may not have been applied properly, or the decision may not have been made lawfully—for example, the legislation was not complied with, or the decision-maker lacked the legal authority to make the decision.

The appropriate remedy in those instances may be for the agency to reconsider or change a decision. Reconsideration may involve taking into account additional information which should have been considered the first time, giving the person a

## PENSION REDUCTION

## CASE STUDY

Mrs A complained about a reduction in her pension from the Department of Veterans' Affairs (DVA), following the death of her husband. As a former prisoner of war, he had received a 'victims of persecution' payment from the Dutch government. This had not affected their DVA pensions. After Mr A passed away, DVA changed the way it assessed the payments from the Dutch government and reduced Mrs A's pension as a result. We concluded that DVA's decision to change the way it assessed the payments was reasonably open to it in the circumstances. However, the sudden and unexplained change in policy by DVA had understandably caused surprise and distress to Mrs A. DVA agreed to apologise to Mrs A and provide a full explanation of the change in policy.

natural justice opportunity, or having a fresh decision maker look at the issue. The case study *Permanent relationship* illustrates one such complaint.

Some other examples where agencies agreed to reconsider or change a decision follow.

- A person sought compensation for the late delivery of an item. When we investigated, the agency found they had handled his request badly. Although he would not normally have been entitled to compensation, the agency paid it in recognition of their poor handling of his complaint.
- We received a complaint from a woman that payments to her and her partner were to be suspended at a time of extreme personal crisis. When we contacted the agency, they restored the payments and, given the special personal circumstances, took extra measures beyond their normal procedures to ensure the problem did not recur.

In some cases there may be a right to have the decision reviewed on the merits by an administrative tribunal. However, our general approach is that the alternative of merits review should not be taken as a way to deal with poor administration and poor decision making. If a poor decision can be dealt with at the agency level, it should be, rather than requiring a person to go through a review process with the potential for extra costs, uncertainty and additional distress.

#### Expediting action

Many complaints to the Ombudsman arise from delay by an agency in making a decision or taking action. In some cases there will be a good reason for the delay, such as the circumstances being particularly complex, but in many other cases delay is avoidable. One of the most frequent remedies we achieve is for agencies to expedite action. The case study *Unwanted group certificate* illustrates a case where an agency did not resolve a matter until our office intervened.

### PERMANENT RELATIONSHIP

### CASE STUDY

A migration agent complained that the Department of Immigration and Citizenship (DIAC) had granted Mr B a temporary spouse visa, rather than a permanent spouse visa, despite the fact Mr and Mrs B had been married for 46 years. Mrs B had lived in Australia since the late 1990s, assisting in caring for her grandchildren in difficult family circumstances. Mr B visited often but did not seek to come to Australia permanently until he retired in 2006. Our investigation suggested the decision maker had put significant weight on one factor and not taken into account a substantial amount of other evidence about the nature of their relationship. In addition, the decision maker had taken a Centrelink decision that Mrs B was 'separated' out of context, and not provided Mr B with an opportunity to clarify matters. DIAC agreed to have another decision maker reconsider the decision. It was decided Mr B met the criterion of being in a long-term spouse relationship, which is a requirement for the grant of a permanent spouse visa.

### UNWANTED GROUP CERTIFICATE

### CASE STUDY

Ms C complained that an agency had issued her a group certificate in error, and she had been unable to have the situation rectified despite trying for three months. When we investigated the matter, the agency acknowledged it had not dealt with Ms C's concerns properly. The agency wrote to the Australian Taxation Office asking for the group certificate to be withdrawn, and commenced a review of its relevant procedures.

The following examples illustrate how simple agency errors can lead to delays which can cause considerable inconvenience to members of the public, and which can be remedied easily.

- A person complained that his request to have his application for merits review by a tribunal afforded high priority had not been agreed. When we contacted the tribunal, they found a registry officer had made a mistake and his case should have been given high priority from the outset. The agency promptly arranged for a hearing of his case.
- A complainant had worked for an agency for over twenty years. Ten years later he sought confirmation of the details of his employment from the agency, so that he could ascertain his entitlements in his current workplace. Nine months passed without a satisfactory response. The agency, which had lost his original request and not followed up properly on his later contacts, provided him with a comprehensive response shortly after we contacted them.

### Financial remedies

Poor administration can cause financial loss to people. For example, they may not obtain a benefit to which they were entitled, their benefit may be reduced below their real entitlement, they may have a debt raised against them unreasonably, or they may suffer other financial losses.

### Compensation

The scheme for Compensation for Detriment caused by Defective Administration (the CDDA Scheme) provides an important

financial remedy. The CDDA Scheme allows portfolio ministers and authorised officials to compensate individuals or other bodies who have experienced losses caused by agency maladministration.

The CDDA Scheme is designed to cover losses where there is no legal liability to compensate the person. The case study *Ignored* illustrates one example where a large CDDA payment was made.

Some other complaints we investigated which resulted in CDDA payments, or increased CDDA payments, illustrate the diverse range of circumstances in which such payments are justified.

- A person claimed CDDA because she did not receive a benefit for which she considered herself eligible. Our investigation suggested there was sufficient evidence to show she had advised the agency of all the relevant circumstances, and they should have told her of the existence of the benefit. The agency accepted our view and paid most of her claim.
- We received a complaint that an agency had given a person incorrect advice about the time remaining for completing a course. Acting on that advice, he paid further tuition fees, only later to find that he could not undertake the course because of the time limit. The agency rejected his CDDA claim on the basis that there was no definitive evidence it had given incorrect advice. Our analysis suggested that, on the balance of probabilities, he most likely had been given incorrect advice, and the agency paid his claim.

## IGNORED

## CASE STUDY

The former proprietors of a business complained that a regulatory agency had ruined their business through inappropriate and poor supervision of the regulatory staff of the agency. We did not investigate the regulatory practices, but identified that the proprietors had made numerous complaints over an extended period of time which were not addressed seriously. This failure resulted in extra costs and identifiable missed opportunities for the business. The regulator accepted this assessment and offered compensation of \$1 million.

- An agency failed to process a person's claim for a benefit. There were multiple errors over extended periods of time, such as incorrectly recording income details, not acting on information provided, and requiring the person to provide very detailed historical records to support their claims, with long delays in resolving the problems. Once the matter was escalated with the agency, it responded promptly, paid the benefit and paid CDDA of nearly \$10,000.

### Dealing with a debt

Debts and associated penalties can be raised against people for many reasons. When a debt, or part of a debt, is raised unreasonably, there are a number of ways it may be dealt with. The agency may be able to change the decision legally. In other cases, the Minister for Finance and his or her delegates may waive a debt where it has arisen wrongly and there is a moral, rather than legal, obligation to cancel the debt. Specific legislation may also provide for the waiver of debts. The case study *No assurance* shows how an agency changed its decision on a debt.

The following examples illustrate some of the diverse ways in which debts may arise, and how they may be dealt with.

- An agency raised a large debt against a person because it considered she had received payments for which she was not eligible. Our investigation found that the agency's decision might have been different had extra information been available to it. We advised the complainant, who provided the relevant information to the agency, and the debt was cancelled.
- A person complained that an agency raised a debt against her for overpayments she had never received. The agency had made the payment twice, after initially making the payment into the wrong bank account. The agency raised a debt against her, based on a suspicion that she had misled the agency and in fact had access to both bank accounts. Our investigation revealed that the agency was in error, and had confused her with another person. The agency withdrew the debt.

### Other financial remedies

Simple errors by agency staff can have significant adverse financial consequences for people. The same can happen when a person misunderstands government requirements, or there are unforeseen changes in their personal circumstances. The intervention of the Ombudsman's office can often result in a financial remedy for the person, as the following examples show.

- After an agency stopped paying a person's pension when he was overseas, the person made a number of unsuccessful attempts to resolve the situation. While he largely caused the problem, when we contacted the agency they identified that they could have done more to resolve it. They reinstated his pension.

## NO ASSURANCE

## CASE STUDY

Mrs D had provided an assurance of support (AOS) for Ms E when Ms E migrated to Australia. Several months after her arrival, Ms E claimed newstart allowance (NSA), which Centrelink granted. Nearly two years later, Centrelink raised a debt against Mrs D because of the AOS and undertook recovery for several years. However, Centrelink had not checked about the possible existence of an AOS at the time of granting NSA to Ms E, and had not contacted Mrs D before commencing payment. The decision to recover was affirmed in internal review and at the Social Security Appeals Tribunal. When we started investigating Mrs D's complaint, and before the matter was heard by the Administrative Appeals Tribunal, Centrelink reviewed the case and decided it had made a legal error. It changed its decision on Mrs D's debt and repaid her the money it had already recovered.

- A person complained that an agency had wrongly valued his shares for some years, resulting in pension underpayments. When he brought it to the agency's attention, they corrected the payments but would not pay arrears. Our investigation showed that the agency had incorrectly recorded the details of some of his shares, and the agency paid him the arrears.
- An agency rejected a person's insurance claim for damage to an item purchased overseas. Our investigation revealed the agency could not demonstrate that the damage had not occurred while it had control of the item. The agency undertook to pay the cost of repairs and associated costs.
- An agency failed to take account of the terms of an order for payment by a court when assessing the financial relationship between two parties. As a result of our enquiries, the agency obtained a legal opinion which confirmed their decision, but they were able to identify an alternative way to deal satisfactorily with the payment.

### Apologies

An apology can be highly effective in addressing a person's grievance about poor administrative practice. Complainants often see an apology from an agency as a prerequisite to moving forward. An apology that is appropriately framed and properly

communicated by an agency will often be accepted by a person as a satisfactory resolution of their grievance. The case study *Incorrect information* shows how powerful an apology and explanation can be.

The diverse circumstances in which an apology can be appropriate are illustrated by the following examples.

- An agency apologised for providing incorrect instructions on how a person should go about amending details on a database to assist in their application for a migration visa.
- A person complained about continuing delays in getting medical treatment approved and reimbursement of medical expenses. After we contacted the agency, it apologised for the delays and poor handling of his case and put in place more appropriate procedures for the person's circumstances.
- A person complained about lengthy delays in receiving the correct amount of regular payments to which she was entitled. Our investigation revealed she had complained as soon as she started receiving the incorrect amounts, but the officer she dealt with went on extended leave and no one else dealt with her complaint. The agency apologised to her.
- An agency apologised to a person for delay and inconvenience in handling his insurance claim for damage caused to his private vehicle by a government vehicle.

### INCORRECT INFORMATION

### CASE STUDY

Mr F complained that, amongst other things, he had been advised in a letter from a Minister that his father's death had not been determined as being related to his father's service in World War II. Mr F had always believed his father's death was a result of war service, as this information was given to him as a child, and he had received a war orphan pension to cover matters such as medical expenses and school fees. Mr F's subsequent efforts to clarify the matter, including through freedom of information (FOI), had not resolved the issue. After we contacted DVA, they undertook an extensive analysis of their records. They identified that Mr F had been given incorrect information and their view was that his father's death was war-caused. The Secretary of the Department wrote to Mr F with an apology for the error, a detailed explanation as to how it may have occurred, and an offer for sympathetic consideration of any further FOI application Mr F might have, without the payment of fees.

- An agency apologised for incorrectly sending a letter threatening legal action, arising from their failure to check address details and to follow established procedures to contact the person before sending the letter.

## SYSTEMIC ISSUES

An investigation of a complaint can reveal a systemic problem that could affect other clients of the agency. Among the recommendations that are often made by the Ombudsman's office are for better training of agency staff, a change to agency procedures or policies, a revision of agency publications or advice to the public, or a review of government policy or legislation that is having harsh or unintended consequences. These types of recommendations for reform are taken up in the following summary of issues dealt with by the Ombudsman's office in 2007–08.

### Improving advice to the public

People rely on government agencies for advice and information on a great range of issues related to the legislation and programs administered by agencies. The first requirement is that the advice should be accurate. It can be equally important that agencies note any limitations applying to the general advice they are providing, or caution people to seek specific or independent advice relevant to their individual circumstances.

The Ombudsman's office dealt with a number of complaints during the year where incomplete or imprudent advice was provided, or the advice was not as timely as it might have been. It is important to draw these problems to the attention of the agency so that a similar problem can be avoided in future. The case study *Over 65* shows one example where an agency improved the timeliness of advice to people.

There were other examples where agencies agreed to improve their advice to the public arising from complaints that we investigated.

- An agency agreed to provide more detailed information about the limitations on priority processing times for particular types of applications dealt with by the agency.
- An agency agreed to publish on its website its criteria for discretionary waiver of fees payable to the agency.

### Having good procedures

Agencies must have sound procedures in place to administer complex legislation and government programs in a manner that is efficient, effective, fair, transparent and accountable, and that delivers the appropriate services to members of the public. The procedures need to deal with the exceptional as well as the normal cases, as the case study *Late payments* illustrates.

Having good procedures to deal with exceptional cases was a common theme in other complaints we investigated.

## OVER 65

## CASE STUDY

Mr G complained because Comcare stopped paying compensation when he turned 65. We did not investigate this matter because the decision had been affirmed by the Administrative Appeals Tribunal as being in line with the legislation. However, we noted that Comcare provided information in general publications about benefits ceasing when a person turns 65, and that its practice was to write directly to each affected client sometime between three months and six weeks prior to the client's 65<sup>th</sup> birthday. We suggested Comcare might consider writing directly to affected clients further in advance. Comcare agreed and revised their processes to alert people on their 64<sup>th</sup> birthday, and again prior to turning 65. This will help make sure people are aware of the impending change and have a longer period of time to make any necessary arrangements.

## LATE PAYMENTS

## CASE STUDY

Ms H complained that her compensation payments from DVA were often late, and she was given a different explanation each time. In the course of our investigation, DVA advised us that the problem had arisen after Ms H had been moved from an automatic payment regime to a manual payment regime because her earnings fluctuated and a review was being undertaken. Her payments had been late twice because of human error or the absence of her case officer, and other members in the team had been unaware of the need for manual payment. DVA advised us that it had changed procedures in the area involved so that manual payments are managed as a team, and if a staff member is away another staff member can deal with the payment.

- A person who was in detention had missed a Magistrates Court hearing due to a request for transport being misplaced. The manager of the detention facility put in place new arrangements to supplement the manual procedures for transport bookings, to prevent a recurrence.
- An agency was unable to process a person's claim for a benefit through its automatic claim system because of the person's unusual circumstances. The agency eventually undertook a manual calculation, paid the benefit and introduced improvements to their manual claims processing and systems.
- A person complained about the confusing and conflicting advice she had been given about her husband's whereabouts, medical condition and repatriation to Australia, following his illness while on service overseas. The agency agreed that the matter had not been handled well and took steps to remedy the systemic problems.

### Interpreting and applying legislation and guidelines correctly

An agency should always be alert to the danger that legislation or its own guidelines are not being interpreted correctly. To deal with this risk, agencies need to have adequate internal quality controls, look for inconsistencies in the application of legislation or guidelines, and focus on problem cases. The case study *Not the owner* shows an example where ministerial guidelines were not being interpreted correctly.

### Treating people equitably

Complainants sometimes allege that an agency has not treated them equitably compared to other people. The following two case studies, *Different calculations* and *State differences*, illustrate the different and complex ways in which problems of equitable treatment can arise.

## NOT THE OWNER

## CASE STUDY

Mr J complained that Centrelink had overturned a decision to grant his claim for liquid petroleum gas (LPG) conversion. Centrelink makes decisions on applicant eligibility and administers the grant payments on behalf of the Department of Innovation, Industry, Science and Research (DIISR). Centrelink makes decisions based on ministerial guidelines and advice from DIISR. Mr J had been the registered owner of the car at the time of the LPG conversion, but not later when he made the claim. Our investigation revealed that DIISR was interpreting the ministerial guidelines incorrectly and he did not need to be the registered owner at the time of claim. DIISR subsequently revised the customer guidelines for the scheme, and Mr J's application was reconsidered and found to be eligible.

**DIFFERENT CALCULATIONS****CASE STUDY**

Ms K was receiving a partial disability support pension because she also received workers compensation payments from an overseas country. She complained to us that Centrelink did not calculate the Australian dollar equivalent of her overseas payments in the same way as it treated foreign currency amounts received by other Centrelink recipients, and as a result she suffered financial loss. In the course of our investigation, Centrelink advised that it did treat overseas compensation payments differently depending on whether the person was receiving a social security payment at the time of their compensable event. If the person had been receiving a social security payment, the rates were automatically recalculated each month and customers could seek a review if there was a 5% difference between the rate Centrelink calculated and what they received. If not, as in Ms K's case, Centrelink staff manually updated the rates twice a year. Centrelink agreed that the different approaches could adversely affect some customers and changed its procedures so that monthly re-valuing would occur in all cases.

**STATE DIFFERENCES****CASE STUDY**

Mr L, who lived in Western Australia (WA), complained that his claim for LPG conversion had been refused, because he did not have the current registration papers for the vehicle in question. Mr L had purchased the vehicle second-hand. In WA, registration papers are sent only when the vehicle is next due for registration, not when ownership changes. While people can pay for a new registration certificate, this entails extra costs compared to people in most other states. As a result of our enquiries, AusIndustry consulted with the relevant WA department, and agreed that a screen dump obtained from the WA Licensing Centre would suffice as proof of registration. This information is now published on AusIndustry's website. AusIndustry identified that a similar situation occurs in Victoria, and has made similar arrangements. Mr L's application was subsequently reviewed and found to be eligible.

# VIEW FROM THE BUREAUCRACY



## 30TH ANNIVERSARY SEMINAR—AUGUST 2007

The administrative law reforms that led to the creation of the Ombudsman's office in 1977 reflected a new emphasis on the rights of individuals over executive action. Mr Andrew Podger, Institute of Public Administration Australia National President, commented that 'The size and complexity of government had been growing ... and the need for some re-balancing was widely recognised'.

According to Dr Peter Shergold, then Secretary of the Department of Prime Minister and Cabinet, the Ombudsman 'provides an assurance to citizens that the workings of officialdom are subject to expert scrutiny ... ensuring public accountability for the way in which a public service uses public funds in the public interest'.

Mr Podger believed the Ombudsman has contributed to improved decision making, building more coherence and structure, as well as fairness, into government systems. He commented 'The bureaucracy's genuine respect for the Ombudsman comes ... from the quality of the assessment, its timeliness, and its appreciation of both the experience of the person seeking review and the context in which the decision maker was operating.'



'The Commonwealth Ombudsman has been a substantial contributor to public administration in Australia, Ombudsman reports assist in resolving underlying problems, rather than just correcting a wrong decision and blaming the decision maker.'

The existence of the Ombudsman acts as a powerful reminder to public servants that they have an obligation to ensure their actions are not infected with administrative error, beyond legal authority or deny natural justice. The Ombudsman's activities improve the quality of government service delivery, and ensure fair and impartial treatment of recipients of those services.

## CHAPTER 9

# LESSONS AND INSIGHTS FOR GOVERNMENT

The Ombudsman's office is uniquely placed to notice common problem areas in government administration. Each year we hear from thousands of people with complaints about government, which leads us to speak to most departments and large agencies.

A major focus of our work in recent years has been to draw out, for the benefit of government generally, insights and lessons that emerge from those thousands of complaints and investigations. Each complaint is unique, but frequently they highlight issues of administrative style, choice and attitude that convey a broader lesson.

This chapter presents highlights from that dimension of Ombudsman work during the year.

'... complaint[s] ... frequently highlight issues of administrative style, choice and attitude that convey a broader lesson.'

### LESSONS FOR PUBLIC ADMINISTRATION

In 2005 and 2006, following the cases of Ms Cornelia Rau and Ms Vivian Alvarez, the Australian Government asked the Ombudsman's office to investigate 247 cases where people had been held in immigration detention and later released when it was found they were not unlawful. The office published eight reports as a result of those investigations.

In August 2007 the Ombudsman's office published a further report *Lessons for public administration: Ombudsman investigation of referred immigration cases* (Report

No 11/2007). This report drew together ten lessons from the referred immigration reports that are relevant to all areas of government in guarding against administrative errors that can be harmful to members of the public. As the report noted:

*At the end of every administrative process is a person who can be affected, beneficially or adversely. It is therefore important in all areas of government administration that the exercise of significant powers is underpinned by high quality internal systems, rigorous decision making, clear policy guidance, effective training, active oversight and quality assurance, and efficient internal and external information exchange.*

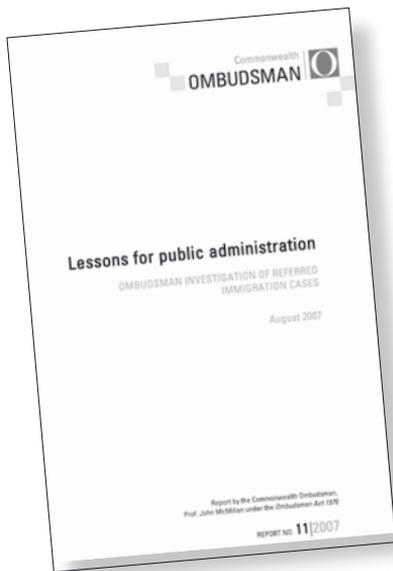
The report was released jointly by the Ombudsman and Mr Andrew Metcalfe, the Secretary of the Department of Immigration and Citizenship, at a seminar held by the Institute of Public Administration Australia. Speaking at the release, Mr Metcalfe said:

*The events we are speaking about today were a watershed for my organisation and for the public sector as a whole, and we should take every opportunity to promote the lessons learned to a wider audience.*

The ten lessons are:

- maintain accurate, comprehensive and accessible records
- place adequate controls on the exercise of coercive powers
- actively manage unresolved and difficult cases
- heed the limitations of information technology systems

- guard against erroneous assumptions
- control administrative drift
- remove unnecessary obstacles to prudent information exchange with other agencies and bodies
- promote effective communication within your own agency
- manage complexity in decision making
- check for warning signs of bigger problems.



Since the publication of the report, the Ombudsman, Deputy Ombudsmen, Senior Assistant Ombudsmen and other senior staff have given presentations on the report to a wide range of Australian Government agencies and other organisations. The presentations also form part of the regular orientation seminars for members of the Senior Executive Service, organised by the Australian Public Service Commission.

### INVESTIGATION REPORTS

The *Ombudsman Act 1976* provides that the Ombudsman can initiate an own motion investigation into government administration. A number of such investigations are conducted each year, usually into problem areas in agency administration that have

been identified in the course of complaint investigation. The practice of the office is to publish a report on the findings of an own motion investigation. Fourteen reports arising from own motion and other investigations were published in 2007–08.

The reports provide an important opportunity to step back from the detail of individual complaints and to draw attention to general issues that warrant attention within an agency. While focused on specific government programs or legislation, the reports often deal with issues that arise in other areas of government. This section provides some examples from these reports that are of broader relevance to government.

*Implementation of job capacity assessments for the purposes of Welfare to Work initiatives: examination of administration of current work capacity assessment mechanisms* (Report No 5/2008).

The Welfare to Work program requires an applicant for income support who has a disability, illness or other barrier to work to undergo a job capacity assessment. This report drew attention to the importance of ensuring that those appointed to undertake a specialist assessment of this kind have appropriate qualifications for the task. An example given in the report was that two different assessors, one an intern psychologist and the other a social worker, had reached different conclusions on the same basic information about a person's job capacity.

Another issue raised was the need for caution and proper documentation of the reasons for a decision, when an officer without specialist qualifications is required to make a decision on the basis of specialist reports. The report gave an example where a job capacity assessor did not provide an explanation for disregarding a doctor's opinion on a person's medical condition in favour of their own opinion.

The report recommended that the summary section of a job capacity assessment report should include an appropriate level of detail to justify an assessor's recommendation. It also recommended that, where the assessor

has formed a view contrary to the medical evidence provided, the specific aspects of the disputed medical assessment should be stated and reasons for disregarding the medical report should be provided.

*Department of Immigration and Citizenship: administration of detention debt waiver and write-off* (Report No 2/2008). This report was prompted by complaints to the Ombudsman that highlighted confusion among many people as to the distinction between waiver and write-off of a debt owed to the Australian Government. A debt that is waived is not recoverable at a later time, whereas a debt that is written off can be pursued later if the person's financial circumstances improve.

The recommendations made in the report to reduce the risk of confusion and disadvantage are as relevant in other areas of government where debts are incurred. Among the recommendations were that a person should be told clearly and in plain language why a debt was imposed, the options available for paying off a debt or applying to have it waived or written off, and the distinction between waiver and write-off.

*Damage caused to inbound international postal items* (Report No 4/2008). This report pointed to the need for collaboration between agencies that have inter-related responsibilities in dealing with claims for property damage that arise from their activities. The nub of the issue examined in the report was that three agencies were involved in dealing with inbound international mail—processing the mail, customs clearance and quarantine inspection. If a mail item was damaged, people were often unclear about which agency to approach. A complaint made to one agency could be referred to another, with no agency ultimately accepting responsibility for dealing with the matter.

A theme of the report was that agencies that collaborate in service delivery or regulation must also collaborate in handling complaints about their actions. One important measure recommended in the report was for agencies to establish a single point of

contact for complainants. Improvements in recording damaged items, and informing people how to claim compensation for lost or damaged items, could also reduce difficulties for members of the public.

Other reports dealt with issues of the following kind:

- *Comcare: identifying the rehabilitation authority of a former Australian Government employee* (Report No 18/2007): showed how machinery of government changes and legislative uncertainty can lead to people falling through the cracks of the new program arrangements, and the measures that should be taken by agencies to respond to the problem
- *Australia Post: investigation of a complaint about a postal delivery officer* (Report No 17/2007): illustrated the importance of good complaint handling when a member of the public has lodged a complaint, and the need to maintain confidentiality in dealing with the complaint
- *Department of Industry, Tourism and Resources: failure to provide adequate reasons for a decision refusing an R&D Start Grant application* (Report No 13/2007): showed the importance of correctly advising an unsuccessful applicant for a grant of the reasons for the decision, especially if the applicant is entitled to submit a fresh application that is designed to overcome weaknesses in the first application
- *Centrelink: payment of independent rate of Youth Allowance to a young person* (Report No 1/2008): highlighted the need for special arrangements and sensitivity in dealing with an application for a government benefit from a person under 18 who was experiencing family difficulty.

## E-BULLETINS

As noted in Chapter 5, during 2007–08 the office launched a series of Ombudsman e-bulletins, available from our website and through an email subscription. Their purpose is to provide to a wider audience, particularly

staff in agencies, a sample of recent complaints and the lessons that can be drawn from them. Each case study shows that a single problem or complaint can point to a larger issue that may need to be addressed by an agency. The lesson can also be relevant to other agencies.

For example, cases in the first e-bulletin dealt with:

- conflict of interest in tendering
- managing a breach of a client's privacy
- ensuring that staff know and correctly apply the legislation they are administering—and using complaints as a way to detect errors and mistakes
- having procedures for handling requests under the *Freedom of Information Act 1982* take proper account of the existence of electronic records.

### ADMINISTRATIVE DEFICIENCY

Section 15 of the Ombudsman Act lists the grounds on which the Ombudsman can formally make a report to an agency, and ultimately to the Prime Minister and Parliament. Only a few such reports are made each year to agencies, and more rarely to the Prime Minister or Parliament. Most complaints to the Ombudsman can be resolved informally, and without the need to reach a firm view on whether an agency's conduct was defective. This reflects the emphasis of our work on achieving remedies for complainants, and improving agency complaint-handling processes and public administration generally.

Instances nevertheless arise in which administrative deficiency should be recorded and notified to an agency. This helps draw attention to problems in agency decision making and processes, and feeds into the systemic work of the Ombudsman's office. The purpose of a finding of administrative deficiency is not to reprimand the agency concerned, and the individual findings are not separately published in the same way that reports under s 15 are usually published.

Under our current work practices, a finding of administrative deficiency can only be

recorded with the approval of a Senior Assistant Ombudsman, Deputy Ombudsman or the Ombudsman. We notify the agency of our intention to record administrative deficiency, with an explanation of the reasons. If an agency disagrees with a proposed recording of administrative deficiency, the matter will be considered further by the relevant Senior Assistant Ombudsman or, if necessary, a Deputy Ombudsman or the Ombudsman.

This process helps ensure that concerns about agency administration are considered at appropriate levels in the agency, and that remedial action is taken.

During 2007–08 we recorded 368 cases where there were one or more issues of administrative deficiency, including some complaints discussed elsewhere in this report. The following additional examples illustrate the administrative deficiencies recorded during the year.

- *Factual error.* A person's application for a benefit was wrongly refused on the basis of an incorrect assessment as to whether they met a particular eligibility criterion. This was caused by a wrong assessment of the date of the person's enrolment in a particular course.
- *Human error.* A tribunal remitted an application to an agency. The liaison area in the agency did not identify that further action was required on the case, leading to long delays in deciding the application.
- *Legal error.* A person requested a review of an agency decision. The agency wrongly decided that his request was invalid and out of time. The agency decision was not in accordance with the legislation.
- *Inadequate advice, explanation or reasons.* A person rang an agency seeking information about how to make a complaint against a third party. The agency staff did not ask sufficient questions to determine his circumstances and sent him the wrong information, leading to substantial problems for the person when he made his complaint.
- *Unreasonable delay.* A person applied for a benefit. The officer handling her application

went on urgent unplanned leave for some months. The case was not allocated to another officer and the agency did not respond to contacts from the person, resulting in long delays in deciding the application.

- *Procedural deficiency.* A person was denied a benefit on the basis of an assessment of their medical condition. The initial medical assessment was inconclusive, but was amended by an agency staff member following a call to a doctor who did not have the person's medical records. The proper procedure would have been for the staff member to arrange a fresh medical assessment.
- *Flawed administrative process.* An agency's information technology system was unable to reconcile different payments when a person's eligibility for various payments changed throughout the year, and the agency had to manually reconcile the payments. The agency was aware of the system's shortcoming, but had not made enough effort to identify people affected by this problem and to manage the issue better.
- *Unreasonable or harsh agency action.* An agency sent formal notices to a person's employer seeking details of his earnings on three occasions, without seeking the information from the person in the first instance. After apologising to the person, the agency then sent a fourth notice to the employer, although the agency appeared to have all the information it needed and was aware that the relationship between the person and his employer was poor.
- *Resource deficiency in agency.* A person's request for review of an agency's decision was not finalised until well beyond the statutory time period because the agency had received a large number of requests and had a staff shortage. This delay led to the person accruing a debt and to the relationship between the person and the agency deteriorating badly.
- *Inadequate knowledge/training of staff.* Problems in a procurement process probably occurred because the agency

staff in charge of the process were subject area specialists, not procurement experts. For example, they allowed the successful tenderer to deviate from the requirements outlined in the request for quotation, without giving other potential tenderers the capacity to bid on the same basis. Hence there was no assurance that the agency obtained value for money.

- *Breach of duty/misconduct by an officer.* Agency officers did not follow appropriate guidelines and procedures for managing a real or perceived conflict of interest in awarding a contract.

## BROADER THEMES

The remainder of this chapter describes some other themes that have been taken up during the year in Ombudsman complaint handling and own motion investigations.

### Good complaint handling

Good complaint handling is a constant theme of Ombudsman work. Inevitably problems arise in any administrative program. A good complaint-handling process provides a way for problems to be dealt with quickly and effectively, reducing further distress and disadvantage for government clients. On the other hand, poor complaint handling can exacerbate what may have been a simple error or oversight. This may give rise to other complaints from the person concerned and to a loss of public confidence in the agency.

'Good complaint handling is a constant theme of Ombudsman work.'

Good complaint handling can provide an agency with intelligence about systemic problem areas in agency administration. For example, an individual complaint may show that legislation is not being applied properly, that staff need better training, that there are deficiencies in an agency's quality assurance processes, or that resources are inadequate for the task at hand.

Most complaints investigated by the Ombudsman's office have already been dealt with by an agency. Consequently,

if the Ombudsman investigation leads to a different outcome for the complainant, it can be important to look at why external intervention was necessary to resolve the problem, and if necessary take this up with the agency. This may point to a weakness in the agency's complaint-handling system.

Over the years the Ombudsman's office has published a number of reports looking at complaint handling in various agencies. For example, in 2006–07 three own motion investigations focused on aspects of complaint handling by agencies involved in airport operations (Report No 3/2007), by the Australian Defence Force (Report No 4/2007), and by the Migration Agents Registration Authority (Report No 5/2007).

Reports published during the year on individual complaints highlighted weaknesses in agency complaint-handling or reconsideration processes. For example:

- Report No 13/2007 was critical of how the then Department of Industry, Tourism and Resources dealt with a claim for compensation from a person whose application for a research and development grant had been unsuccessful
- Report No 17/2007 described problems in the way Australia Post dealt with a person's complaint about a street mail delivery contractor
- Report No 1/2008 described a delay in Centrelink's review of a decision.

Problems in agency complaint handling were also exposed in some complaint investigations undertaken during the year.

- A person complained to an agency after its officers visited his residence to try to serve papers on him that were unconnected with the agency's official business. One of the officers showed his agency identification. The agency investigated the person's complaint but did not give him a meaningful explanation of the agency action following his complaint.
- A person's complaint to an agency about delay was referred by its complaint-

handling unit to the wrong area, because of a recording mistake. Furthermore, the agency did not follow up on his subsequent contacts, failed to escalate the matter at the appropriate time, and then closed his complaint without providing him with any advice.

## Recordkeeping

Many complaints arise from poor recordkeeping practices. Common problems include that a record has been lost, a file error is not detected or corrected, an important record is not made or retained, unreliable or ambiguous information in a record is later treated as fact, or an incomplete record is assumed to be complete and accurate. The problem of poor recordkeeping is often compounded by delay either in making a decision in a person's case, or in resolving their complaint about the matter.

Poor recordkeeping also undermines transparency in agency decision making, and can lead to allegations of deception, bias, incompetence, or corruption.

Reports published by the Ombudsman during the year commented on recordkeeping practices. For example, the report on *Implementation of job capacity assessments for the purposes of Welfare to Work initiatives* (Report No 5/2008) made the following recommendations:

- assessment summaries made as part of a job capacity assessment should contain an appropriate level of detail to justify an assessor's recommendation, and if an assessor forms a view contrary to specialist medical evidence, the specific areas of disagreement should be stated and reasons given for disregarding the medical report
- job capacity assessors should be required to record and retain proper file notes of all contacts made as part of an assessment process, such as interviews, and discussions with treating doctors, other specialists and Centrelink.

Two other published investigation reports contained comments on recordkeeping:

- Report No 13/2007 noted that the Industry Research and Development Board did not record in any detail the reasons for twice refusing a grant
- Report No 3/2008, which dealt with allegations that Defence had ignored forewarnings of the fire on HMAS *Westralia*, noted that there was no record of the reasons for a decision not to investigate anonymous allegations made in 2000 or of action taken at the time.

Recordkeeping problems were often noted in individual complaint investigations. An example was a lengthy delay in deciding a person's claim for a benefit, after the agency first lost his file for over three months and then, when he lodged a fresh claim, failed to find his medical reports.

### Natural justice

'Natural justice' or 'procedural fairness' is a fundamental requirement of sound administrative practice. Above all, it provides an opportunity for a person to be heard before a decision is made that adversely affects them. This can be important if there are gaps, errors or discrepancies in the information on which an agency proposes to base a decision. The usual remedy in administrative law where there is a breach of natural justice is for a court to nullify a decision and require an agency to reconsider.

The Ombudsman cannot nullify an agency decision, but to the extent practicable we recommend that an agency reconsider or change a decision if there was a breach of natural justice.

There will always be a risk that natural justice is not fully observed by agencies unless the issue is specifically addressed in agency guidelines and procedures. This is a recurring theme in investigation reports published by the Ombudsman. For example, the report on *Marriage-like relationships: policy guidelines for assessment under social security law* (Report No 14/2007) recommended that the policy guidelines be changed to specifically address procedural fairness. For example,

they could require that before a decision is made that a social support claimant is a member of a couple, the person should be advised in writing of the proposed decision and the reasons for it, and be given an opportunity to respond.

The report *Application of penalties under Welfare to Work* (Report No 16/2007) expressed concern that Centrelink's failure to notify customers of its intention to withhold payment deprived those customers of the opportunity to query Centrelink's action, or to arrange their finances in anticipation of future payments not being made.

Failure to observe natural justice was a strong theme in a report published by the Ombudsman in 2006—*Department of Immigration and Multicultural Affairs: Administration of s 501 of the Migration Act 1958 as it applies to long-term residents* (Report No 1/2006). The report drew attention to decisions in which there had been a breach of procedural fairness in making a decision to cancel the visa of a person.

As noted in the Immigration section of Chapter 7—*Looking at the agencies*, in response to one of the recommendations in that report, the Department of Immigration and Citizenship undertook a review of 91 cases where people who were long-term permanent residents had had their visa cancelled under s 501 ('character grounds'). The review was completed in 2007–08 and identified that, in all but one case, the highest level of procedural fairness had not been met.

Problems with according people natural justice were identified in some complaints investigated during the year. For example, the Department of Foreign Affairs and Trade (DFAT) cancelled a person's passport at the request of her adult guardian, but did not advise her or tell her of her review rights. When she tried to travel overseas, her passport was seized and she was prevented from travelling. When we investigated, DFAT was already considering some of the issues. DFAT subsequently agreed to apologise and to invite her to apply for compensation for

costs she had incurred. The department also agreed to change its procedures to afford natural justice prior to cancelling passports wherever this was possible, taking into account issues such as security and flight risk.

In another example, an agency was required by law to give a person an opportunity to comment upon a proposed change in assessment of his eligibility for a government benefit. A meeting was scheduled and the agency then changed the date. He was not advised in time, and when he later contacted the agency they gave him wrong information about the purpose of the meeting. The agency decision maker then made the decision on the basis that he had decided not to attend the meeting. Following our investigation, the agency introduced guidelines to ensure procedural fairness would be provided and to ensure staff understood the importance of providing customers with an opportunity to be heard.

### Good communication

As discussed in Chapter 8, good communication is essential to good public administration. Problems noted in the earlier discussion occurred in the general advice given by agencies to the public, and in the reasons for decisions. Good communication involves being timely and clear, explaining options and implications, and keeping people informed. It involves communicating in the most effective manner, and by the most appropriate channel, for the audience.

Reports published by the Ombudsman often focus on issues of communication. For example, communication was at the heart of a report that gave examples of deficiencies in letters advising people that their application for a visa was unsuccessful—*Department of Immigration and Citizenship: notification of decisions and review rights for unsuccessful visa applications* (Report No 15/2007). Unless a decision is clearly explained and notified, a person's capacity to usefully seek review of an adverse decision or to lodge a fresh application will be diminished. It is important

also that advice to a person about their immigration status in Australia should be clear and comprehensive.

'Reports published by the Ombudsman often focus on issues of communication.'

The need for clear communication was a theme in the report into DIAC's administration of detention debt waiver and write-off (Report No 2/2008). Amongst the recommendations in that report were that:

- people should be given complete and accurate information about their immigration detention debt, including repayment options, a contact person, and what they can do if they are experiencing difficulty paying their debt
- a letter notifying a person that a debt is to be written off should fully explain the decision and that it does not extinguish the debt for all time, and give the options open to the person to seek waiver of the debt.

Poor communication by agencies was criticised in many individual investigations during the year, as illustrated by the following two instances.

- An agency failed to provide an adequate explanation to a person about why she was not receiving the full payment to which she considered she was entitled. The agency could have provided more relevant information without breaching the secrecy provisions in the relevant legislation.
- An agency officer mistakenly sent a letter to a person advising him he had been assessed as meeting the first stage of processing for a particular benefit. This was incorrect, but the agency officer failed to advise the person of this mistake, and rather asked the person not to keep asking about progress with his application.

### Joint service delivery

Recent Ombudsman annual reports have highlighted problems that can arise where different organisations in the public, private

and not-for-profit sectors, and at different levels of government, are involved in developing and implementing a government policy. This problem is raised again in this report in Chapter 7. Disputes about service delivery can be very difficult to resolve, especially if it is unclear to whom or where a complaint about a particular issue should be sent. It is perplexing and frustrating for complainants to be shuffled from one organisation to another.

This issue was addressed in a few investigation reports published during the year. For example, the report *Damage caused to inbound international postal items* (Report No 4/2008), noted earlier in this chapter, recommended that three agencies take joint responsibility for deciding which agency is most appropriate to handle a claim about damage to a postal item. A claimant should not be expected to communicate with multiple agencies in an attempt to find someone willing to consider their claim.

A strong message sent by the Ombudsman's office is that an agency must retain some responsibility for the resolution of complaints even though it has contracted out the delivery of a function. This issue arose in one complaint during the year where an agency was unable to provide the Ombudsman's office with straightforward statistical information about the service outcomes for clients of a contracted organisation. This became an issue because the agency had made statements about the outcomes in earlier rejecting the particular complaint.

A general point arising in that and other cases is that an agency should ensure that issues related to contract or relationship management with the service provider do not obscure its responsibility to deal effectively with complaints from the public about the service delivery. Each complaint should be dealt with on its merits.

### Legality

The public should be able to trust that government agencies will always act lawfully and make lawful decisions. People rely on agency staff to do so when applying

legislation that gives a right to benefits and services, that regulates movement in and out of the country, and that imposes obligations to pay taxes and debts.

Legal compliance was an issue addressed in some reports during the year. For example, the report *Application of penalties under Welfare to Work* (Report No 16/2007) raised a concern that a Centrelink practice of withholding payment pending a decision on whether a person had complied with a requirement imposed on them was not supported by the social security law. Another report, *Centrelink: payment of independent rate of Youth Allowance to a young person* (Report No 1/2008), expressed concern that the suspension of a young person's payments appeared to have been without legal basis and the records did not have an explanation of why this was done.

There were other examples where legislation or legal orders may not have been complied with.

- Agency staff continued to make enquiries about a person's eligibility for payment, despite a court order requiring the payment to be made.
- When a person's payment was wrongly credited to someone else, an agency officer tried to remedy the problem by remaking the payment to the correct person from consolidated revenue. While well-intentioned, such a payment was without legal basis.
- An agency incorrectly suspended a person's payments. The problem was compounded because agency staff did not recognise she was at risk of domestic violence and she was not able to speak to relevant staff despite ringing the contact point every day for over two weeks.

### Timely decision making

Delay in making a decision or taking action is a frequent cause of complaint to the Ombudsman. People expect government agencies to act in a timely manner. They expect an enquiry to the agency to be answered promptly, an application lodged

with the agency to be decided efficiently, or a dispute with the agency to be resolved fairly but quickly. Timeliness standards may be specified in legislation or in service charters.

A number of own motion investigation reports released during the year discussed problems of timeliness. For example:

- Report No 14/2007 recommended that the policy guidelines for assessing marriage-like relationships under social security law emphasise the need to conduct 'member of a couple' investigations as quickly as reasonably possible and that investigations should not be kept open in anticipation of new information becoming available if existing information does not substantiate a finding that a marriage-like relationship exists
- Report No 16/2007 concluded that delays in Centrelink decision making on participation and serious failures were not acceptable, and in many cases compounded the difficulties faced by customers subject to a non-payment period
- Report No 2/2008 on DIAC's administration of detention debt waiver and write-off recommended that DIAC introduce timeliness standards to prevent unnecessary delay, and to ensure people were advised at regular and appropriate intervals of progress in their case.

Timeliness was also an issue in many individual cases we investigated during the year. For example:

- An agency was required by law to pursue money owed to a person. The agency failed to act for periods of over seven years. When it did recover the money, it then failed to pay the person for another twelve months.
- Agency staff failed to take reasonable action to verify claims made by a person over a period of fifteen months that he was not liable for a debt. While the person was able to seek formal review, the agency would have been readily able to verify the information.

#### **Future work**

In 2008–09 we plan to publish further information on the broad themes that arise in public administration. This will include a new better practice guide to complaint handling, and a better practice guide to good public administration. We will also continue to pursue these themes through our program of own motion investigations, and publication of investigation reports and cases that are of broader relevance.

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# APPENDIX 1

## FREEDOM OF INFORMATION STATEMENT

Section 8 of the *Freedom of Information Act 1982* (FOI Act) requires each Australian Government agency to publish information about the way it is organised, its powers, the kinds of decisions it makes, the documents it holds, the way members of the public can obtain access to these documents and any arrangements for public involvement in the work of the agency.

The body of this annual report explains the organisation and major functions of the Commonwealth Ombudsman. This statement supplements that general information to meet the requirements of s 8 of the FOI Act. It is correct as at 30 June 2008.

### FUNCTIONS AND DECISION-MAKING POWERS OF THE OMBUDSMAN

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act). The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman, the Immigration Ombudsman, the Law Enforcement Ombudsman, the Postal Industry Ombudsman and the Taxation Ombudsman.

The national office of the Commonwealth Ombudsman and the office of the Australian Capital Territory Ombudsman are co-located in Canberra. Other offices are located in Adelaide, Alice Springs, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

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

### Investigation of administrative actions

Following a complaint from a member of the public, or using 'own motion' powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and private contractors delivering government services.

The Ombudsman cannot investigate:

- the actions of government ministers or judges
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide not to investigate complaints that are 'stale' or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where it is considered an investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as considered appropriate. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people

who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, the Ombudsman may report that view to the agency and recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report to the Prime Minister and report to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

### **Defence Force Ombudsman**

Section 19C of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Defence Force Ombudsman (DFO). The DFO can investigate complaints from current or former members of the Australian Defence Force about Defence Force employment matters. The DFO cannot investigate most actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

### **Taxation Ombudsman**

Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the Australian Taxation Office.

### **Immigration Ombudsman**

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration concerning the circumstances of any person who has been in immigration detention for two years or more.

### **Law Enforcement Ombudsman**

Under s 4(5) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman when investigating complaints about the conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979* (AFP Act). Complaints about the conduct of AFP officers received prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act). This Act was repealed after relevant provisions of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced on 30 December 2006.

The special procedures that applied under the Complaints Act to complaints about the AFP's practices and procedures or the conduct of individual AFP members, are explained in previous annual reports.

Complaints about the conduct of AFP officers received after 30 December 2006 are dealt with under the Ombudsman Act. In addition, under the AFP Act the Ombudsman is required to review the administration of the AFP's handling of complaints, through inspection of AFP records, at least annually. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the

Minister. The results of these reviews must be provided to Parliament on an annual basis.

### **The Ombudsman's intercept and surveillance devices audit**

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP, the Australian Crime Commission (ACC) and the Australian Commission for Law Enforcement Integrity (ACLEI), and certain other agencies under specific circumstances, to ascertain whether the agencies have complied with specified recordkeeping requirements of the Acts.

### **Audit of controlled operations**

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP, the ACC and ACLEI.

### **Postal Industry Ombudsman**

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman (PIO). The PIO deals with complaints about postal service delivery by Australia Post and those private sector postal operators that elect to be members of the PIO scheme.

### **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. The FOI Act s 57(3) provides that an application cannot be made to the Administrative Appeals Tribunal for review of an FOI decision that is the subject of a complaint to the Ombudsman until the Ombudsman has finalised the investigation.

### **Australian Capital Territory (ACT) Ombudsman**

Under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), the Commonwealth Ombudsman discharges the role of ACT Ombudsman. A services agreement between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT Ombudsman is set out in a separate annual report made to the ACT Government pursuant to the *Ombudsman Act 1989* (ACT).

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

### **CATEGORIES OF DOCUMENTS HELD BY THE OMBUDSMAN**

The Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

### **FOI access and contact**

General enquiries and requests for access to documents or other matters relating to FOI may be made in person, by telephone or in writing at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. For the cost of a local call, people can contact the Commonwealth Ombudsman's office by calling 1300 362 072. (See contacts in 'References' section of this report.)

Under s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsmen, all Senior Assistant Ombudsmen, and some Executive Level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant as detailed below.

### FOI requests to the Ombudsman's office

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (33 in 2007–08, compared to 34 in 2006–07), mostly for documents related to investigations. Following are some observations about how those requests are handled.

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:
  - documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
  - records of telephone conversations involving the complainant
  - most database entries relating to the complainant.
- In the course of investigation, we may provide an agency response to a complainant so that he or she can better understand the agency's position. It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other

agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the content and context of the documents, in light of their experience in dealing with similar requests.

- A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

The Ombudsman's office has raised with the Government, in the context of a current review of the Ombudsman Act, whether the office should be subject to the FOI Act. Some other Ombudsman offices in Australia are exempt from the FOI Act in their jurisdiction. The explanation given is that it can be unsuitable to apply the Act to an office that has the function of investigating complaints against other government agencies, including complaints about FOI matters. Many of the documents held by the Ombudsman's office will have come either from the complainant or the agency under investigation, or be internal working documents of the Ombudsman's office that contain interim expressions of opinion about other agencies that should not be disclosed publicly unless that agency has first been given an opportunity to comment on the opinion consistently with natural justice and the Ombudsman Act s 8(5).

## APPENDIX 2

### PAPERS AND PRESENTATIONS BY STAFF

Airo-Farulla, G. 2007, *The role of the Ombudsman and administrative law*, presentation to Inspector-General Australian Defence Force Investigation Officer Course

Anderson, R. 2008, *Current issues of FOI and the administration of the Office of the Commonwealth Ombudsman*, presentation to Japanese Cabinet officials, Canberra

Brent, R. 2007, *The role of the Ombudsman and administrative law*, presentation to Australian Fisheries Management Authority, Canberra

- 2007, *The role of the Ombudsman and administrative law*, presentation to Australian National Audit Office, Canberra
- 2007 and 2008, *Senior Executive Service Transforming Leadership Programs*, presentations to APSC Leadership, Melbourne, Bowral, Canberra
- 2007, *Common faults in administrative investigation*, presentation to Inspector-General Australian Defence Force, Brisbane
- 2007, *The developing role of the Ombudsman in achieving administrative justice*, presentation to Continuing Legal Education Law Society Seminar, Canberra
- 2008, *A perspective on leadership*, presentation to Comcare EL1 Leadership Program, Canberra

Clendinning, A. 2008, *The role of the Ombudsman*, presentation to APSC SES Orientation, Canberra

Coleman, P. 2007, *The role of the Ombudsman*, presentation to APSC SES Orientation Program for Department of Health and Ageing, Canberra

Fleming, H. and Colley, M. 2007, presentation to annual National Employment Services Association Conference, Coolom

Fleming, H. 2007, *The role of the Ombudsman and administrative law*, presentations to APSC SES Orientation, Canberra

Masri, G. 2007, *The role of the Ombudsman*, presentations to APSC SES Orientation, Canberra

- 2008, *Ten lessons for public service*, presentation to Migration Review Tribunal-Refugee Review Tribunal, Sydney and Melbourne

Matcham, R. 2007, *The role of the Ombudsman*, presentations to APSC SES Orientation, Canberra

McMillan, J. 2007, *How ACT agencies can improve service delivery and response to complaints*, presentation to Executive Meeting of ACT Department of Justice and Community Safety, Canberra

- 2007, *30 Years of complaint handling—What have we learned?* Presentation to Department of Veterans' Affairs SES Forum, Canberra
- 2007, *Immigration referred cases: lessons for government*, presentation to Institute of Public Administration Australia Lunchtime Seminar on Lessons Learned from the Referred Cases, Canberra

- 2007, *Integrity and accountability in government—an Ombudsman's perspective*, presentation to Northern Territory Commonwealth Club Forum, Darwin
- 2007, *The role of the Ombudsman*, presentation to Northern Territory Members of Parliament Forum, Darwin
- 2007, *Best practice in complaint handling*, presentation to Society of Consumer Affairs Professionals 2007 Symposium, Melbourne
- 2007, *Improving government—Lessons from the Ombudsman review of immigration administration*, presentation to Northern Territory Institute of Public Administration Australia/Australian Institute of Administrative Law members, Darwin
- 2007, *Who watches the watchers?*, presentation to Annual Conference Australian Mayoral Aviation Council, Brisbane
- 2007, *Ombudsman oversight of policing and defence in Australia*, presentation to Law Enforcement and Defence complaint handling workshop, Papua New Guinea
- 2007, *Government administrative compensation schemes*, guest lecture at University of NSW Graduate law program, Sydney
- 2007, *Human rights charters: how important to improving government?*, Alice Tay Lecture on Law and Human Rights, Canberra
- 2007, *Natural Justice: Too much, too little, or just right?*, presentation to Australian Institute of Administrative Law (SA Chapter), Adelaide
- 2007, Guest speaker at MHCA launch 'Let's Get to Work! A National Mental Health Employment Strategy for Australia', Canberra
- 2007, *Designing an effective oversight body—Ombudsman or independent commissioner?*, presentation to 5th International Conference of Information Commissioners, Wellington, New Zealand
- 2007, *Celebrating ten years of the Taxpayers' Charter*, address to 10th anniversary of the Taxpayers' Charter function, Canberra
- 2008, Launch of Alice Springs office, Alice Springs
- 2008, *The role of the Ombudsman and administrative law*, presentation to Insolvency Trustee Services Australia Senior Management Workshop, Canberra
- 2008, *Lessons for public administration*, presentation to Department of Finance and Deregulation Learning Centre Program for Senior Staff, Canberra
- 2008, *The role of the Ombudsman*, presentation to APSC SES Orientation, Canberra
- 2008, *Governance and leadership*, presentation to Department of Immigration and Citizenship 2008 SES Speaker Program, Canberra
- 2008, *Risk areas for faulty decision making*, presentation to 2008 Government Business Conference, Sydney
- 2008, *Postal complaints—issues and trends*, presentation to Postal Agents Officers Association annual conference, Launceston
- 2008, *The expanding Ombudsman role—what fits and what doesn't fit*, presentation to 24th Australasian and Pacific Ombudsman Region Conference, Melbourne
- 2008, *What's in a name? The use of the term Ombudsman*, presentation to Australian New Zealand Ombudsman Conference, Melbourne

- 2008, *Best practice in complaint handling*, presentation to ACT Human Rights Commission, Canberra
- 2008, *Ten lessons learned for public administration—What the ACCC can learn from them*, presentation to Australian Competition and Consumer Commission Senior Management Conference
- 2008, *Dealing with detention issues*, guest lecture at Australian National University Faculty of Law, Canberra
- 2008, *Introduction to anti-corruption law and policy in Australia and Fighting corruption while safeguarding human rights*, presentations to China-Australia Human Rights Technical Cooperation Program Anti-Corruption Seminar, China
- 2008, *Administrative Law Review: How ombudsmen and tribunals work alongside each other*, presentation to South Australian Chapter of the Council of Australasian Tribunals, Adelaide
- 2008, *FOI and privacy: Do they belong together?*, presentation to Privacy Contact Officer Network, Canberra
- 2008, *The role of the Ombudsman*, presentation to APSC SES Orientation, Canberra

Stankevicius, A. 2008, *The role of the Ombudsman*, presentation to APSC SES Orientation, Canberra

Thom, V. 2007, *Complaints and disciplinary procedures*, presentation to Professions Australia workshop, Canberra

- 2007, *Ten lessons learned*, presentation to ComSuper, Canberra

- 2007, *The role of the Ombudsman and administrative law*, presentation to ACT Agency Contact Officers Forum, Canberra

- 2007, *The role of the Ombudsman and administrative law*, presentation to the Pakistan Association of Australia, Sydney

- 2008, *Ten lessons learned*, presentation to Continuing Legal Education Law Society Seminar, Canberra

- 2008, *The role of the Ombudsman*, presentation to ACT Agency Contact Officers Forum, Canberra

Merryfull, D. 2008, *Ten lessons learned for public administration*, presentation to Governance and Government Relations, ATO, Canberra

# APPENDIX 3

## STATISTICS

### EXPLANATIONS OF TERMS USED IN TABLE A1

**Approaches/complaints finalised**—approaches/complaints finalised in 2007–08, including some complaints carried over from previous years

**Approaches/complaints received**—approaches/complaints received in 2007–08

**Category 1 approaches**—resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority

**Category 2 approaches**—approaches that cannot be resolved at category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency

**Category 3 approaches**—investigation conducted and agency contacted

**Category 4 approaches**—further investigation conducted, as the complaint was not able to be resolved in category 3

**Category 5 approaches**—further investigation conducted, as the complaint was not able to be resolved in category 4; involves formal reporting processes

**Remedies**—complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

**TABLE A1** Approaches and complaints about Australian Government agencies, received and finalised, and remedies, 2007–08.

AGENCY	RECEIVED		FINALISED					REMEDIES							
	Total	Not Investigated		Investigated			Total	Action expedited	Apology	Decision changed/reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
		Category 1	Category 2	Category 3	Category 4	Category 5									
<b>Agriculture, Fisheries and Forestry</b>															
Department of Agriculture, Fisheries and Forestry	19	2	12	3	2	-	19	1	-	4	-	3	-	1	9
Australian Fisheries Management Authority	8	-	6	2	-	-	8	-	-	1	1	-	-	-	2
Australian Pesticides and Veterinary Medicines Authority	3	-	2	-	-	-	2	-	-	-	-	-	-	-	-
Australian Quarantine and Inspection Service	67	11	24	11	1	-	47	2	-	-	15	1	1	19	
Australian Wine and Brandy Corporation	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-
<b>Attorney-General's</b>															
Attorney-General's Department	41	6	26	5	2	-	39	-	-	-	6	-	-	-	6
Administrative Appeals Tribunal	32	7	20	3	1	-	31	-	-	2	-	-	-	-	2
Australian Crime Commission	4	2	3	-	-	-	5	-	-	-	-	-	-	-	-
Australian Customs Service	105	41	48	11	2	-	102	-	-	-	14	-	-	1	15
Australian Institute of Criminology	2	1	-	1	-	-	2	-	-	-	-	-	-	-	-
Family Court of Australia	31	14	17	-	-	-	31	-	-	-	-	-	-	-	-
Federal Court of Australia	14	2	12	-	1	-	15	-	-	-	-	-	-	-	-
Federal Magistrates Court of Australia	12	2	9	2	-	-	13	-	1	-	2	-	-	-	3
High Court of Australia	7	1	5	1	-	-	7	-	-	-	1	-	-	-	1
Insolvency and Trustee Service Australia	56	17	33	11	2	-	63	3	2	1	13	-	-	1	20
National Capital Authority	3	-	2	-	-	-	2	-	-	-	-	-	-	-	-
National Native Title Tribunal	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-
Office of the Commonwealth Director of Public Prosecutions	9	1	6	3	-	-	10	-	-	-	1	-	-	-	1
<b>Broadband, Communications and the Digital Economy</b>															
Department of Broadband, Communications and the Digital Economy	20	14	6	-	-	-	20	-	-	-	-	-	-	-	-
Australian Broadcasting Corporation	9	-	8	1	-	-	9	-	-	1	-	-	-	-	1
Australian Communications and Media Authority	48	26	16	6	3	-	51	-	2	2	6	-	-	10	
Australian Postal Corporation	2,063	621	653	695	47	1	2,017	86	149	85	439	14	143	1,115	
Special Broadcasting Service Corporation	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-
Telstra Corporation	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-
<b>Commonwealth Parliamentary Services</b>															
Department of Parliamentary Services	4	-	1	2	-	-	3	1	-	-	1	-	-	-	2
<b>Defence</b>															
Department of Defence	135	31	74	24	3	-	132	5	2	1	17	1	-	3	29
Australian Air Force Cadets	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-
Australian Army	138	30	55	48	4	-	137	9	2	3	28	4	2	1	49
Australian Army Cadets	3	1	2	-	-	-	3	-	-	-	-	-	-	-	-

AGENCY	RECEIVED		FINALISED					REMEDIES							
	Total	Not Investigated		Investigated			Total	Action expedited	Apology	Decision changed/ reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
		Category 1	Category 2	Category 3	Category 4	Category 5									
Australian Navy Cadets	3	1	1	-	-	-	2	-	-	-	-	-	-	-	-
Australian War Memorial	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-
Defence Force Retirement and Death Benefits Authority	5	-	1	5	-	6	2	-	-	3	1	-	-	6	
Defence Housing Australia	28	6	15	6	2	29	-	1	2	1	1	1	-	6	
Defence Service Homes	2	1	1	-	-	2	-	-	-	-	-	-	-	-	
Department of Veterans' Affairs	139	30	53	56	15	154	17	13	17	40	12	2	5	106	
Royal Australian Air Force	48	17	13	13	5	48	5	1	2	10	4	1	-	23	
Royal Australian Navy	59	9	26	16	3	54	4	1	1	10	1	-	-	20	
<b>Education, Employment and Workplace Relations</b>															
Department of Education, Employment and Workplace Relations	721	259	264	149	27	699	10	10	32	126	13	4	16	211	
Australian Industrial Registry	2	1	1	-	-	2	-	-	-	-	-	-	-	-	
Australian National University	12	2	8	4	2	17	1	-	2	-	-	-	-	3	
Comcare	79	16	35	21	4	77	3	2	3	11	4	2	2	27	
Office of Workplace Ombudsman	665	584	64	11	1	660	3	2	4	5	-	-	1	15	
Office of Workplace Services	-	-	-	2	2	4	2	3	-	1	-	-	-	6	
Workplace Authority	39	24	10	2	2	38	-	-	-	6	-	1	-	7	
<b>Environment, Water, Heritage and the Arts</b>															
Department of the Environment, Water, Heritage and the Arts	42	7	9	22	3	41	13	11	-	6	4	-	1	35	
Australian Film Commission	-	-	1	-	-	1	-	-	-	-	-	-	-	-	
Australian Heritage Council	1	-	1	-	-	1	-	-	-	-	-	-	-	-	
Great Barrier Reef Marine Park Authority	4	-	4	-	-	4	-	-	-	-	-	-	-	-	
National Gallery of Australia	1	-	-	-	-	-	-	-	-	-	-	-	-	-	
National Museum of Australia	1	-	-	-	-	-	-	-	-	-	-	-	-	-	
Sydney Harbour Federation Trust	1	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Families, Housing, Community Services and Indigenous Affairs</b>															
Department of Families, Housing, Community Services and Indigenous Affairs	165	17	35	35	3	90	1	-	-	18	-	-	4	23	
Aboriginal Hostels Limited	5	1	1	-	-	2	-	-	-	-	-	-	-	-	
Central Land Council	5	1	4	-	-	5	-	-	-	-	-	-	-	-	
Indigenous Business Australia	17	3	6	6	-	15	-	-	-	-	-	-	-	-	
Indigenous Land Corporation	1	-	2	-	-	2	-	-	-	-	-	-	-	-	
Northern Land Council	7	2	2	1	-	5	-	-	-	-	-	-	-	-	
Office of Indigenous Policy Coordination	-	-	1	1	-	2	-	-	-	-	-	-	-	-	
Office of the Registrar of Aboriginal and Torres Strait Islander Corporations	11	4	2	6	-	12	1	-	-	-	-	-	-	1	

AGENCY	RECEIVED		FINALISED					REMEDIES							
	Total	Not Investigated		Investigated			Total	Action expedited	Apology	Decision changed/ reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
		Category 1	Category 2	Category 3	Category 4	Category 5									
Social Security Appeals Tribunal	51	7	32	6	-	-	45	1	-	5	-	-	-	8	
Tivoli Land Council	2	-	-	1	-	-	1	-	-	-	-	-	-	1	
<b>Finance and Deregulation</b>															
Department of Finance and Deregulation	23	3	12	6	3	-	24	1	1	1	-	-	1	4	
Australian Electoral Commission	50	14	26	9	-	-	49	-	-	7	-	2	1	10	
Commissioner for Superannuation (ComSuper)	33	12	7	9	1	-	29	5	2	4	1	-	1	13	
<b>Foreign Affairs and Trade</b>															
Department of Foreign Affairs and Trade	148	52	70	27	8	1	158	4	6	4	19	4	2	41	
Australian Agency for International Development (AusAID)	4	1	3	2	1	-	7	-	-	1	2	-	-	3	
Australian Trade Commission	5	2	1	2	-	-	5	-	-	-	1	-	-	1	
<b>Health and Ageing</b>															
Department of Health and Ageing	116	37	44	10	4	-	95	-	2	1	5	1	-	10	
Ageed Care Standards and Accreditation Agency Ltd (The)	1	-	-	1	-	-	1	-	-	-	-	-	-	-	
Australian Sports Commission	3	2	-	-	2	-	2	-	-	-	-	-	-	-	
Food Standards Australia New Zealand	3	1	2	-	-	-	3	-	-	-	-	-	-	-	
National Health and Medical Research Council	3	1	1	1	-	-	3	1	1	1	-	-	-	3	
Office of Hearing Services	1	-	-	1	-	-	1	-	-	-	-	-	-	-	
Office of the Aged Care Commissioner	2	-	1	1	-	-	2	-	-	-	1	-	-	1	
<b>Human Services</b>															
Department of Human Services	8	3	2	4	4	-	13	-	2	1	8	-	1	12	
Australian Hearing	1	-	1	-	-	-	1	-	-	-	-	-	-	-	
Centrelink	7,573	4,199	1,547	1,460	173	3	7,382	266	113	248	1,050	282	10	2,068	
Child Support Agency	2,208	892	629	541	63	-	2,125	99	64	73	525	38	4	838	
Commonwealth Rehabilitation Service	24	7	13	3	-	-	23	-	-	-	3	-	-	3	
Health Services Australia	2	-	1	1	-	-	2	-	-	-	-	-	-	-	
Medicare Australia	125	51	45	30	1	-	127	5	1	5	23	3	-	41	
Professional Services Review	3	-	3	-	-	-	3	-	-	-	-	-	-	-	
<b>Immigration and Citizenship</b>															
Department of Immigration and Citizenship	1,528	318	585	427	91	-	1,421	84	44	48	345	23	13	628	
Migration Agents Registration Authority	23	3	11	6	3	-	23	1	1	-	2	-	1	6	
Migration Review Tribunal and Refugee Review Tribunal	31	2	19	5	2	-	28	3	2	2	1	-	-	8	
<b>Infrastructure, Transport, Regional Development and Local Government</b>															
Department of Infrastructure, Transport, Regional Development and Local Government	35	7	28	5	1	-	41	1	-	-	-	-	-	1	

AGENCY	RECEIVED		FINALISED					REMEDIES							
	Total	Not Investigated		Investigated			Total	Action expedited	Apology	Decision changed/ reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total
		Category 1	Category 2	Category 3	Category 4	Category 5									
Airservices Australia	8	1	6	-	1	-	8	-	-	-	-	-	-	-	-
Civil Aviation Safety Authority	18	6	8	1	1	-	16	-	-	1	-	-	-	-	1
<b>Innovation, Industry, Science and Research</b>															
Department of Innovation, Industry, Science and Research	46	20	17	4	2	1	44	1	-	3	5	3	2	-	14
AusIndustry	23	3	13	6	2	-	24	-	-	2	9	2	1	-	14
Commonwealth Scientific and Industrial Research Organisation	9	4	4	-	-	-	8	-	-	-	-	-	-	-	-
IP Australia	9	4	4	-	-	-	8	-	-	-	-	-	-	-	-
<b>Prime Minister and Cabinet</b>															
Department of the Prime Minister and Cabinet	12	1	7	3	1	-	12	-	-	2	-	-	-	-	2
Australian Public Service Commission	9	8	1	-	-	-	9	-	-	-	-	-	-	-	-
Governor-General and Commander-in-Chief	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-
National Archives of Australia	9	-	7	2	-	-	9	1	-	2	-	-	-	-	3
Office of the Privacy Commissioner	47	21	16	8	1	-	46	-	1	2	2	-	-	-	5
<b>Resources, Energy and Tourism</b>															
Department of Resources, Energy and Tourism	3	1	2	-	-	-	3	-	-	-	-	-	-	-	-
<b>Treasury</b>															
The Treasury	5	2	3	-	-	-	5	-	-	-	-	-	-	-	-
Australian Bureau of Statistics	40	25	12	4	-	-	41	2	-	1	4	-	-	-	7
Australian Competition and Consumer Commission	36	13	16	3	3	-	35	1	-	5	-	-	1	-	7
Australian Prudential Regulation Authority	83	41	29	8	-	-	78	-	-	5	3	-	-	1	9
Australian Securities and Investments Commission	189	23	127	28	9	1	188	5	2	4	33	1	1	2	48
Australian Taxation Office	1,219	379	673	104	26	-	1,182	14	9	13	82	16	1	9	144
Australian Valuation Office	4	3	-	-	-	-	3	-	-	-	-	-	-	-	-
Productivity Commission	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-
Reserve Bank of Australia	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-
Superannuation Complaints Tribunal	11	1	7	2	1	-	11	-	-	1	-	-	-	-	1
Tax Agents' Board	14	2	4	3	1	-	10	1	1	2	-	-	-	-	4
<b>Australian Federal Police</b>															
Australian Federal Police	353	123	288	32	8	5	456	1	1	2	-	3	1	6	14
<b>Private Postal Operators</b>															
Private Postal Operators	4	2	1	2	-	-	5	-	-	1	-	2	-	1	4
<b>ACT Government Agencies</b>															
ACT Government Agencies	541	142	236	166	14	3	561	17	11	23	105	11	8	15	190
<b>Approaches about out-of-jurisdiction agencies/requests for information</b>															
Approaches about out-of-jurisdiction agencies/requests for information	20,311	17,313	2,959	-	-	-	20,272	-	-	-	-	-	-	-	-
<b>Total</b>	<b>39,932</b>	<b>25,569</b>	<b>9,129</b>	<b>4,719</b>	<b>564</b>	<b>17</b>	<b>39,298</b>	<b>663</b>	<b>466</b>	<b>598</b>	<b>3,042</b>	<b>640</b>	<b>75</b>	<b>436</b>	<b>5,940</b>

Note: for those agencies that were abolished as a result of the Administrative Arrangement Orders issued on 3 December 2007, and about which we received a small number of approaches and complaints in 2007-08, we have counted these approaches and complaints against the agency which received the function that was the subject of the complaint. This approach has not been possible for agencies about which we received a larger number of complaints. Nor has it been possible to adjust for the transfer of functions between agencies.

## APPENDIX 4 CONSULTANCY SERVICES

The office engages consultants when the expertise required is not available within the organisation or when the specialist skills required are not available without diverting resources from other higher priority tasks. In accordance with procurement guidelines, consultants are selected by open tender, panel arrangements, select tendering or direct sourcing.

Table A2 provides details of consultancy services let by the office during 2007–08 with a contract value (GST inclusive) of \$10,000 or more.

### ADVERTISING AND MARKET RESEARCH

Advertising is used to publicise the office's services. No advertising contracts were let in 2007–08. The office's advertising strategies were designed and conceived in-house. Recruitment and tender notices were placed in newspapers at a cost of \$34,794; and advertisements to publicise the

office's services were placed in newspapers and journals at a cost of \$14,754. Notices and advertisements were placed through hma Blaze.

Instinct and Reason conducted two market research surveys on behalf of the office in 2006–07 and 2007–08:

- a survey of agencies in 2006–07 to ascertain their views about our effectiveness and interactions, and to identify areas where we could improve processes to lead to speedier and more effective resolution of complaints
- a survey of complainants in 2007–08 to obtain information on three key aspects—access, demographics and quality of service.

In 2007–08 a payment of \$15,400 was made to Instinct and Reason for the agency survey. Through oversight, another payment of \$15,400 made in 2006–07 for that survey was not reported in our last annual report. Other payments totalling \$93,610 were made to Instinct and Reason in 2007–08 for the survey of complainants.

**TABLE A2** Consultancy services, 2007–08

Consultant name	Description	Contract price	Selection process <sup>(1)</sup>	Justification <sup>(2)</sup>
ThinkPlace Pty Ltd trading as ThinkPlace Trust	Provision of facilitation services	\$11,880	Select Tender	B
McPherson Consulting Pty Ltd	Own motion investigation into the administration of the CDDA Scheme by specified agencies	\$37,125	Direct Sourcing	B
Courage Partners Pty Ltd	Development and delivery of performance audit training	\$16,500	Select Tender	B
Instinct and Reason Pty Ltd	Market research services	\$104,610	Select Tender	B
<b>Total</b>		<b>\$170,115</b>		

**Definitions**

## (1) Selection process

Select tender—procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

Direct sourcing—a form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

Open tender—procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

Panel—an 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. Tenders are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a pre-determined length of time, usually at a pre-arranged price.

## (2) Justification for decision to use consultancy

A—skills currently unavailable within agency

B—need for specialised or professional skills

C—need for independent research or assessment

# APPENDIX 5

## FINANCIAL STATEMENTS



### INDEPENDENT AUDITOR'S REPORT

#### Cabinet Secretary and Special Minister of State

##### Scope

I have audited the accompanying financial statements of the Office of the Commonwealth Ombudsman for the year ended 30 June 2008, which comprise: a Statement by the Commonwealth Ombudsman and Chief Financial Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

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

The Commonwealth Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards (which include the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

##### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial

statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office of the Commonwealth Ombudsman's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Commonwealth Ombudsman's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commonwealth Ombudsman, as well as evaluating the overall presentation of the financial statements.

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

#### ***Independence***

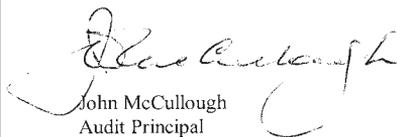
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

#### **Auditor's Opinion**

In my opinion, the financial statements of the Office of the Commonwealth Ombudsman:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Ombudsman's financial position as at 30 June 2008 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



John McCullough  
Audit Principal

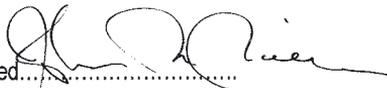
Delegate of the Auditor-General

Canberra  
4 September 2008

**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 2008 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

4 September 2008

Signed.....

Jill Jepson  
Chief Finance Officer

4 September 2008

OFFICE OF THE COMMONWEALTH OMBUDSMAN

INCOME STATEMENT

for the year ended 30 June 2008

	Notes	2008 \$	2007 \$
<b>INCOME</b>			
<b>Revenue</b>			
Revenue from government	3A	17,881,000	17,579,000
Sale of goods and rendering of services	3B	<u>1,513,253</u>	<u>1,326,486</u>
<b>Total Revenue</b>		<u>19,394,253</u>	<u>18,905,486</u>
<b>Gains</b>			
Other gains	3C	<u>21,000</u>	<u>18,000</u>
<b>Total Gains</b>		<u>21,000</u>	<u>18,000</u>
<b>TOTAL INCOME</b>		<u>19,415,253</u>	<u>18,923,486</u>
<b>EXPENSES</b>			
Employee benefits	4A	14,146,030	13,423,736
Suppliers	4B	5,103,123	4,566,785
Depreciation and amortisation	4C	783,203	687,232
Write-down and impairment of assets	4D	11,857	-
Losses from asset sales	4E	<u>27,915</u>	<u>41,920</u>
<b>TOTAL EXPENSES</b>		<u>20,072,128</u>	<u>18,719,673</u>
<b>SURPLUS/(DEFICIT)</b>		<u>(656,875)</u>	<u>203,813</u>

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

BALANCE SHEET

as at 30 June 2008

	Notes	2008 \$	2007 \$
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash and cash equivalents	5A	159,590	58,634
Trade and other receivables	5B	<u>5,144,485</u>	<u>5,092,337</u>
<b>Total financial assets</b>		<u>5,304,075</u>	<u>5,150,971</u>
<b>Non-financial assets</b>			
Infrastructure, plant and equipment	6A	1,411,558	1,842,360
Intangibles	6C	311,337	406,012
Other non-financial assets	6D	<u>149,858</u>	<u>211,401</u>
<b>Total non-financial assets</b>		<u>1,872,753</u>	<u>2,459,773</u>
<b>TOTAL ASSETS</b>		<u>7,176,828</u>	<u>7,610,744</u>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	623,352	657,064
Other payables	7B	<u>415,971</u>	<u>516,372</u>
<b>Total payables</b>		<u>1,039,323</u>	<u>1,173,436</u>
<b>Provisions</b>			
Employee provisions	8A	3,286,926	3,078,854
Other provisions	8B	<u>366,877</u>	<u>286,792</u>
<b>Total provisions</b>		<u>3,653,803</u>	<u>3,365,646</u>
<b>TOTAL LIABILITIES</b>		<u>4,693,126</u>	<u>4,539,082</u>
<b>NET ASSETS</b>		<u>2,483,702</u>	<u>3,071,662</u>
<b>EQUITY</b>			
Contributed equity		2,145,000	1,996,000
Reserves		135,167	215,252
Retained surplus		<u>203,535</u>	<u>860,410</u>
<b>TOTAL EQUITY</b>		<u>2,483,702</u>	<u>3,071,662</u>
<b>Current liabilities</b>		<b>3,882,343</b>	3,843,392
<b>Non-current liabilities</b>		<b>810,783</b>	695,690
<b>Current assets</b>		<b>5,453,933</b>	5,362,372
<b>Non-current assets</b>		<b>1,722,895</b>	2,248,372

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN  
 STATEMENT OF CHANGES IN EQUITY  
 for the year ended 30 June 2008

	Retained Earnings		Asset Revaluation Reserve		Contributed Equity/Capital		Total Equity	
	2008	2007	2008	2007	2008	2007	2008	2007
	\$	\$	\$	\$	\$	\$	\$	\$
Opening Balance	860,410	656,597	215,252	215,252	1,996,000	1,937,000	3,071,662	2,808,849
<b>Income and Expense</b>								
Revaluation adjustment	-	-	(80,085)	-	-	-	(80,085)	-
<b>Subtotal income and expenses recognised directly in equity</b>	-	-	(80,085)	-	-	-	(80,085)	-
Surplus/(deficit) for the year	(656,875)	203,813	-	-	-	-	(656,875)	203,813
<b>Total income and expenses</b>	(656,875)	203,813	(80,085)	-	-	-	(736,960)	203,813
<b>Transactions with Owners</b>								
<b>Contributions by Owners</b>								
Appropriation (equity injection)	-	-	-	-	149,000	59,000	149,000	59,000
<b>Sub-total Transactions with Owners</b>	-	-	-	-	149,000	59,000	149,000	59,000
<b>Closing balance at 30 June</b>	203,535	860,410	135,167	215,252	2,145,000	1,996,000	2,483,702	3,071,662

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

CASH FLOW STATEMENT

for the year ended 30 June 2008

	Notes	2008 \$	2007 \$
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		17,829,290	15,947,265
Goods and services		2,549,997	1,347,643
Net GST received		335,076	381,875
<b>Total cash received</b>		<b>20,714,363</b>	<b>17,676,783</b>
<b>Cash used</b>			
Employees		(14,742,760)	(13,146,128)
Suppliers		(5,644,006)	(5,022,524)
<b>Total cash used</b>		<b>(20,386,766)</b>	<b>(18,168,652)</b>
<b>Net cash flows from/(used by) operating activities</b>	9	<b>327,597</b>	<b>(491,869)</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of infrastructure, plant and equipment		-	2,692
<b>Total cash received</b>		<b>-</b>	<b>2,692</b>
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment		(146,034)	(663,103)
Purchase of intangibles		(139,607)	(210,936)
<b>Total cash used</b>		<b>(285,641)</b>	<b>(874,039)</b>
<b>Net cash flows from/(used by) investing activities</b>		<b>(285,641)</b>	<b>(871,347)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations – contributed equity		59,000	1,089,000
<b>Total cash received</b>		<b>59,000</b>	<b>1,089,000</b>
<b>Net cash flows from/(used by) financing activities</b>		<b>59,000</b>	<b>1,089,000</b>
<b>Net increase/(decrease) in cash held</b>		<b>100,956</b>	<b>(274,216)</b>
Cash and cash equivalents at the beginning of the reporting period		58,634	332,850
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>159,590</b>	<b>58,634</b>

The above statement should be read in conjunction with the accompanying notes.

OFFICE OF THE COMMONWEALTH OMBUDSMAN  
 SCHEDULE OF COMMITMENTS  
 as at 30 June 2008

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APPENDIX 5 FINANCIAL STATEMENTS

	2008 \$	2007 \$
<b>BY TYPE</b>		
<b>Commitments Receivable</b>		
Sale of goods and services	1,014,075	-
Grant income	753,605	805,017
Net GST recoverable on commitments	<u>196,303</u>	<u>416,008</u>
<b>Total commitments receivable</b>	<u>1,963,983</u>	<u>1,221,025</u>
<b>Capital Commitments</b>	<u>-</u>	<u>-</u>
<b>Total capital commitments</b>	<u>-</u>	<u>-</u>
<b>Other Commitments</b>		
Operating leases	<u>3,927,010</u>	<u>4,576,085</u>
<b>Total other commitments</b>	<u>3,927,010</u>	<u>4,576,085</u>
<b>Net commitments by type</b>	<u>1,963,027</u>	<u>3,355,060</u>
<b>BY MATURITY</b>		
<b>Commitments Receivable</b>		
<b>Sale of goods and services</b>		
One year or less	1,014,075	-
From one to five years	-	-
Over five years	<u>-</u>	<u>-</u>
<b>Total sale of goods and services</b>	<u>1,014,075</u>	<u>-</u>
<b>Grants receivable</b>		
One year or less	366,791	418,203
From one to five years	386,814	386,814
Over five years	<u>-</u>	<u>-</u>
<b>Total grants receivable</b>	<u>753,605</u>	<u>805,017</u>
<b>Net GST recoverable on commitments</b>		
One year or less	(14,945)	113,742
From one to five years	211,248	302,266
Over five years	<u>-</u>	<u>-</u>
<b>Total net GST recoverable on commitments</b>	<u>196,303</u>	<u>416,008</u>

The above schedule should be read in conjunction with the accompanying notes.

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APPENDIX 5 FINANCIAL STATEMENTS

**OFFICE OF THE COMMONWEALTH OMBUDSMAN**  
**SCHEDULE OF COMMITMENTS (CONT'D)**  
*as at 30 June 2008*

	2008	2007
	\$	\$
<b>Commitments Payable</b>		
<b>Operating lease commitments</b>		
One year or less	1,216,466	1,251,162
From one year to five years	2,710,544	3,324,923
Over five years	—	—
<b>Total operating lease commitments</b>	<u>3,927,010</u>	<u>4,576,085</u>
<b>Net commitments by maturity</b>	<u>1,963,027</u>	<u>3,355,060</u>

Note: 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.

The operating leases are adjusted periodically by the Consumer Price Index (CPI). The commitments above do not include an estimate of the future impact of CPI adjustments due to the impracticality of reliably estimating the impact and the immateriality of the likely impact.

The above schedule should be read in conjunction with the accompanying notes.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

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APPENDIX 5 FINANCIAL STATEMENTS

**NOTE 1—Summary of Significant Accounting Policies****1.1 Ombudsman Objectives**

The Office of the Commonwealth Ombudsman is an Australian Public Service Organisation. The Office of the Commonwealth Ombudsman seeks to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the office contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Ombudsman is structured to meet one outcome:

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

The office's activities contributing towards this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the office in its own right. The Ombudsman's office has no administered activities.

Departmental activities are identified under two headings for Outcome 1: Output 1 is Review of administrative action and Output 2 is Review of statutory compliance in specified areas.

The office does not conduct any administered activities.

The continued existence of the Ombudsman's office in its present form, and with its present programs, is dependent on Government policy and legislation and on continuing appropriations by Parliament for the office's administration and programs.

**1.2 Basis of Preparation of the Financial Statements**

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general-purpose financial report.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2007; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

## NOTE 1—Summary of Significant Accounting Policies (Cont'd)

## 1.2 Basis of Preparation of the Financial Statements (Cont'd)

The financial report is presented in Australian dollars.

Unless an alternative treatment is specifically required by an accounting standard or FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the Entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2008 or in the comparative financial year.

## 1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates or other judgements have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

## 1.4 Statement of Compliance

**Adoption of new Australian Accounting Standard requirements**

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standard is applicable to the current reporting period:

**Financial instrument disclosure**

AASB 7 *Financial Instruments: Disclosures* is effective for reporting periods beginning on or after 1 January 2007 (the 2007–08 financial year) and amends the disclosure requirements for financial instruments. In general AASB 7 requires greater disclosure than that previously required. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will effect the disclosure presented in future financial reports.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

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APPENDIX 5 FINANCIAL STATEMENTS

## NOTE 1—Summary of Significant Accounting Policies (Cont'd)

## 1.4 Statement of Compliance (Cont'd)

The following new standards, amendments to standards or interpretations for the current financial year have no material financial impact on the office.

- 2007–4 *Amendments to Australian Accounting Standards arising from ED 151 and Other Amendments and Erratum: Proportionate Consolidation*
- 2007–7 *Amendments to Australian Accounting Standards*
- UIG Interpretation 11 AASB 2 – *Group and Treasury Share Transactions* and 2007–1 *Amendments to Australian Accounting Standards arising from AASB Interpretation 11.*

**Future Australian Accounting Standard requirements**

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

- AASB Interpretation 12 *Service Concession Arrangements* and 2007–2 *Amendments to Australian Accounting Standards arising from AASB Interpretation 12*
- AASB 8 *Operating Segments* and 2007–3 *Amendments to Australian Accounting Standards arising from AASB 8*
- 2007–6 *Amendments to Australian Accounting Standards arising from AASB 123*
- AASB Interpretation 13 *Customer Loyalty Programmes*
- AASB Interpretation 14 *AASB 119 – The Limit on a Defined Asset, Minimum Funding Requirements and their Interaction.*

**Other**

The following standards and interpretations have been issued but are not applicable to the operations of the office.

**AASB 1049 Financial Reporting of General Government Sectors by Governments**

AASB 1049 specifies the reporting requirements for the General Government Sector and therefore has no effect on the office's financial statements.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

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APPENDIX 5 FINANCIAL STATEMENTS

## NOTE 1—Summary of Significant Accounting Policies (Cont'd)

## 1.5 Revenue

*Revenue from government*

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as revenue when the office gains control of the appropriations, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations received are recognised at their nominal amounts.

*Resources Received Free of Charge*

Resources received free of charge are recorded as either revenue or gains depending on their nature ie whether they have been generated in the course of the ordinary activities of the Ombudsman's office.

*Other types of revenue*

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the seller retains no managerial involvement nor effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

**OFFICE OF THE COMMONWEALTH OMBUDSMAN**  
**NOTES TO AND FORMING PART OF THE**  
**FINANCIAL STATEMENTS FOR THE YEAR ENDED**  
**30 JUNE 2008**

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APPENDIX 5 FINANCIAL STATEMENTS

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**NOTE 1—Summary of Significant Accounting Policies (Cont'd)**

**1.6 Gains**

***Resources received free of charge***

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature that is whether they have been generated in the course of the ordinary activities of the Ombudsman's office.

***Sale of assets***

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

**1.7 Transactions with the Government as Owner**

***Equity injections***

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in Contributed Equity in that year.

***Restructuring of Administered Arrangements***

Net assets received from or relinquished to another Australian Government Agency or Authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

***Other distributions to owners***

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2007–08, no amounts were returned to the Official Public Account.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008**NOTE 1—Summary of Significant Accounting Policies (Cont'd)****1.8 Employee Benefits**

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

**Leave**

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Ombudsman's office is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the office's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the estimated future cash flows to be made in respect of all employees at 30 June 2008. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

**Separation and redundancy**

Provision is also made for separation and redundancy payments in circumstances where the office has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

**Superannuation**

Staff of the Ombudsman's office are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

**OFFICE OF THE COMMONWEALTH OMBUDSMAN**  
**NOTES TO AND FORMING PART OF THE**  
**FINANCIAL STATEMENTS FOR THE YEAR ENDED**  
**30 JUNE 2008**

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APPENDIX 5 FINANCIAL STATEMENTS

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**NOTE 1—Summary of Significant Accounting Policies (Cont'd)**

**1.8 Employee Benefits (Cont'd)**

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Ombudsman's office makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the office's employees. The office's accounts for the contributions as if they were contributions to defined contributions plans.

The liability for superannuation recognised at 30 June 2008 represents outstanding contributions for the final fortnight of the year.

**1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

**1.10 Borrowing Costs**

All borrowing costs are expensed as incurred.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008**NOTE 1—Summary of Significant Accounting Policies (Cont'd)****1.11 Cash**

Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of three months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

**1.12 Financial Assets**

The office's classifies its financial assets in the following categories:

- financial assets as 'at fair value through profit or loss',
- 'held-to-maturity investments',
- 'available-for-sale' financial assets, and
- 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon 'trade date'.

***Effective interest method***

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.

***Financial assets at fair value through profit or loss***

Financial assets are classified as financial assets at fair value through profit or loss where the financial asset:

- has been acquired principally for the purpose of selling in the near future;
- is a part of an identified portfolio of financial instruments that the agency manages together and has a recent actual pattern of short-term profit-taking; or
- is a derivative that is not designated and effective as a hedging instrument.

Assets in this category are classified as current assets.

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

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APPENDIX 5 FINANCIAL STATEMENTS

**NOTE 1—Summary of Significant Accounting Policies (Cont'd)****1.12 Financial Assets (Cont'd)**

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

***Available-for-Sale Financial Assets***

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless management intends to dispose of the asset within 12 months of the balance sheet date.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in the reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part or all of the cumulative gain or loss previously recognised in the reserve is included profit for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments cost is used. The office has no such instruments.

***Held-to-maturity***

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold to maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

***Loans and receivables***

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

***Impairment of financial assets***

Financial assets are assessed for impairment at each balance date.

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## NOTE 1—Summary of Significant Accounting Policies (Cont'd)

## 1.12 Financial Assets (Cont'd)

*Financial assets held at amortised cost* – If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Income Statement.

*Available for sale financial assets* – If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Income Statement.

*Available for sale financial assets (held at cost)* – If there is objective evidence that an impairment loss has been incurred the amount of impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

## 1.13 Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

***Financial liabilities at fair value through profit or loss***

Financial liabilities at fair value through profit or loss are initially measured at fair value.

Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

***Other financial liabilities***

Other financial liabilities, including borrowings, are measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or where appropriate, a shorter period.

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## NOTE 1—Summary of Significant Accounting Policies (Cont'd)

## 1.13 Financial Liabilities (Cont'd)

**Supplier and other payables**

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

## 1.14 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 1.15 Financial Guarantee Contracts

Financial guarantee contracts are accounted for in accordance with AASB 139. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137.

## 1.16 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

## 1.17 Property, Plant and Equipment

**Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the office where there exists an obligation to restore the property to its original condition. These costs are included in the value of the office's leasehold improvements with a corresponding provision for the 'makegood' taken up.

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NOTE 1—Summary of Significant Accounting Policies (Cont'd)

1.17 Property, Plant and Equipment (Cont'd)

**Revaluations**

Fair values for each class of asset are determined as shown below:

Asset Class	Fair Value measured at:
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through the operating result. Revaluation decrements for a class of assets are recognised directly through operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

**Depreciation**

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the office using, in most cases, the straight line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease taking into consideration options available at the end of lease.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2008	2007
Leasehold improvements	<b>Lease term</b>	Lease term
Plant and equipment	<b>3 to 9 Years</b>	3 to 9 years

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**NOTE 1—Summary of Significant Accounting Policies (Cont'd)****1.17 Property, Plant and Equipment (Cont'd)*****Impairment***

All assets were assessed for impairment at 30 June 2008. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the office were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

**1.18 Intangibles**

The office's intangibles comprise purchased software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the software is 1 to 8 years (2006–07: 1 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2008.

**1.19 Taxation**

The office is exempt from all forms of taxation except fringe benefits tax (FBT) 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.

**1.20 Reporting of Administered Activities**

The office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2008 or in the comparative financial year.

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**NOTE 2—Events occurring after the Balance Sheet Date**

No significant events occurred after balance date that would materially affect the financial statements.

2008	2007
\$	\$

**NOTE 3 – Revenue**

Note 3A – Revenues from Government

Appropriations:

Departmental outputs	17,881,000	17,579,000
<b>Total revenues from government</b>	<b>17,881,000</b>	<b>17,579,000</b>

Note 3B – Sale of goods and rendering of services

Rendering of services to:

Rendering of services – related entities	506,666	442,586
Rendering of services – external entities	1,006,587	883,900
<b>Total sale of goods and rendering of services</b>	<b>1,513,253</b>	<b>1,326,486</b>

**Gains**

Note 3C – Other gains

Resources received free of charge	21,000	18,000
<b>Total other gains</b>	<b>21,000</b>	<b>18,000</b>

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	2008	2007
	\$	\$
<b>NOTE 4—Operating Expenses</b>		
<u>Note 4A – Employee benefits</u>		
Wages and salaries	10,694,718	11,109,866
Superannuation		
Defined contribution plans	424,557	318,868
Defined benefit plans	1,499,569	1,476,642
Leave and other entitlements	1,354,629	226,222
Other employee expenses	172,557	162,545
Separation and redundancies	–	129,593
<b>Total employee benefits</b>	<u>14,146,030</u>	<u>13,423,736</u>
<u>Note 4B – Suppliers</u>		
Provision of goods – related entities	–	–
Provision of goods – external entities	325,833	316,567
Rendering of services – related entities	600,825	754,945
Rendering of services – external entities	2,826,280	2,383,435
Operating lease rentals <sup>1</sup>	1,224,260	1,004,159
Workers' compensation premiums	125,925	107,679
<b>Total supplier expenses</b>	<u>5,103,123</u>	<u>4,566,785</u>
<sup>1</sup> These comprise minimum lease payments only.		
<u>Note 4C – Depreciation and amortisation</u>		
<u>Depreciation</u>		
Infrastructure, plant and equipment	548,921	458,742
<b>Total depreciation</b>	<u>548,921</u>	<u>458,742</u>
<u>Amortisation</u>		
Intangibles – Computer Software	234,282	228,490
<b>Total depreciation and amortisation</b>	<u>783,203</u>	<u>687,232</u>

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	2008	2007
	\$	\$
<b>NOTE 4—Operating Expenses (Cont'd)</b>		
<u>Note 4D – Write-down and impairment of assets</u>		
Asset Write-Downs from		
Impairment on financial instruments*	11,857	—
<b>Total write-down and impairment of assets</b>	<u>11,857</u>	<u>—</u>
* For full disclosure on the impairment on financial instruments, see note 12B		
<u>Note 4E – Losses from asset sales</u>		
Infrastructure, plant and equipment		
Proceeds from sale	—	(2,692)
Carrying value of assets sold	27,915	42,581
Selling expense	—	—
Intangibles		
Proceeds from sale	—	—
Carrying value of assets sold	—	2,031
Selling expense	—	—
<b>Total losses from asset sales</b>	<u>27,915</u>	<u>41,920</u>
<b>NOTE 5—Financial Assets</b>		
<u>Note 5A – Cash and cash equivalents</u>		
Cash at bank and on hand	159,590	58,634
<b>Total cash and cash equivalents</b>	<u>159,590</u>	<u>58,634</u>
<u>Note 5B – Trade and other receivables</u>		
Goods and services	273,483	309,001
GST receivable from the Australian Taxation Office	50,414	92,601
Appropriation receivable – for existing outputs	4,832,445	4,690,735
<b>Total trade and other receivables (gross)</b>	<u>5,156,342</u>	<u>5,092,337</u>

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	2008	2007
	\$	\$
<b>NOTE 5—Financial Assets (Cont'd)</b>		
<u>Note 5B – Trade and other receivables (Cont'd)</u>		
Less: Allowance for doubtful debts		
Goods and services	11,857	–
<b>Total trade and other receivables (net)</b>	<u>5,144,485</u>	<u>5,092,337</u>
Receivables are represented by:		
Current	5,144,485	5,092,337
Non-current	–	–
<b>Total trade and other receivables (net)</b>	<u>5,144,485</u>	<u>5,092,337</u>
All receivables are current assets. Credit terms are net 30 days (2007: 30 days).		
Receivables (gross) are aged as follows:		
Not Overdue	5,091,479	5,091,724
Overdue by:		
less than 30 days	64,863	113
30 to 60 days	–	–
61 to 90 days	–	–
More than 90 days	–	500
<b>Total trade and other receivables (gross)</b>	<u>5,156,342</u>	<u>5,092,337</u>
The allowance for doubtful debt is aged as follows:		
Not Overdue	11,857	–
Overdue by:		
less than 30 days	–	–
30 to 60 days	–	–
61 to 90 days	–	–
More than 90 days	–	–
<b>Total allowance for doubtful debts</b>	<u>11,857</u>	<u>–</u>
<b>Reconciliation of the allowance for doubtful debts:</b>		
Opening balance	–	–
Increase/decrease recognised in net result	11,857	–
<b>Closing balance</b>	<u>11,857</u>	<u>–</u>

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	2008	2007
	\$	\$
<b>NOTE 6—Non-financial assets</b>		
<u>Note 6A – Infrastructure, plant and equipment</u>		
<b><i>Leasehold improvements</i></b>		
At fair value	1,468,624	1,430,288
Accumulated depreciation	<u>(716,712)</u>	<u>(459,036)</u>
<b><i>Total leasehold improvements</i></b>	<u>751,912</u>	<u>971,252</u>
<b><i>Plant and equipment</i></b>		
At fair value	1,481,867	1,455,286
Accumulated depreciation	<u>(822,221)</u>	<u>(584,178)</u>
<b><i>Total plant and equipment</i></b>	<u>659,646</u>	<u>871,108</u>
<b><i>Total Infrastructure, plant and equipment</i></b>	<u>1,411,558</u>	<u>1,842,360</u>

Formal valuations are generally undertaken where management considers there is a material/ significant difference between the carrying value of the asset and its fair value. In between formal revaluations the office monitors the assets ensuring the fair value of the assets is materially correct. This is conducted annually.

No indicators of impairment were found for infrastructure, plant and equipment.

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**NOTE 6—Non-financial assets (Cont'd)**

Note 6B – Analysis of infrastructure, plant and equipment

**TABLE A**

**Reconciliation of the opening and closing balances of infrastructure, plant and equipment (2007–08)**

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2007			
Gross Book Value	1,430,288	1,455,286	2,885,574
Accumulated Depreciation	(459,036)	(584,178)	(1,043,214)
<b>Net book value 1 July 2008</b>	<b>971,252</b>	<b>871,108</b>	<b>1,842,360</b>
Additions:			
by purchase	38,336	107,698	146,034
Net revaluation increment/(decrement)	—	—	—
Reclassification	—	—	—
Depreciation expense	(257,676)	(291,245)	(548,921)
Disposals			
Other disposals	—	(27,915)	(27,915)
<b>Net book value 30 June 2008</b>	<b>751,912</b>	<b>659,646</b>	<b>1,411,558</b>
Net book value as at 30 June 2008 represented by:			
Gross Book Value	1,468,624	1,481,867	2,950,491
Accumulated depreciation	(716,712)	(822,221)	(1,538,933)
	751,912	659,646	1,411,558

**TABLE B**

**Reconciliation of the opening and closing balances of infrastructure, plant and equipment (2006–07)**

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2006			
Gross Book Value	1,109,640	1,213,829	2,323,469
Accumulated Depreciation	(298,354)	(344,535)	(642,889)
<b>Net book value 1 July 2008</b>	<b>811,286</b>	<b>869,294</b>	<b>1,680,580</b>
Additions:			
by purchase	402,002	261,101	663,103
Net revaluation increment/(decrement)	—	—	—
Reclassification	(13,565)	13,565	—
Depreciation expense	(201,931)	(256,811)	(458,742)
Disposals			
Other disposals	(26,540)	(16,041)	(42,581)
<b>Net book value 30 June 2007</b>	<b>971,252</b>	<b>871,108</b>	<b>1,842,360</b>
Net book value as at 30 June 2007 represented by:			
Gross Book Value	1,430,288	1,455,286	2,885,574
Accumulated depreciation	(459,036)	(584,178)	(1,043,214)
	971,252	871,108	1,842,360

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	2008	2007
	\$	\$
<b>NOTE 6—Non-financial assets (Cont'd)</b>		
<u>Note 6C – Intangibles</u>		
Computer software:		
Purchased – at cost	1,061,520	1,128,915
Accumulated amortisation	(750,183)	(722,903)
<b>Total intangibles (non-current)</b>	<u>311,337</u>	<u>406,012</u>

No indicators of impairment were found for intangible assets.

**TABLE C**  
**Reconciliation of opening and closing balances of intangibles**

Item	Computer software purchased 2007–08	Computer software purchased 2006–07
	\$	\$
<b>As at 1 July 2007</b>		
Gross book value	1,128,915	946,593
Accumulated amortisation	(722,903)	(520,996)
<b>Net book value 1 July 2007</b>	<b>406,012</b>	<b>425,597</b>
Additions:		
by purchase	139,607	210,936
by finance lease	–	–
Reclassifications	–	–
Amortisation	(234,282)	(228,490)
Impairments recognised in the operating result	–	–
Other movements	–	–
Disposals:		
from disposal of entities or operations (including restructuring)	–	–
other disposals	–	(2,031)
<b>Net book value 30 June 2008</b>	<b>311,337</b>	<b>406,012</b>
<b>Net book value as of 30 June 2008 represented by:</b>		
Gross book value	1,061,520	1,128,915
Accumulated amortisation	(750,183)	(722,903)
	<b>311,337</b>	<b>406,012</b>

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	2008	2007
	\$	\$
<b>NOTE 6—Non-financial assets (Cont'd)</b>		
<u>Note 6D – Other non-financial assets</u>		
Prepayments	<u>149,858</u>	<u>211,401</u>
All other non-financial assets are current assets.		
<b>NOTE 7—Payables</b>		
<u>Note 7A – Suppliers payables</u>		
Trade creditors and accruals	<u>623,352</u>	<u>657,064</u>
All supplier payables are current liabilities. Settlement is usually made net 30 days.		
<u>Note 7B – Other payables</u>		
Unearned income	329,839	401,073
Lease incentives	<u>86,132</u>	<u>115,299</u>
<b>Total other payables</b>	<u><b>415,971</b></u>	<u><b>516,372</b></u>
Other payables are represented by:		
Current	355,801	430,240
Non Current	<u>60,170</u>	<u>86,132</u>
<b>Total other payables</b>	<u><b>415,971</b></u>	<u><b>516,372</b></u>

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	2008	2007
	\$	\$
<b>Note 8—Provisions</b>		
<u>Note 8A – Employee provisions</u>		
Salaries and wages	170,187	98,173
Leave	2,975,739	2,787,715
Superannuation	141,000	154,169
Separation and redundancy	–	38,797
<b>Total employee provisions</b>	<u>3,286,926</u>	<u>3,078,854</u>
<b>Employee provisions are represented by:</b>		
Current	2,839,580	2,714,768
Non-current	447,346	364,086
<b>Total employee provisions</b>	<u>3,286,926</u>	<u>3,078,854</u>

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee leave provisions expected to be settled in 12 months from the reporting date are \$947,091 (2007: \$810,860), in excess of one year are \$2,028,648 (2007: \$1,976,855).

	2008	2007
	\$	\$
<u>Note 8B – Other provisions</u>		
Restoration obligations	<u>366,877</u>	<u>286,792</u>
<b>Other provisions are represented by:</b>		
Current	63,610	41,320
Non-current	303,267	245,472
<b>Total Other Provisions</b>	<u>366,877</u>	<u>286,792</u>
Carrying amount at the beginning of the year	286,792	306,049
Additional provisions made	80,085	–
Amounts reversed	–	(19,257)
Carrying amount at the end of the year	<u>366,877</u>	<u>286,792</u>

The office currently has seven (2007: seven) agreements for the leasing of premises which have provisions requiring the office to restore the premises to their original condition at the conclusion of the lease. The Ombudsman's office has made a provision to reflect the present value of these obligations.

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	2008	2007
	\$	\$
<b>Note 9—Cash flow reconciliation</b>		
<i>Reconciliation of cash and cash equivalents per Balance Sheet to Cash Flow Statement</i>		
Report cash and cash equivalents as per:		
Cash Flow Statement	159,590	58,634
Balance Sheet	<u>159,590</u>	<u>58,634</u>
Difference	<u>-</u>	<u>-</u>
<i>Reconciliation of operating result to net cash flows from operating activities:</i>		
Operating result	(656,875)	203,813
Depreciation/amortisation	783,203	687,232
Net loss/(gain) on disposal of assets	27,915	41,920
(Increase)/Decrease in receivables	37,852	(1,809,247)
(Increase)/Decrease in prepayments	61,543	(43,134)
Increase/(Decrease) in employee provisions	208,072	362,906
Increase/(Decrease) in supplier payables	(33,712)	973
Increase/(Decrease) in other payables	(100,401)	82,925
Increase/(Decrease) in other provisions	<u>-</u>	<u>(19,257)</u>
<b>Net cash from/(used by) operating activities</b>	<b><u>327,597</u></b>	<b><u>(491,869)</u></b>

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	2008	2007
<b>Note 10—Senior Executive Remuneration</b>		
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
	<b>Number</b>	<b>Number</b>
\$130,000 to \$144,999	1	—
\$145,000 to \$159,999	1	—
\$160,000 to \$174,999	—	1
\$175,000 to \$189,999	—	3
\$190,000 to \$204,999	1	1
\$235,000 to \$249,999	1	1
\$250,000 to \$264,999	1	1
\$295,000 to \$309,999	—	1
\$325,000 to \$339,999	—	1
\$340,000 to \$354,999	1	—
<b>Total</b>	<b>6</b>	<b>9</b>
	<b>2008</b>	<b>2007</b>
	<b>\$</b>	<b>\$</b>
The aggregate amount of total remuneration of senior executives shown above.	<b>1,342,125</b>	2,046,304
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.	—	—
<b>Note 11—Remuneration of Auditors</b>		
Financial statement audit services are provided free of charge to the office.		
The fair value of the services provided was:	<b>21,000</b>	18,000
No other services were provided by the Auditor-General.		

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	2008	2007
	\$	\$
<b>NOTE 12—Financial Instruments</b>		
<u>Note 12A – Categories of financial instruments</u>		
<b>Financial Assets</b>		
Loans and receivables financial assets		
Trade and other receivables	261,626	309,001
Cash and cash equivalents	159,590	58,634
<b>Carrying amount of financial assets</b>	<u>421,216</u>	<u>367,635</u>
<b>Financial Liabilities</b>		
At amortised cost		
Trade and other payables	623,352	657,064
<b>Carrying amount of financial liabilities</b>	<u>623,352</u>	<u>657,064</u>
<u>Note 12B – Net income and expense from financial assets</u>		
<b>Loans and receivables</b>		
Interest revenue	-	-
Exchange gains (loss)	-	-
Impairment	(11,857)	-
Gain (loss) on disposal	-	-
<b>Net gain (loss) from loans and receivables</b>	<u>(11,857)</u>	<u>-</u>
<b>Net gain (loss) from financial assets</b>	<u>(11,857)</u>	<u>-</u>

The net income/expense from financial assets not at fair value through profit and loss is nil.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

	2008	2007
	\$	\$
<b>NOTE 12—Financial Instruments (Cont'd)</b>		
<u>Note 12C – Net income and expense from financial liabilities</u>		
<b>Financial liabilities – at amortised cost</b>		
Interest expense	-	-
Exchange gains (loss)	-	-
Gain (loss) on disposal	-	-
<b>Net gain (loss) from financial liabilities – at amortised cost</b>	-	-
<b>Net gain (loss) from financial liabilities</b>	-	-

The net income/expense from financial liabilities not at fair value through profit and loss is nil.

Note 12D – Fair value of financial instruments

	Carrying amount 2008 \$	Fair value 2008 \$	Carrying amount 2007 \$	Fair value 2007 \$
<b>Financial Assets</b>				
Trade and other receivables	261,626	261,626	309,001	309,001
Cash and cash equivalents	159,590	159,590	58,634	58,634
<b>Total Financial Assets</b>	<u>421,216</u>	<u>421,216</u>	<u>367,635</u>	<u>367,635</u>
<b>Financial Liabilities</b>				
Trade and other payables	623,352	623,352	657,064	657,064
<b>Total Financial Liabilities</b>	<u>623,652</u>	<u>623,352</u>	<u>657,064</u>	<u>657,064</u>

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APPENDIX 5 FINANCIAL STATEMENTS

NOTE 12—Financial Instruments (Cont'd)

**Loans and receivables designated at fair value through profit or loss**

The following table illustrates changes in the fair value of loans and receivables designated at fair value through profit and loss that arose due to credit risk.

	2008 \$	2007 \$
<b>Fair value changes due to credit risk:</b>		
during the period	-	-
prior periods	-	-
	<u>-</u>	<u>-</u>
<b>Cumulative change</b>	<u>-</u>	<u>-</u>

The following table illustrates changes in the fair value of credit derivatives relating to loans and receivables designated at fair value through profit and loss:

	2008 \$	2007 \$
<b>Fair value changes due to credit risk:</b>		
during the period	-	-
prior periods	-	-
	<u>-</u>	<u>-</u>
<b>Cumulative change</b>	<u>-</u>	<u>-</u>

**Valuation method used for determining the fair value of financial instruments**

The following table identifies for those assets and liabilities (those at fair value through profit or loss or available for sale) carried at fair value (above) whether fair value was obtained by reference to market prices or by a valuation technique that employs observable market transactions, or one that uses non-observable market inputs to determine a fair value.

	Valuation technique utilising			Total \$
	Market values \$	Market inputs \$	Non-market inputs \$	
<b>Financial assets at fair value</b>				
Trade and other receivables	-	-	261,626	261,626
Cash and cash equivalents	159,590	-	-	159,590
<b>Financial assets at fair value</b>	<u>159,590</u>	<u>-</u>	<u>261,626</u>	<u>421,216</u>
<b>Financial liabilities at fair value</b>				
Trade and other payables	-	-	623,352	623,352
<b>Financial liabilities at fair value</b>	<u>-</u>	<u>-</u>	<u>623,352</u>	<u>623,352</u>

OFFICE OF THE COMMONWEALTH OMBUDSMAN

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APPENDIX 5 FINANCIAL STATEMENTS

**NOTE 12—Financial Instruments (Cont'd)**

Note 12E—Financial assets reclassified

There were no financial assets reclassified.

Note 12F—Credit risk

Credit risk is defined as 'the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation'. The office's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

A significant portion of the 'loans and receivables' are appropriations receivable from the Australian Government, therefore the credit risk for these amounts is low. The 'loans and receivables' are monitored on an ongoing basis by the office.

The following table illustrates the office's gross exposure to credit risk, excluding any collateral or credit enhancements.

	2008 \$	2007 \$
<b>Financial Assets</b>		
Trade and other receivables	261,626	309,001
Cash and cash equivalents	<u>159,590</u>	<u>58,634</u>
<b>Total</b>	<u><u>421,216</u></u>	<u><u>367,635</u></u>

The office does not hold any collateral or other credit enhancement facilities against these assets.

Credit quality of financial instruments not past due or individually determined as impaired

	Not Past Due Nor Impaired 2008 \$	Not Past Due Nor Impaired 2007 \$	Past Due or Impaired 2008 \$	Past Due or Impaired 2007 \$
<b>Financial assets</b>				
Trade and other receivables	<u>196,763</u>	<u>308,388</u>	<u>76,720</u>	<u>613</u>
<b>Total</b>	<u><u>196,763</u></u>	<u><u>308,388</u></u>	<u><u>76,720</u></u>	<u><u>613</u></u>

OFFICE OF THE COMMONWEALTH OMBUDSMAN  
 NOTES TO AND FORMING PART OF THE  
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NOTE 12—Financial Instruments (Cont'd)

Ageing of financial assets that are past due but not impaired for 2008

	0 to 30 days \$	31 to 60 days \$	61 to 90 days \$	90+ days \$	Total \$
Trade and other receivables	64,863	–	–	–	64,863
<b>Total</b>	64,863	–	–	–	64,863

Ageing of financial assets that are past due but not impaired for 2007

	0 to 30 days \$	31 to 60 days \$	61 to 90 days \$	90+ days \$	Total \$
Trade and other receivables	113	–	–	500	613
<b>Total</b>	113	–	–	500	613

Note 12G – Liquidity risk

Liquidity risk is defined as the risk that the Office of the Ombudsman is not able to meet its obligations at a reasonable time. The office monitors the amount of cash available in its bank account and the appropriations receivable which it is able to drawdown from the Department of Finance and Deregulation. An estimate of the amount payable by the office is made on a weekly basis. A drawdown is submitted to ensure that there is sufficient cash in the office's bank account to meet its obligations.

The following tables illustrate the maturities for financial liabilities:

	On demand 2008 \$	Within 1 year of 2008 \$	1 to 5 years 2008 \$	> 5 years 2008 \$	Total 2008 \$
Trade and other payables	623,352	–	–	–	623,352
<b>Total</b>	623,352	–	–	–	623,352

## OFFICE OF THE COMMONWEALTH OMBUDSMAN

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## NOTE 12—Financial Instruments (Cont'd)

	On demand 2007 \$	Within 1 year of 2007 \$	1 to 5 years 2007 \$	> 5 years 2007 \$	Total 2007 \$
Trade and other payables	657,064	–	–	–	657,064
<b>Total</b>	<b>657,064</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>657,064</b>

Note 12H—Market risk

The Office of the Ombudsman has no significant exposure to market risk.

**NOTE 13—Contingent Liabilities**

The office has no contingent liabilities.

The Office of the Commonwealth Ombudsman has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable, and all are considered remote. There are no existing or likely claims of which the office is aware.

OFFICE OF THE COMMONWEALTH OMBUDSMAN  
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**NOTE 14—Appropriations**

Note 14A—Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2008	2007
	\$	\$
Balance brought forward from previous year	4,782,970	3,400,034
Appropriation Act:		
Appropriation Act (No.1) 2007–08	17,763,000	16,396,000
Appropriation Act (No.3) 2007–08	–	1,183,000
NTER Appropriation Act (No.1) 2007–08	200,000	–
Reductions of appropriations (Appropriation Act section 9)	(82,000)	–
Advance to the Finance Minister (Appropriation Act section 11)	–	–
Comcover receipts (Appropriation Act section 12)	71,962	4,000
FMA Act:		
Refunds credited (FMA section 30)	170,426	20,824
Appropriations to take account of recoverable GST (FMA section 30A)	292,889	505,559
Annotations to 'net appropriations' (FMA section 31)	2,307,609	1,326,486
Total appropriation available for payments	25,506,856	22,835,903
Cash payments made during the year (GST inclusive)	20,613,407	18,052,933
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	4,893,449	4,782,970
Cash at bank and on hand	159,590	58,634
*Departmental appropriations receivable	4,683,445	4,631,735
GST Receivable from the ATO	50,414	92,601
<b>Total</b>	<b>4,893,449</b>	<b>4,782,970</b>

\*Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30 JUNE 2008

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APPENDIX 5 FINANCIAL STATEMENTS

**NOTE 14—Appropriations (Cont'd)**

Note 14B—Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

Particulars	Non-Operating	
	2008 \$	2007 \$
Balance brought forward from previous year	59,000	1,089,000
Appropriation Act:		
Appropriation Act (No.2) 2007-08	—	—
Appropriation Act (No.4) 2007-08	—	59,000
NTER Appropriation Act (No.2) 2007-08	149,000	—
<b>Total appropriation available for payments</b>	<b>208,000</b>	<b>1,148,000</b>
Cash payments made during the year (GST inclusive)	59,000	1,089,000
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	149,000	59,000
Appropriation receivable	149,000	59,000
<b>Total</b>	<b>149,000</b>	<b>59,000</b>

**NOTE 15—Reporting of Outcomes**

Note 15A—Net Cost of Outcome Delivery

	Outcome 1	
	2008 \$	2007 \$
<b>Expenses</b>		
Administered	—	—
Departmental	20,072,128	18,719,673
<b>Total expenses</b>	<b>20,072,128</b>	<b>18,719,673</b>
<b>Costs recovered from provision of goods and services to the non-government sector</b>		
Administered	—	—
Departmental	1,006,587	883,900
<b>Total costs recovered</b>	<b>1,006,587</b>	<b>883,900</b>
<b>Other external revenues</b>		
Administered	—	—
Total Administered	—	—
Departmental	506,666	442,586
<b>Total other external revenues</b>	<b>506,666</b>	<b>442,586</b>
<b>Net cost (contribution) of outcome</b>	<b>18,558,875</b>	<b>17,393,187</b>

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE  
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**NOTE 15—Reporting of Outcomes (Cont'd)**

Note 15B—Major Classes of Departmental Revenues and Expenses by Output

	Outcome 1					
	Output 1		Output 2		Output 1 Total	
	2008	2007	2008	2007	2008	2007
	\$	\$	\$	\$	\$	\$
<b>Departmental expenses</b>						
Employees	13,410,436	12,669,322	735,594	754,414	14,146,030	13,423,736
Suppliers	4,837,761	4,310,132	265,362	256,653	5,103,123	4,566,785
Depreciation and amortisation	742,476	648,610	40,727	38,622	783,203	687,232
Other	37,704	39,564	2,068	2,356	39,772	41,920
<b>Total departmental expenses</b>	<b>19,028,377</b>	<b>17,667,628</b>	<b>1,043,751</b>	<b>1,052,045</b>	<b>20,072,128</b>	<b>18,719,673</b>
<b>Funded by:</b>						
Revenues from government	16,872,512	16,591,060	1,008,488	987,940	17,881,000	17,579,000
Sales of goods and services	1,513,353	1,326,486	—	—	1,513,353	1,326,486
Other non-taxation revenues	—	—	—	—	—	—
<b>Total departmental revenues</b>	<b>18,385,865</b>	<b>17,917,546</b>	<b>1,008,488</b>	<b>987,940</b>	<b>19,394,353</b>	<b>18,905,486</b>

Direct costs for Outputs 1 and 2 are allocated primarily on staff numbers.

Indirect costs, such as corporate support expenses, are allocated on staff numbers and square metres occupied. The provision of services by corporate support areas is predominantly driven by staff demands. Some exceptions exist, but testing has shown that other, more complex allocation methods do not produce a materially different result from that produced by this simple allocation method.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

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FINANCIAL STATEMENTS FOR THE YEAR ENDED  
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**Note 16—Compensation and Debt Relief**

No Act of Grace payments were made during the reporting period (2007: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997* (2007: nil).

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## ABBREVIATIONS AND ACRONYMS

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
ACT	Australian Capital Territory
ACS	Australian Customs Service
ADF	Australian Defence Force
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979</i> (Cth)
AGIMO	Australian Government Information Management Office
ANAO	Australian National Audit Office
ANU	Australian National University
ANZOA	Australian and New Zealand Ombudsman Association
AO	Officer of the Order of Australia
AOS	assurance of support
APS	Australian Public Service
APSC	Australian Public Service Commission
AQIS	Australian Quarantine and Inspection Service
ARO	Authorised Review Officer
ATO	Australian Taxation Office
AusAID	Australian Agency for International Development
AWA	Australian Workplace Agreement
CASA	Civil Aviation Safety Authority
CCC	Customer Contact Centre
CDDA	Compensation for Detriment caused by Defective Administration
CDEP	Community Development Employment Projects
Complaints Act	<i>Complaints (Australian Federal Police) Act 1981</i> (Cth)
Crimes Act	<i>Crimes Act 1914</i> (Cth)
CSA	Child Support Agency
CSHC	Commonwealth Seniors Health Card
Cth	Commonwealth
DAFF	Department of Agriculture, Fisheries and Forestry
DEEWR	Department of Education, Employment and Workplace Relations
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade

DFO	Defence Force Ombudsman
DHA	Defence Housing Australia
DHS	Department of Human Services
DIAC	Department of Immigration and Citizenship
DIISR	Department of Innovation, Industry, Science and Research
DPO	Departure Prohibition Order
DSP	disability support pension
DVA	Department of Veterans' Affairs
EL	Executive Level
FaCSIA	Department of Families, Community Services and Indigenous Affairs
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1982</i> (Cth)
FTB	Family Tax Benefit
GFU	Global Feedback Unit
GIC	General Interest Charge
GSL	Global Solutions Limited (Australia) Pty Ltd
GST	goods and services tax
Hon.	Honourable
IDC	Immigration Detention Centre
IGADF	Inspector-General of the Australian Defence Force
IGD	Inspector-General Division
IOI	International Ombudsman Institute
IRH	immigration residential housing
IT	information technology
JCA	job capacity assessment
JNM	Job Network Member
LPG	liquid petroleum gas
Migration Act	<i>Migration Act 1958</i> (Cth)
MOA	memorandum of agreement
MP	Member of Parliament
NAIDOC	originally stood for National Aborigines and Islanders Day Observance Committee (it is now a week of celebration of the survival of Indigenous culture and the Indigenous contribution to modern Australia)
NOC	National Ombudsman Commission of Indonesia
NSA	newstart allowance
NSW	New South Wales

NT	Northern Territory
NTER	Northern Territory Emergency Response
OCPNG	Ombudsman Commission of Papua New Guinea
OH&S	occupational health and safety
OH&S Act	<i>Occupational Health and Safety Act 1991</i> (Cth)
Ombudsman Act	<i>Ombudsman Act 1976</i> (Cth)
OPC	Office of the Protective Commissioner
PA	public address
PAES	Portfolio Additional Estimates Statements
PBS	Portfolio Budget Statements
PIO	Postal Industry Ombudsman
PM&C	Department of Prime Minister and Cabinet
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defence Force
PPO	private postal operator
Privacy Act	<i>Privacy Act 1988</i> (Cth)
Prof.	Professor
Public Service Act	<i>Public Service Act 1999</i> (Cth)
Qld	Queensland
RAAF	Royal Australian Air Force
ROG	redress of grievance
RPNGC	Royal Papua New Guinea Constabulary
s	section
SA	South Australia
SD Act	<i>Surveillance Devices Act 2004</i> (Cth)
SES	Senior Executive Service
SG Act	<i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994
SSAT	Social Security Appeals Tribunal
TAS	Tasmania
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)
TRA	Trades Recognition Australia
VIC	Victoria
WA	Western Australia

## COMPLIANCE INDEX

This is a guide to the report's compliance with the Requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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