

Annual Report 2008–2009



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1 October 2009

Senator the Hon. Joe Ludwig MP
Cabinet Secretary and Special
Minister of State
Parliament House
CANBERRA ACT 2600

Dear Minister

I have pleasure in submitting the thirty-second Commonwealth Ombudsman Annual Report for the year ended 30 June 2009, as required by s 19(1) of the *Ombudsman Act 1976*.

The report also contains the Annual Reports of the Defence Force Ombudsman and the Postal Industry Ombudsman in accordance with s 19F(3) and s 19X of the Act respectively.

Section 38 of the *Complaints (Australian Federal Police) Act 1981*, now repealed, requires a report on operations of the Ombudsman under that Act during the year ended 30 June 2009. This report deals with those matters.

I certify that this report has been prepared in accordance with the Requirements for Annual Reports for 2008–09 as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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

Yours faithfully

Prof. John McMillan
Commonwealth 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 office's management and accountability arrangements, and summarises our engagement with various stakeholders.

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.

Ombudsmen—200 years of service

Briefly outlines the development of the modern concept of an ombudsman over the past 200 years since the first ombudsman office was established in Sweden in 1809.

Appendixes and references

The appendixes include freedom of information reporting; statistics on the number 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 body of the report, a list of acronyms and abbreviations, and the addresses for each of our offices.

CONTACTING THE COMMONWEALTH OMBUDSMAN

Enquiries about this report, or the information in it, should be directed to the Director of Public Affairs, Commonwealth Ombudsman. If you would like to make a complaint, or obtain further information about the Ombudsman:

Visit: Ground Floor, 1 Farrell Place
Canberra ACT 2600

Write to: GPO Box 442, Canberra ACT 2601

Phone: 1300 362 072

Fax: 02 6249 7829

Email: ombudsman@ombudsman.gov.au

Website: www.ombudsman.gov.au

The *Commonwealth Ombudsman Annual Report 2008–2009* is available on our website.

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OMBUDSMAN

FOREWORD

There was increased activity in each of the Ombudsman's five key functions during 2008–09.

First, in complaint handling and investigation, the office received 45,719 approaches and complaints during the year—an increase of 14%. An investigation was conducted in 5,233 cases.

The main reason for this increase is the readiness of people to seek assistance from an independent office in resolving a problem with government. The public expects government officials to be competent and helpful, and are more ready to complain when mistakes occur or service standards decline.

Second, and partly in response, the Ombudsman's office devoted more attention to initiating own motion investigations into potential problem areas in public administration. Eighteen investigation reports were published in 2008–09—more than in any previous year.

A characteristic of those reports is that they deal with issues thrown up by individual complaints that point to more general problems in agency administration. A report can be an effective way of highlighting systemic weaknesses and prompting agencies to undertake administrative reform. During 2009–10 this program of own motion investigations will be extended, with a special focus on the investigation of complaint issues that arise in more than one agency.

Third, there has been a steady increase in the compliance auditing work of the office. In 2008–09 we conducted 30 inspections of the records of law enforcement and other agencies to ensure strict compliance with laws regulating telecommunications interception, electronic surveillance, controlled operations and access to stored communications. This



Prof. John McMillan, Commonwealth Ombudsman

compares to 10 inspections a year four years ago.

The purpose of these inspections is to provide reassurance to Parliament and the public that coercive and invasive law enforcement powers are lawfully invoked. If so, there is a greater readiness by the legislature to entrust those powers to agencies as an aid to the enforcement and administration of the law. We expect this trend to continue. For example, legislation was before the Parliament in the latter half of 2009 to require the Ombudsman to review the conduct of each examination conducted by the Fair Work Building Industry Inspectorate.

Fourth, the office has acquired additional specialist tasks that involve the monitoring or oversight of agency operations. Three ongoing functions that resulted in public reports were the audit of complaint handling by the Australian Federal Police; inspection of the records of the Australian Quarantine and Inspection Service relating to quarantine investigations; and the preparation of a report on each person held in immigration detention for more than two years (now six months).

Other monitoring activities during the year included unannounced visits to immigration detention centres; accompanying immigration, taxation and police officers on compliance operations; and regular visits to Christmas Island to oversight the reception and processing of illegal maritime arrivals.

The fifth function of the office is to promote good administration in Australian Government agencies. Considerably more emphasis was devoted to this function in 2008–09. The Ombudsman is uniquely placed to identify areas of administrative weakness, and to distil the lessons and principles that can improve standards of public administration. This led to the publication of a *Better Practice Guide to Complaint Handling*, seven fact sheets, three e-bulletins containing Ombudsman case studies, 19 submissions to parliamentary and other inquiries, and presentations by staff to over fifty conferences, seminars and workshops.

We will take this initiative a step further in 2009–10 by publishing a *Better Practice Guide to Good Administration*.

There was activity during the year on two other fronts. The office led the formation of a Pacific Ombudsman Alliance, to provide support for complaint handling in Pacific Islands Forum countries. The office hosted and visited Ombudsman staff from many of these countries. There was also an active outreach program of 219 visits to regional areas and capital cities in all Australian states and territories.

Turning to other matters, a special feature of this annual report, represented both on the cover and in Chapter 8, is that the Ombudsman institution celebrated its 200th anniversary in 2009. The first office designated as an Ombudsman office was established in Sweden in 1809. This was part of a constitutional settlement to end autocratic rule and recognise the right of citizens to lodge a grievance against government.

The International Ombudsman Institute held a conference in Stockholm in 2009 to mark this anniversary. Many of the 140 or more countries in which Ombudsman offices have been established participated in the conference. Most of the offices, including those in Australia, were established in the last 40 years.

The global expansion in Ombudsman work was a strong theme of the conference. This has paralleled a growth in the scale and complexity of government. The special role of the Ombudsman is to represent citizens in the affairs of government, not as an advocate but as an independent agency that can check whether laws and procedures are properly followed. This can redress the imbalance that exists between the powers and resources of government and the public.

The traditional mandate of the Ombudsman has not changed over 200 years, though many offices have broadened their horizons. Some have a special statutory role to seek protection for vulnerable groups in society, such as children, refugees, people in detention and those suffering mental illness. An added emphasis is also given by many offices to human rights values, social democratic objectives, and prevention of corruption in government.

Another theme picked up in the conference was the role that Ombudsman offices play in alternative dispute resolution. The quest for individual justice grows stronger in democratic countries, but this can be hampered by cost and legal formalities. The Ombudsman has proved to be an accessible and inexpensive justice forum for many people in dispute with government.

The Commonwealth Ombudsman's office is proud to play an active role in the international development of the Ombudsman institution. We believe that this trend makes a solid contribution to the development of integrity and transparency in government worldwide.

John McMillan

Commonwealth Ombudsman

Overview

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CHAPTER 1

Ombudsman's review

1

CHAPTER 1 OMBUDSMAN'S REVIEW

The primary function of the Ombudsman's 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.

The idea of an ombudsman-like office—someone to safeguard citizens in their dealings with government—has been seen in one form or another in a number of civilisations. The first modern ombudsman office was created in Sweden in 1809. By the 200th anniversary, worldwide there were more than 140 statutory ombudsman offices at the national or sub-national level with oversight of public authorities.

In Australia, the Commonwealth Ombudsman's office has been in operation since 1977. Since then the office has dealt with hundreds of thousands of complaints about all areas of government.

COMPLAINTS

In 2008–09 we received 45,719 approaches and complaints, 14% more than last year. The number of approaches and complaints about agencies within the Ombudsman's jurisdiction (19,412) decreased slightly from 2007–08, when we had recorded a 9% increase from 2006–07. This year there was a 30% increase in the number of complaints about matters outside our jurisdiction and requests for information. This was the third consecutive year in which there was a substantial increase in these types of approaches.

During the year we dealt with approaches and complaints about more than 120 Australian Government agencies. We investigated 5,233 separate complaints, compared to 4,700 in 2007–08. Some agency error or deficiency was identified in 10% of the complaints investigated, compared to 8% last year. We also identified one or more remedies in 74% of the complaints investigated, almost the same as last year.

Our timeliness in closing all approaches and complaints, and investigated complaints, decreased from last year. However, there was a substantial reduction in the number of open complaints at the end of 2008–09, compared to the previous financial year.

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 include the Australian Federal Police (AFP), the Australian Crime Commission (ACC), some state and territory law enforcement and integrity 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 enforcement activities.

During 2008–09 we carried out 30 inspections, compared to 19 in 2007–08. We inspected the records of 15 different agencies, compared to five in 2007–08. This included eight inspections of the AFP, six of the ACC, two of the Australian Customs and Border Protection Service, two of the New South Wales Police, and one inspection each of 11 other agencies. The increase in inspections was predominantly due to increased access to stored communications (for example, emails) by agencies.

PROMOTING GOOD ADMINISTRATION

In addition to dealing with individual complaints and inspecting records for statutory compliance, the Ombudsman's office promotes good administration through a variety of other methods.

We are conscious of the need to provide a broader range of information, in different formats, to assist agencies improve their public administration.

In 2008–09 we released 18 reports on own motion and major investigations. These covered areas as diverse as contracting, use of interpreters, grant administration, assessment of claims for disability support pension, dealing with allegations of customer fraud, and notification to people that mail is awaiting collection.

In April 2009 we released the *Better Practice Guide to Complaint Handling*. The guide defines the essential principles for effective complaint handling. It can be used by agencies when developing a complaint-handling system or when evaluating or monitoring an existing system.

During the year we released three e-bulletins that describe recent case studies of finalised complaints from which lessons can be drawn that are considered to be of interest to a wider audience. We also produced seven fact sheets to assist agencies in various facets of public administration.

In addition we made 13 submissions to Parliamentary inquiries and six other submissions to major reviews.

ENGAGEMENT

We continued our efforts to make the broader community, and in particular key stakeholders, aware of the role of the Ombudsman's office and to hear about the issues that concern them in dealing with Australian Government agencies or other organisations delivering services on behalf of the Government. The number of our outreach activities increased by 28% on 2007–08, largely due to increased outreach in association with the Northern Territory Emergency Response.



The Commonwealth Ombudsman and Chief Ombudsman of Papua New Guinea signing a new memorandum of agreement

Other examples of our broader outreach activities include conducting roundtable discussions with community groups and other special interest groups in all state capital cities, and participating in joint activities with state, territory and private sector Ombudsman offices.

Our level of engagement with Australian Government agencies has improved. In addition to our focus on producing a broader range of material to assist agencies improve administrative practices, we have strengthened our relationship with a number of agencies about which we usually receive few complaints. In 2007–08 we changed the allocation of responsibilities for dealing with complaints about those agencies, so that our state offices specialise in dealing with agencies within particular portfolios. This approach has proved beneficial. It enables us to better manage our relations with these agencies, provides a higher degree of consistency in the way we deal with complaints about these agencies, and gives a greater capacity to identify any systemic issues.

Our work with regional partners, funded by the Australian Agency for International

Development (AusAID), passed three milestones during the year:

- ▶ We entered into a new memorandum of agreement with the Ombudsman Commission of Papua New Guinea to run for a minimum of three years. This follows the first agreement, which started in 2005 and resulted in a number of important exchanges and collaborative activities between the Commission and this office.
- ▶ The Indonesian Parliament passed legislation to create a new Ombudsman of the Republic of Indonesia, and we started working closely with our Indonesian partners during the transition phase as the new legislation is implemented.
- ▶ In collaboration with our Pacific Islands Forum partners, we launched the Pacific Ombudsman Alliance. The Alliance works to strengthen regional cooperation and coordination between Pacific Island Ombudsmen and other Pacific Island nations that are working to establish ombudsman functions and like agencies.

INTERNAL MANAGEMENT

During 2008–09 we further refined our work practices, drawing in part on the results of a client satisfaction survey conducted late in 2007–08 and on detailed analyses conducted by our business improvement team. Some of the main changes were:

- ▶ revision of our five-category complaint-handling structure and administrative deficiency workflow
- ▶ introduction of a quality assurance audit panel to complement other quality assurance processes
- ▶ development of a new approach to handling requests for reviews of our decisions
- ▶ mapping of office workflows to assist in learning and development opportunities for staff and the evaluation of business practices.

A new collective agreement between the office and the Community and Public Sector Union came into effect in December 2008. The agreement focuses on people, remuneration and employment arrangements, working environment and lifestyle, further streamlining of personnel practices and processes, and performance management and improvement to underpin salary increases.

One objective of our human resource management is to extend the average time of tenure with the office. This will lead to the efficiencies that arise from lower staff turnover, increased corporate knowledge, and improved consistency and effectiveness of our core business activities.

In 2008–09 the office's operating revenue was \$20.823 million and operating expenses were \$19.894 million, resulting in a profit of \$0.929 million. The office received an unqualified audit opinion on its 2008–09 financial statements.

YEAR AHEAD

Three major challenges face the office in 2009–10. The first is to deal efficiently with an expected increase in complaints and approaches to the office. Typically, many of the complaints that we receive within jurisdiction relate to new government programs. This can give rise to difficult or unexpected issues that require investigation.

Second, the office will continue the trend of recent years of placing more emphasis on the publication of reports and other guides to good administration. We expect to publish more than 20 reports in 2009–10 on significant cases or issues that have arisen in complaint investigation. Some of the investigations that are underway look at issues that are common to more than one agency, such as the payment of administrative compensation, and dealing with clients who exhibit mental illness. The publication of fact sheets and better practice guides to good administration will also receive added emphasis in 2009–10.

Third, the Ombudsman's office is in discussion with government about possible new functions that could be discharged by the office. These include options relating to whistleblower protection, oversight of government complaint handling in Norfolk Island, and monitoring the conduct of examinations conducted by the Fair Work Building Industry Inspectorate. There is also likely to be an expansion in the level of compliance auditing work of the office. The trend of recent years, that is likely to continue in 2009–10, is that the traditional complaint-handling role of the office will be supplemented by other functions to ensure effective independent external oversight of government administration.

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* (Ombudsman Act) and is in the portfolio administered by the Prime Minister.

The statutory responsibilities of the Ombudsman have expanded as follows:

- ▶ 1981—handling complaints about the Australian Federal Police (AFP)
- ▶ 1982—handling complaints about freedom of information
- ▶ 1983—Defence Force Ombudsman
- ▶ 1988—compliance auditing of AFP and National Crime Authority (now Australian Crime Commission (ACC)) telecommunications interception records, with added responsibilities of monitoring controlled operations in 2001 and auditing of surveillance device records in 2004
- ▶ 1989—Australian Capital Territory (ACT) Ombudsman
- ▶ 1995—Taxation Ombudsman
- ▶ 2005—assessing and reporting on the detention of long-term (two years or more) immigration detainees
- ▶ 2005—Immigration Ombudsman
- ▶ 2005—handling complaints about Commonwealth service providers
- ▶ 2006—Postal Industry Ombudsman
- ▶ 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 Customs and Border Protection Service), and the use of surveillance devices by state law enforcement agencies under Commonwealth legislation
- ▶ 2006—Law Enforcement Ombudsman, 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 agencies.

The complaint and own motion investigation roles of the Ombudsman are the more traditional ombudsman roles that constitute the majority of the work of the office. The guiding principle in an Ombudsman investigation is to examine 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.

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.

In addition the Ombudsman Act 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 AFP 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 under 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. Ombudsman office staff are employed under the *Public Service Act 1999*. Senior Assistant Ombudsmen are Senior Executive Service Band 1 staff.

Details of 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 for 2008–09 defined one outcome for the office, supported by two outputs. These did not change during the year.

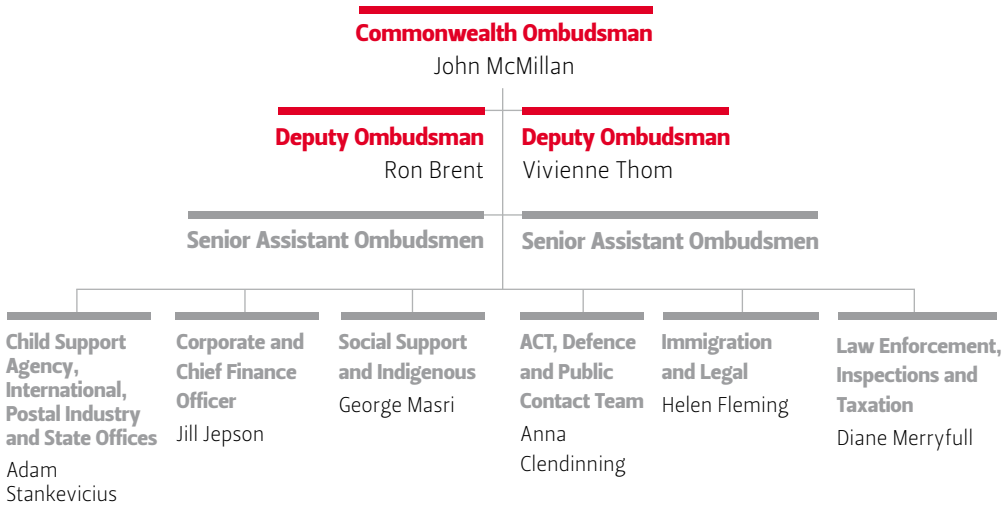
The outcome was *administrative action by Australian Government agencies is fair and accountable*. The supporting outputs were:

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

This annual report describes our performance against this outcome and the supporting outputs.

The Government introduced a new program reporting framework from the 2009–10 Budget. Our new outcome from 2009–10 is *fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies*.

FIGURE 2.1 COMMONWEALTH OMBUDSMAN ORGANISATIONAL STRUCTURE AT 30 JUNE 2009



ARCTIC OCEAN

OMBU



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Indonesia

Indonesia's National Ombudsman Commission was established in 2000 by Presidential decree. Over the past few years we have worked with the Ombudsman and his staff as they strengthened decentralised services across the Indonesian archipelago as well as their central agency functions.

The Indonesian Parliament has now passed legislation to establish an Ombudsman of the Republic of Indonesia.

The *Law on Ombudsman of the Republic of Indonesia* came into effect on 7 October 2008. There is a transition period to convert from the existing Commission to the new office, which is expected to commence late in 2009.

The creation of a statutory basis for the Ombudsman function in Indonesia marks an

important change. The result should be an organisation with stronger legal powers, greater independence and a much wider jurisdiction.

Three Australian offices—the Commonwealth Ombudsman, the New South Wales Ombudsman and the Western Australian Ombudsman—have been working with the existing Ombudsman Commission in support of a roadmap for the future. The immediate priority in Indonesia is the appointment of nine new Ombudsmen, who are charged with providing a broad Ombudsman service throughout Indonesia and across its three levels of government. A new structure to support them will also be developed from the existing Commission.



Performance report

This chapter summarises the office's performance based on the outcomes and outputs structure set out in the Portfolio Budget Statements and Portfolio Additional Estimates Statements 2008–09. It is complemented by the following chapters to give a more comprehensive overview of the range of outcomes of our work:

- ▶ chapter 5 outlines the way in which we engage with stakeholders such as the community, agencies and other national and international partners in promoting good administration
- ▶ chapter 6 provides detailed assessments of our work with a number of agencies in handling complaints and carrying out inspections and other activities
- ▶ chapter 7 provides examples of the types of remedies we achieved for individuals and common themes emerging from our work where we have helped agencies improve their administrative procedures.

The Portfolio Budget Statements for 2008–09 defined one outcome for the office, supported by two outputs. These did not change during the year.

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

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

A financial overview for the office is provided in Chapter 4—*Management and accountability*. Further financial information is in Appendix 6—*Agency resource statement and resources for outcomes* and Appendix 7—*Financial statements*.

PERFORMANCE AT A GLANCE

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE, 2008–09

OUTPUT 1—Review of administrative action	
Key performance indicator—Complaint-handling service delivered effectively and efficiently	
<p><i>Target</i></p> <p>Efficiently close all approaches and complaints received, in the face of growing complaint numbers.</p>	<p><i>Achievement</i></p> <p>We received 14% more approaches and complaints in 2008–09 than in 2007–08. There was a slight decrease in the number of approaches and complaints about agencies within jurisdiction, offset by a substantial increase in the number of requests for information and complaints that were outside jurisdiction. There was a real increase in the number of complaints investigated and a reduction in the number of cases remaining open at the end of the year.</p> <p>We met this target.</p>

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE, 2008–09 (continued)

OUTPUT 1—Review of administrative action <i>cont.</i>	
Key performance indicator—Complaint–handling service delivered efficiently and effectively	
Target Improvement in the achievement of our client service standards for all incoming approaches to the office and the management of all complaints.	Achievement Overall there was no change in the achievement of our client service standards for all incoming approaches to the office and management of all complaints. We did not meet this target.
Key performance indicator—Submissions, own motion investigations and better practice guides foster improved public administration generally	
Target Produce an estimated six submissions, 12 own motion investigations, and two better practice guides.	Achievement We made 13 submissions to Parliamentary inquiries and six other submissions to major reviews, and released 18 reports on own motion and major investigations, one better practice guide and seven fact sheets for agencies. We exceeded this target.
Key performance indicator—Agencies satisfied with quality of services, and accept findings and recommendations resulting from complaint investigations and systemic problems identified	
Target Agencies generally accept findings and recommendations.	Achievement Agencies accepted more than 80% of the recommendations made in public reports in full or in part, and consideration of a number of other recommendations depended on further agency work. We met this target.
Key performance indicator—Timely and effective completion of assessment reports on long-term immigration detainees	
Target Government generally accepts recommendations on detainees.	Achievement We met this target.
Key performance indicator—Public satisfaction with the quality of services provided	
Target High level of satisfaction with service received.	Achievement Client survey results and the continuing high number of approaches to the office indicate there is a good degree of public satisfaction with the office. We have put a number of measures in place to further improve the quality of our services. We met this target.

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE, 2008–09 (continued)

OUTPUT 2—Review of statutory compliance in specified areas	
Key performance indicator—Inspect the accuracy and comprehensiveness of records on selected law enforcement activities for compliance with statutory requirements	
<p><i>Target</i></p> <p>All inspections and reports completed according to the statutory inspection schedule.</p>	<p><i>Achievement</i></p> <p>Despite a substantial increase in workload we met this target.</p>
<p><i>Target</i></p> <p>Government and agencies accept the quality and relevance of findings and recommendations.</p>	<p><i>Achievement</i></p> <p>We met this target.</p>

Funding from other sources

The office receives significant funding from other sources for two functions. These were described previously as purchaser–provider arrangements.

The office has an agreement 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 receives funds from the Australian Agency for International Development (AusAID) to support the work of Ombudsmen and similar services in Indonesia, Papua New Guinea and the Pacific Islands more generally. 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 5—*Engagement*.

OUTPUT 1—REVIEW OF ADMINISTRATIVE ACTION

Key performance indicator—Complaint–handling service delivered effectively and efficiently

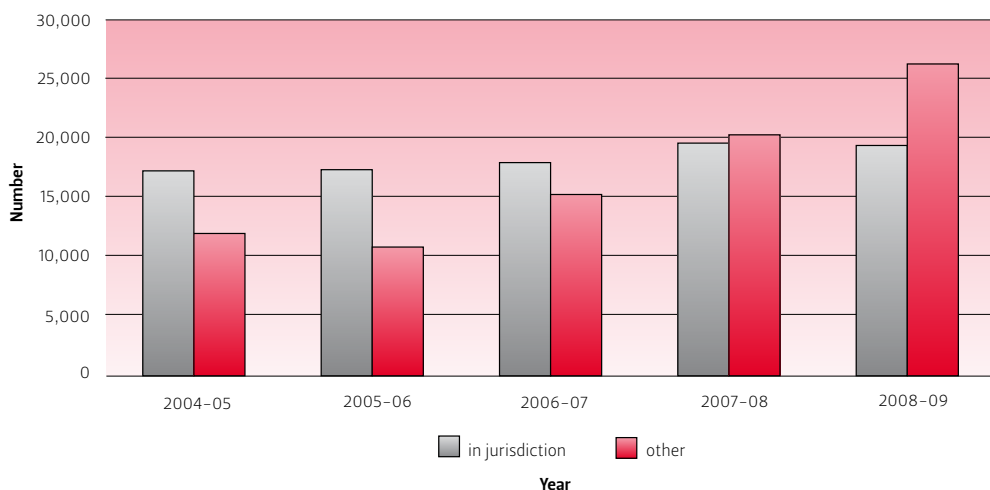
Our 2008–09 targets for this key performance indicator were:

- ▶ efficiently close all approaches and complaints in the face of growing complaint numbers
- ▶ improvement in the achievement of our client service standards for all incoming approaches to the office and management of all complaints.

Target: Efficiently close all approaches and complaints in the face of growing complaint numbers

Approaches and complaints received

In 2008–09 we received 45,719 approaches and complaints, 14% more than in 2007–08. Of these, 19,412 were about agencies within the Ombudsman’s jurisdiction, compared to 19,621 the previous year (a 1% decrease). There was a 30% increase in the number of complaints about matters outside jurisdiction and requests for information. Figure 3.1 shows the trend in approaches and complaints over the last five years.

FIGURE 3.1 APPROACH AND COMPLAINT TRENDS, 2004-05 TO 2008-09

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:

- ▶ a 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.

The number of complaints and approaches received electronically increased slightly. Over the past five years, the percentage of approaches received electronically has increased from 5% to 14% of the total, as Table 3.2 shows.

TABLE 3.2 APPROACHES AND COMPLAINTS, BY METHOD RECEIVED, 2004-05 TO 2008-09

Year	Telephone	Written	In person	Electronic	AFP*	Total
2008-09	35,738 (78%)	2,654 (6%)	875 (2%)	6,452 (14%)	– (0%)	45,719 (100%)
2007-08	30,568 (77%)	2,861 (7%)	1,194 (3%)	5,306 (13%)	5 (0%)	39,934 (100%)
2006-07	26,081 (78%)	2,626 (8%)	812 (2%)	3,539 (11%)	264 (1%)	33,322 (100%)
2005-06	22,897 (81%)	2,383 (9%)	528 (2%)	2,046 (7%)	373 (1%)	28,227 (100%)
2004-05	24,561 (84%)	2,323 (8%)	623 (2%)	1,429 (5%)	387 (1%)	29,323 (100%)

* Under previous legislation for dealing with complaints about the AFP, 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.

Of the 19,412 approaches and complaints received within the Ombudsman's jurisdiction 15,368 (79%) were about six agencies—Australia Post; the Australian Taxation Office (ATO); Centrelink; the Child Support Agency (CSA); the Department of Education, Employment and Workplace Relations (DEEWR); and the Department of Immigration and Citizenship (DIAC).

Approaches and complaints finalised and investigated

We finalised 46,079 approaches and complaints. Of these approaches and complaints 19,719 were about agencies within the Ombudsman's jurisdiction (compared to 19,131 in 2007–08). We investigated 5,233 separate complaints compared to 4,700 in 2007–08 (27% of complaints finalised compared to 25% in 2007–08). Part of this increase was due to a change in the way we record investigations of complaints about the ATO. Of the complaints investigated, 12% required more substantial investigation, sometimes involving a high level of involvement by senior management and the use of formal powers (categories 4 and 5 in our five-category classification system). This figure is not directly comparable to previous years as we modified the definition of these categories during the year.

Some agency error or deficiency was identified in 10% of complaints investigated, compared to 8% last year. The significant increase from last year (368 cases to 533 cases) generally reflects revised internal procedures and training aimed at ensuring that we record all cases of administrative deficiency that we identify. In the past some agency errors have not been recorded as this can delay finalising a case, but this in turn denies agencies valuable feedback.

The most common type of deficiency noted was unreasonable delay (27% of the cases), followed by procedural deficiency (18%), flawed administrative process (16%), human error (13%) and inadequate advice, explanation or reasons (12%).

Causes of complaint

The majority (79%) of the complaint issues finalised were about the correctness, propriety or timeliness of agencies' decisions or actions. The remainder of the complaint issues involved other matters, such as the accuracy or completeness of advice given by agencies (12%), the application of policy or legislation to the complainant's circumstances (6%), or the conduct of officers in agencies (4%).

Complaints carried forward

The number of complaints carried forward (past 30 June 2009) was 1,484 compared to 1,772 at 30 June 2008. A backlog will always exist as some complaints are received late in the reporting period, and some complaints are complex and take longer to investigate. Nevertheless, it was pleasing to see the lower number open at the end of the year, given the increased number of complaints investigated in 2008–09.

Analysis of achievement

Overall we received 14% more approaches and complaints in 2008–09 than in the previous year. There was a slight decrease in the number of approaches and complaints about agencies within jurisdiction, offset by a substantial increase in the number of requests for information and complaints that were outside jurisdiction. The 11% increase in the number of complaints investigated partly reflects a change to the way we recorded investigation of complaints about the ATO. Nevertheless there was a real increase in the number of complaints investigated and a reduction in the number of cases open at the end of the year. Overall we met this target.

Target: Improvement in the achievement of our client service standards for all incoming approaches to the office and management of all complaints

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. As discussed in more

detail later in this chapter, we periodically undertake major surveys of clients to help gauge our effectiveness and identify areas for improvement.

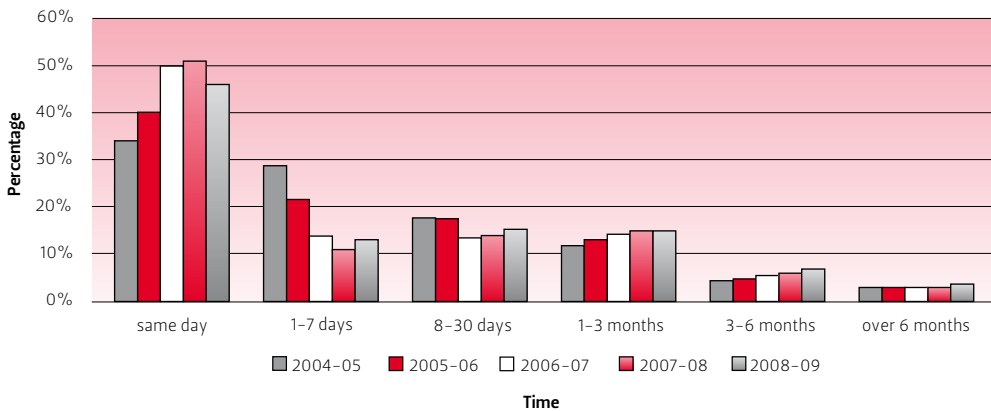
The most recent client survey was undertaken at the end of 2007–08. Two thousand people who had made a complaint about an agency that is in jurisdiction were surveyed. The analysis of the results informs the following discussion.

Timeliness—our service charter indicates that we aim to investigate complaints as quickly as possible, acting fairly, independently and objectively.

In 2008–09, we finalised 74% of all approaches and complaints within one month of receipt and 89% within three months. Figure 3.2 shows the time taken to finalise all approaches and complaints for the periods 2004–05 to 2008–09.

In 2008–09, 23% of investigated complaints were finalised in one month and 63% were finalised in three months. This compares with 25% and 69% respectively in 2007–08. Table 3.3 shows some of the variation in the time it takes to finalise investigated complaints about different agencies.

FIGURE 3.2 TIME TAKEN TO FINALISE ALL APPROACHES AND COMPLAINTS, 2004–05 TO 2008–09



Note: data from 2004–05 is not directly comparable because of changes in work practices.

TABLE 3.3 TIME TO FINALISE INVESTIGATED COMPLAINTS FOR SELECTED AGENCIES, 2008–09 (2007–08)

Agency	Number investigated	% finalised within one month	% finalised within three months
Australia Post	821 (743)	28 (29)	78 (80)
ATO	321 (130)	21 (5)	52 (37)
Centrelink	1,459 (1,636)	34 (37)	70 (80)
CSA	712 (604)	26 (32)	69 (80)
Defence agencies	194 (200)	12 (18)	59 (53)
DEEWR	187 (176)	5 (3)	51 (45)
DIAC	669 (518)	12 (12)	52 (50)

Note: changes were made to the way we count investigated complaints for the ATO, so the ATO figures are not directly comparable with previous years.

It was disappointing to see a reduction in timeliness for closing all approaches and complaints, and for all investigated complaints. This was partly due to the increase in the number of complaints investigated, and to the increase in the overall number of approaches and complaints dealt with during the year.

The client survey indicated that 58% of those whose complaint we investigated felt it took less time than they had expected, or about the right time, to deal with their complaint, and another 8% had no view. For those people whose complaint we did not investigate, 67% thought it took less time than they had expected, or about the right time, and 20% had no view or thought it was not applicable.

We are reviewing the way we deal with incoming approaches, in part to identify ways to improve our timeliness.

Remedies—our service charter advises that we will recommend changes to fix any problems where appropriate.

We recommended one or more remedies in 74% of the complaints investigated (compared to 75% in 2007–08, 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*.

The most common remedy for complainants was an explanation of the circumstances by the Ombudsman's office (30%), the provision of a better explanation by an agency of its decision or action (19%), agency action being expedited (14%), a financial remedy (11%), agency decision changed or reconsidered (9%), and an apology being offered by an agency (7%).

Chapter 7—*Helping people, improving government* provides some examples of the types of remedies achieved for individuals, and systemic remedies, during the year.

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

The Ombudsman Act gives the office a range of discretionary powers to not investigate matters in particular circumstances. The most common reason for not investigating a complaint is that the person has not raised the complaint 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. In 2008–09 we advised the complainant to take the matter up with the relevant agency in the first instance in 58% of the matters within the Ombudsman's jurisdiction (57% in 2007–08).

The client survey showed that, where we advised a person to take up the matter with the agency first, 88% of people did so. The main reasons people did not take up the complaint were that they did not have confidence that the agency would be helpful, they resolved the problem another way, or it was too difficult. More than 60% of those advised to take up the matter with the agency would have been happy for our office to pass the complaint details to the agency involved. We currently follow this process with ATO complaints, and we are considering whether we should pursue this with other agencies.

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.

Analysis of achievement

Overall there was no improvement or deterioration in the achievement of our client service standards for all incoming approaches to the office and management of all complaints. The client survey indicated a range of issues that we need to address, as discussed on pages 20 and 21. We did not meet this target.

Key performance indicator—Submissions, own motion investigations and better practice guides foster improved public administration generally

Target: Produce an estimated six submissions, 12 own motion investigations, and two better practice guides

During the year we made 13 submissions to Parliamentary inquiries as follows:

- ▶ the *Auditor-General Act 1997*—Joint Committee of Public Accounts and Audit
- ▶ community stores in remote Aboriginal and Torres Strait Islander communities—House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs
- ▶ compliance audits on Medicare benefits—Senate Community Affairs Legislation Committee
- ▶ the economic and security challenges facing Papua New Guinea and the island states of the southwest Pacific—Senate Foreign Affairs, Defence and Trade References Committee
- ▶ the effects of the ongoing efficiency dividend on smaller public sector agencies—Joint Committee of Public Accounts and Audit
- ▶ the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009—Senate Community Affairs Committee
- ▶ immigration detention in Australia—Joint Standing Committee on Migration
- ▶ Independent Reviewer of Terrorism Laws Bill 2008 (No 2)—Senate Standing Committee on Legal and Constitutional Affairs
- ▶ the national registration and accreditation scheme for doctors and other health workers—Senate Community Affairs Legislation Committee
- ▶ the operation of the *Law Enforcement Commissioner Integrity Act 2006*—Joint Committee on the Australian Commission for Law Enforcement Integrity
- ▶ the Social Security Legislation Amendment (Employment Services Reform) Bill 2008—Senate Standing Committee on Education, Employment and Workplace Relations
- ▶ the Tax Agent Services Bill 2008—Senate Standing Committee on Economics
- ▶ whistleblowing protections within the Australian Government public sector—House of Representatives Standing Committee on Legal and Constitutional Affairs.

We also appeared before the following Parliamentary committees:

- ▶ Joint Committee of Public Accounts and Audit for its inquiry into the effects of the ongoing efficiency dividend on smaller public sector agencies
- ▶ Joint Standing Committee on Foreign Affairs, Defence and Trade for its inquiry into RAAF F-111 deseal/reseal workers and their families
- ▶ House of Representatives Standing Committee on Legal and Constitutional Affairs for its inquiry into whistleblowing protections within the Australian Government public sector
- ▶ Joint Standing Committee on Migration for its inquiry into immigration detention
- ▶ Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity for its inquiry into law enforcement integrity models.

In addition we made submissions to the:

- ▶ Australian Law Reform Commission inquiry *Review of the Royal Commissions Act 1902*
- ▶ Department of Families, Housing, Community Services and Indigenous Affairs for the review of pensions
- ▶ discussion paper on a Proposed Building and Construction Division of Fair Work Australia
- ▶ independent review *Mental Health Care in the ADF and Transition to Discharge*
- ▶ independent review of the Australian Defence Force Cadets scheme
- ▶ independent review of the Northern Territory Emergency Response.

The Ombudsman released public reports on 18 own motion and major investigations in 2008–09. The reports related to a number of agencies, including the AFP, the Australian Crime Commission (ACC), Australia Post, the ATO, Centrelink, the CSA and DIAC. Chapter 7—*Helping people, improving government* provides a list of the reports

and outlines some of the different types of recommendations made in the reports. Further details on individual reports are also contained in the relevant sections of Chapter 6—*Looking at the agencies*.

In 2008–09 we produced one better practice guide—the *Better Practice Guide to Complaint Handling*. This guide defines the essential principles for effective complaint handling. It can be used by agencies when developing a complaint-handling system or when evaluating or monitoring an existing system.

We produced seven fact sheets to assist agencies:

- ▶ *Ombudsman investigations* (Fact Sheet 1)
- ▶ *Administrative deficiency* (Fact Sheet 2)
- ▶ *Providing remedies* (Fact Sheet 3)
- ▶ *Use of interpreters* (Fact Sheet 4)
- ▶ *Ten principles for good administration* (Fact Sheet 5)
- ▶ *Complaint handling: outsourcing* (Fact Sheet 6)
- ▶ *Complaint handling: multiple agencies* (Fact Sheet 7).

Analysis of achievement

During the year we made 13 submissions to Parliamentary inquiries and six other submissions to major reviews, and released 18 reports on own motion and major investigations, one better practice guide and seven fact sheets for agencies. We exceeded this target.



Key performance indicator—Agencies satisfied with quality of services, and accept findings and recommendations resulting from complaint investigations and systemic problems identified

Target: Agencies generally accept findings and recommendations

Our experience in preparing own motion investigation reports, and finalising individual complaint investigations, is that agencies generally accept the recommendations made. Of the 92 recommendations made in published reports during 2008–09, 74% were accepted in full and 8% in part. The remainder were not accepted or there was no formal response from the agency, often because of other work occurring in the agency, or because the recommendation required either joint action with another agency or a response from government. We now request updates from agencies on the implementation of recommendations on a regular basis, and are looking at how we might present this information publicly. The individual agency sections in Chapter 6—*Looking at the agencies* show many areas of public administration where our feedback and recommendations have resulted in improvements.

Analysis of achievement

We met this target.

Key performance indicator—Timely and effective completion of assessment reports on long-term immigration detainees

Target: Government generally accepts recommendations on detainees

Under the *Migration Act 1958* the Ombudsman has a statutory role of reviewing the cases of people who have been in immigration detention for two years or more. During 2008–09 we received 84 reports from DIAC and provided 120 reports to the Minister for Immigration and Citizenship. The Minister tabled responses on 116 reports during the year.

Forty of the reports tabled in Parliament made recommendations or suggestions. The

majority of these related to consideration of alternative detention arrangements, or community detention arrangements, while a person's immigration status was finalised. In most cases the Minister and his department responded positively to the Ombudsman's reports, either when the reports were tabled in Parliament or through subsequent action. In some other cases the recommendations were overtaken by changes in the person's immigration status or detention arrangements.

Analysis of achievement

We met this target.

Key performance indicator—Public satisfaction with the quality of services provided

Target: High level of satisfaction with service received

The main method by which we gauge the level of public satisfaction with the quality of our services is through periodic surveys of people who have made a complaint to the office. Late in 2007–08 we commissioned an independent market research company to undertake such a survey, and we analysed the results in detail in early 2008–09. The survey aimed to obtain information on three key aspects—access, demographics and quality of service. We surveyed 2,000 people who had made a complaint about an Australian Government or ACT Government agency.

Overall the level of satisfaction with the Ombudsman's office increased from 58% in our last survey (conducted in 2004) to 60%. For people whose complaint we investigated, overall satisfaction fell from 64% to 57%. There was a high correlation between overall satisfaction with the office and satisfaction with the result of the office's investigation. The level of satisfaction for people whose complaint we did not investigate increased from 54% to 62%.

The majority of the people surveyed considered we kept them well informed about our handling of their complaint, and rated the courtesy of our staff highly. The majority considered we dealt with their complaint in

about the right time, or less time than they expected. They also considered we understood the critical issues in their complaint. While our staff were perceived as being clear in communication, and professional and ethical, around one-fifth of respondents considered our staff were not independent or impartial.

Partly as a result of the survey, we are implementing a range of strategies to improve our services further. They include:

- ▶ incorporating more communication training in our core training modules
- ▶ creating scripts to be used by our public contact officers
- ▶ reviewing our template letters
- ▶ redesigning our internet sites
- ▶ reviewing how we manage approaches to the office.

We have also introduced a comprehensive quality assurance audit program to complement the oversight line managers give to the handling of complaints. A team of experienced, senior investigation officers from across the office, led by a Deputy Ombudsman, audits a sample of complaints closed each month. This panel provides feedback to the managers of the staff who handled the complaints. The panel also produces a report identifying areas for improvement in complaint handling, as well as best practice examples they have seen. This is part of a more comprehensive quality process that includes normal supervision, capacity for requiring more senior sign-off as part of our complaint management system, peer or supervisor checking of all correspondence, our system of case reviews and our complaint and feedback processes (including complainant surveys).

We also have a formal review process for complainants who may be dissatisfied with our conclusions and decision about a complaint. We expect the complainant to provide reasons for seeking a review, as this assists the office to fully understand the issues being raised by the complainant.

In 2008–09 we received 251 requests for internal review, 7% more than in 2007–08 (234). We declined to conduct a review in 19 cases for reasons such as the matter was out

TABLE 3.4 INTERNAL REVIEW OF OMBUDSMAN OFFICE DECISIONS, 2008–09

Complainant's reason for seeking review		Outcome affirmed	Outcome varied	Further investigation	Review withdrawn	Total
Decision/ action	Failed to address issue	64	1	30	1	96
	Misunderstood issue	20	1	5		26
	Wrong	67	1	23	1	92
	Bias	1		2		3
Advice	Failed to provide			1		1
	Inadequate/unclear	1				1
	Misleading	1				1
Behaviour	Breach of confidence	1				1
	Bias	1				1
	Incompetence	1		1		2
Practice and procedures	Inadequate	2				2
Other		14	2	3	1	20
Total		173	5	65	3	246

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 246 reviews during the year, with some carried over from 2007–08 (Table 3.4). Of the finalised reviews, the original outcome was affirmed in 173 reviews (70%). This was about the same as in 2007–08 (72%). The office decided to investigate or investigate further after 65 reviews (45 in 2007–08) and to change its decision on the original complaint in five reviews (eight in 2007–08). Three reviews were withdrawn by the complainant.

Of the 246 reviews finalised, 88% related to decisions or actions of the investigation officer. 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 complaint issue.

Late in 2008–09 we introduced a new approach to dealing with requests for reviews. The aim of the changes is to provide greater consistency and timeliness in undertaking reviews.

Under this new approach, a centralised team considers first whether a review should be undertaken, and then conducts the review if required. In some cases, discussion with the person seeking a review may indicate that the person needs a clearer explanation of information we have already provided, or has misunderstood our role, and further investigation is not necessary.

One important factor we take into account in deciding whether we should investigate further is whether there is any reasonable prospect of getting a better outcome for a person. This helps ensure that the office's resources are directed to the areas of highest priority. If, as a result of a review, investigation or further investigation is required, the review team allocates the complaint to a senior staff member who decides who should undertake the investigation or further investigation.

Analysis of achievement

The survey results and the continuing high number of approaches to the office indicate there is a good degree of public satisfaction with the office. We are taking a number of measures to further improve our services. We met this target.

OUTPUT 2—REVIEW OF STATUTORY COMPLIANCE IN SPECIFIED AREAS

Key performance indicator—Inspect the accuracy and comprehensiveness of records on selected law enforcement activities for compliance with statutory requirements

3

CHAPTER 3 PERFORMANCE REPORT

Our 2008–09 targets for this key performance indicator were:

- ▶ all inspections and reports completed according to the statutory inspection schedule
- ▶ Government and agencies accept the quality and relevance of findings and recommendations.

Detailed reporting on our inspections activity is contained in Chapter 6—*Looking at the agencies*.

Target: All inspections and reports completed according to the statutory inspection schedule

The Ombudsman is required to inspect the records of the AFP, the 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.

Although there was a substantial increase in the inspections workload during 2008–09, all inspections and reports were completed according to the statutory inspection schedule. During 2008–09 we carried out 30 inspections, compared to 19 in 2007–08. We inspected the records of 15 different agencies, compared to five in 2007–08. The increase was predominantly due to increased access by agencies to stored communications.

Telecommunications records

Under the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure telecommunications interception activities are

in accordance with the provisions of the TIA Act. In 2008–09 we carried out two inspections each of the AFP and the ACC.

The Ombudsman is also required to inspect the records of these agencies and other agencies that access stored communications (for example, emails), to ensure their activities are in accordance with the Act. In 2008–09 we carried out two inspections each of the AFP and the Australian Customs and Border Protection Service, and one inspection each of the ACC, the Australian Securities and Investments Commission, and 11 state and territory police forces and integrity organisations.

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, the ACC, the New South Wales (NSW) Crime Commission, the NSW Police and the South Australia Police (the agencies inspected in 2007–08) within the nominated timeframe.

Surveillance devices

Under the *Surveillance Devices Act 2004* (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 that the 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 2008 and March 2009 in accordance with our statutory obligation.

Controlled operations

Under the *Crimes Act 1914* (Crimes Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure compliance with Part 1AB of the Act. In 2008–09 we inspected the controlled operations records

of the AFP and the ACC twice each. (A controlled operation is 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.)

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. An annual report for 2007–08 was presented to Parliament in September 2008.

Analysis of achievement

Despite a substantial increase in workload we met this target.

Target: Government and agencies accept the quality and relevance of findings and recommendations

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. We do not formally ask agencies to advise if they accept the findings and recommendations. However, we understand that all of the Ombudsman's recommendations in reports finalised in 2008–09 were accepted by the agencies.

As discussed further in the section on inspections and monitoring in Chapter 6—*Looking at the agencies*, those agencies that are regularly inspected by this office now show a high level of compliance with legislative provisions. The improvements they have made show that compliance audits are a valuable exercise in accountability.

Analysis of achievement

We met this target.

Papua New Guinea

The Ombudsman Commission of Papua New Guinea was established by the Constitution of the Independent State of Papua New Guinea upon independence in 1975. The current Chief Ombudsman is Mr Chronox Manek OL.

A Twinning Program was established between the Commonwealth Ombudsman and the Ombudsman Commission in 2005. The Program, which receives funding from AusAID, has supported regular staff exchanges and capacity-building activities between both offices.

A recent project under the Twinning Program was to strengthen the Intake Screening Unit (ISU) of the Ombudsman Commission. The ISU is the front line for receiving complaints. Our Public Contact Team (PCT) in Canberra has a similar function and we have worked together to improve front line services in the ISU.

An important part of effective complaint handling is to deal efficiently with complaints when they are first received. This means, for example, that complaints

are quickly sent to the relevant part of the office for investigation, or if the complaint is not in the Ombudsman's jurisdiction, the complainant is advised of this and any other options for dealing with their problem.

In 2006 Jim Farley from our office worked with the ISU to improve letter templates for correspondence with agencies.

Our second ISU placement, Joanne Taylor, is a specialist with our PCT. During a three-month placement at the end of 2008, Joanne was able to share many of the lessons learned from her experience of establishing the PCT. She helped review the recommendations from two previous reviews and, through consultation with staff, determine how best for the ISU to progress.

Joanne also reviewed the systems for managing staff performance, including staff job descriptions and further training requirements. The Ombudsman Commission has invited Joanne back for a further short placement in 2009.



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 11 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.

At 30 June 2009, the office's senior management team and their areas of responsibility were:

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

- ▶ Corporate and Chief Finance Officer—Ms Jill Jepson, Senior Assistant Ombudsman
 - ▷ corporate services comprising finance, human resources, records management and governance
 - ▷ work practices and procedures, and business improvement
 - ▷ information technology and communications infrastructure
 - ▷ public affairs and outreach, including management of the office's intranet and internet sites.
- ▶ Postal, International, Child Support Agency and State Offices—Mr Adam Stankevicius, Senior Assistant Ombudsman



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

- ▷ specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme
- ▷ specialised advice and complaint handling relating to the Child Support Agency
- ▷ management of the office's International Program and related AusAID projects
- ▷ management and oversight of our state offices (Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney) which handle complaints and undertake specialist work.
- ▶ Social Support and Indigenous—Mr George Masri, Senior Assistant Ombudsman
 - ▷ specialised advice and complaint handling relating to the Department of Human Services (including Centrelink) and relevant policy departments
 - ▷ the office's Indigenous Unit, with staff located in Alice Springs, Canberra and Darwin, specialising in issues involving Indigenous people.

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 and Legal—Ms Helen Fleming, 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 six months or more
 - ▷ in-house legal advice and policy service

to support staff in performing their functions.

- ▶ Law Enforcement, Inspections and Taxation—Ms Diane Merryfull, Senior Assistant Ombudsman
 - ▷ complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies
 - ▷ inspecting the records of enforcement agencies for statutory compliance, adequacy, and comprehensiveness
 - ▷ specialised advice and complaint handling relating to the Australian Taxation Office.

Corporate planning and review

The office's Strategic Plan 2008–2011 sets out the office's direction for that period. Each year the Ombudsman and Deputy Ombudsmen review the plan and establish the priorities for the next year. Our strategic priorities for 2009–10 are to:

- ▶ target outreach, relevant publications and communication activities to key stakeholders, particularly in regional Australia
- ▶ identify, through individual complaint investigation, problem areas in public administration that occur across government
- ▶ be responsive to areas of changing need in allocating resources
- ▶ implement a new electronic records management system to improve recordkeeping, consolidate new quality assurance and utilise the growing data the new system is delivering to improve the quality of our complaint handling
- ▶ further develop staff training and development programs
- ▶ enhance services over the internet, including improved opportunities to lodge complaints via the web.

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.

This year a more formal reporting framework has been developed to ensure there is rigour in the quality and quantity of data provided to the office's Executive. The Executive considers reports on finance, human resources, operations and information technology on a monthly basis. Business statistics are also available to all staff on an ongoing basis and are available electronically.

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 weekly.

Senior Management

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

Information Management Committee

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

Internal Audit Committee

As required by the *Financial Management and Accountability Act 1997*, 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 processes for monitoring compliance with legislation and government policy directives.

At 30 June 2009 the members of the committee were 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), the office's internal auditors, WalterTurnbull, and the Chief Finance Officer attend committee meetings as observers.

During 2008–09 WalterTurnbull conducted three internal audits—review of internal accounting controls, audit of payroll and review of security practices. We are implementing the recommendations from the audits and consider progress against each action item at each Internal Audit Committee meeting.

Occupational Health and Safety Committee

The office's Occupational Health and Safety (OH&S) Committee is made up of elected representatives from each state and territory office and chaired by the Assistant Manager, Human Resources who represents management. The committee met twice during the year.

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 twice during the year and considered matters such as staff survey action items, recruitment and selection guidelines, learning and development, accommodation and environmental management.

Corporate governance practices

Risk management

The office's risk management activities are overseen by the Internal Audit Committee. In 2007–08 the office updated its risk management framework in accordance with the standard *AS/NZS 4360 Risk Management*. In 2008–09 we engaged an external consultant to review and update our Strategic Business Assessment and Risk Management

Plan. The risk assessment was comprehensive and identified six key risks for the office. Each risk was rated in accordance with the office's risk matrix. The analysis set out recommended management actions to mitigate the identified risks. We report on these management actions at each Internal Audit Committee meeting.

The office's risk management strategies include:

- ▶ embedding 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
- ▶ incorporating assessment of risk within the quarterly business reporting framework.

All staff responsible for risk management within the office regularly attend related learning and development opportunities.

The office continues to participate in the annual Comcover Risk Management Benchmarking Survey, and we have noted a measurable improvement in our risk rating since last year, reflecting the effort we have put into this area. The office has moved from being below the average for small agencies on Comcover's overall performance rating to above the average (from 4.4 in 2008 to 5.2 in 2009, compared to 5.0 as the small agency average for both years). The key result area we need to address is in risk monitoring and review, and we will pay particular attention to this in 2009–10.

Business continuity planning

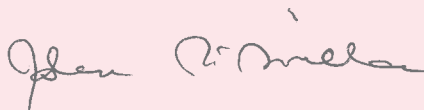
The purpose of our Business Continuity Plan is to ensure that the most critical work of the office can continue with minimal disruption, or be quickly resumed, in the event of a disaster. We revised the plan during the year. The plan utilises the strengths of a national office structure to respond to a potential problem with one or more of the office's nine sites. This was tested during the year when our public contact activities were twice transferred temporarily to other sites.

We scenario-tested the plan in April 2009. The test highlighted the need to update a number of documents and points of weakness in our information technology infrastructure. We revised the plan to address the gaps identified.

Fraud prevention and control

During 2008–09 the office reviewed and updated its fraud control plan and fraud risk assessment. The risk of fraud remains low for the office. The Internal Audit Committee oversees the implementation of the fraud control plan.

I certify that the Commonwealth Ombudsman's 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*.



Prof. John McMillan
Commonwealth Ombudsman

Ethical standards

The office upholds the Australian Public Service values, as specified in s 10 of the *Public Service Act 1999*. The key values of the Commonwealth Ombudsman's office are independence, impartiality, integrity, accessibility, professionalism and teamwork. Our values are documented in the office's Strategic Plan 2008–2011 and are incorporated in the Commonwealth Ombudsman Collective Agreement 2008–2010.

The importance of the values is outlined in induction documentation and training for staff, and in internal documents including the Harassment Prevention Policy and the Work Practice Manual. It is reinforced on a continuous basis through mechanisms such as our internal quality assurance processes, staff training and dealing with complaints about

service delivery. We also gauge internal perceptions of our ethical standards through major surveys, such as the staff survey conducted in March 2009, and engagement with the Australian Public Service Ethics Contact Officer Network, which commenced in May 2009.

Complaint management

The office 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. We evaluated our practices against our *Better Practice Guide to Complaint Handling* and this led to a number of steps to improve the way we accept and monitor complaints about the office's service delivery. The office's complaints and grievances mechanism is set out in our service charter and detailed reporting is provided in Chapter 3—*Performance report*.

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 are committed to meeting our obligations under the *Disability Discrimination Act 1992* through implementation of the Commonwealth Disability Strategy, the Commonwealth Ombudsman's Disability Action Plan 2005–2008 and the Workplace Diversity Framework and Plan 2007–2009. While our Disability Action Plan formally covered the period to 2008, we continue to use this plan and the principles it contains. We will revise the plan when the review of the Commonwealth Disability Strategy by the Department of Families, Housing, Community Services and Indigenous Affairs is completed.

The office's operations encompass the activities of regulator, service provider and employer. Employer activities are reported by the Australian Public Service Commission.

Regulator

The Commonwealth 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 *Assessment of claims for disability support pension from people with acute or terminal illness: an examination of social security law and practice* (Report No. 2/2009), published in March 2009, 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.

Service provider

In developing and maintaining our website, we have used 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. We have started redeveloping our website to further improve accessibility by all members of the public.

Environmental matters

The Ombudsman is required to report on certain environmental matters under s 516A(5)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), 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. The office's Environmental Management Policy focuses on the conservation of energy within the workplace, including the use of light, computer equipment, water management, transport management and recycling. The office recycles toner/printer cartridges, paper and cardboard products, classified waste, cans, bottles and plastic. These strategies are communicated to staff through the Workplace Relations Committee, the office intranet, and induction program. We are also introducing an electronic records management system, which will help to reduce paper usage.

The Ombudsman office's estimated energy consumption per person per year decreased by 9% from 2006–07 to 2007–08. This followed a decrease of 3% in the previous year. Data for 2008–09 was not available at the time of preparation of this report.

All our offices are shared with other tenants. When an office needs to move location, one factor we try to take into account in selecting a new location is the environmental credentials of alternative locations. During 2008–09 we were fortunate to be able to move our Brisbane office to a new office that has achieved a four star *Green Star* office rating. The building has a high performance façade with excellent shading and glazing characteristics to increase internal space energy efficiency. Other features include a capacity for grey-water re-use and irrigation, onsite storm water filtration and re-use for flushing toilets, and a high use of recycled concrete and steel in its construction.

As part of our core complaint-handling activities, we may also investigate matters that relate specifically to the EPBC Act. For example, in June 2009 the Ombudsman released the report *Delays in preparation of Heritage Strategies by Australian Government agencies: Implementation of section 341ZA of the Environment Protection and Biodiversity Conservation Act 1999* (Report No. 9/2009). Among other things, the report noted that few Australian Government agencies were aware of their obligation to prepare a heritage strategy for managing places they own or control, in

accordance with s 341ZA of the EPBC Act. The Ombudsman recommended that the Department of the Environment, Water, Heritage and the Arts write to all departments, alerting them to the obligation under s 341ZA resting on all agencies within their portfolio. He made a number of other recommendations to assist relevant agencies to comply with the Act.

EXTERNAL SCRUTINY

Privacy legislation

The office is subject to the *Privacy Act 1988* and we comply strictly with our responsibilities under that Act. We provide information required for the Personal Information Digest. The Privacy Commissioner did not issue any report or make any adverse comment about the office during 2008–09.

The office participated in the survey conducted by the office of the Privacy Commissioner on portable storage devices and personal information handling in March 2009. A public sector information sheet was developed following the survey, which the office has used to review and update our policies and procedures that apply to the secure use and transfer of information.

Australian Human Rights Commission

The office was not subject to any investigation or report by the Australian Human Rights Commission in 2008–09. The office recognises and respects human rights and anti-discrimination values in all aspects of its work.

Litigation and legal issues

The office was the respondent in two matters brought in the Federal Magistrates Court by the same applicant. One matter was dismissed and the other matter had not been decided by the end of 2008–09.

The office was the respondent in the Administrative Appeals Tribunal in five matters. In the four matters decided by the end of 2008–09, the Tribunal considered it had no jurisdiction to hear two matters, one application was dismissed, and in the other matter the Tribunal determined that additional parts of a document

should be released to a person under the *Freedom of Information Act 1982*.

The Ombudsman and staff enjoy a qualified immunity from suit in relation to things done in good faith in the course of their work. They are not compellable to disclose in proceedings information they acquire in the course of their employment. We customarily rely on that non-compellability when we receive summonses or subpoenas in a matter to which we are not a party.

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. Our Internal Audit Committee examines all reports by the Auditor-General that may be relevant to the office (for example, 2008–09 Audit Report No. 37 *Online Availability of Government Entities' Documents Tabled in the Australian Parliament*) to identify any requirements for improvements in office procedures.

PEOPLE MANAGEMENT

Human resources

The management of staff is a critical function within our office. As a small and geographically dispersed office we face a unique set of challenges in developing a well skilled and stable workforce. This year we have been proactive in meeting this challenge through the development of a clear and concise human resources plan that was released in April 2009.

The human resources plan was developed to assist the human resources team and all staff understand the focus and outcomes expected of human resources activities in the next 12 months. In preparing the plan, consideration was given to the strategic action agenda and strategic priorities contained in the Commonwealth Ombudsman Strategic Plan 2008–2011, as well as an analysis of the current business environment and emerging trends that are driving change.

These include:

- ▶ the Australian Public Service Commission 'State of the Service' Report 2007–2008
- ▶ the Commonwealth Ombudsman staff survey
- ▶ financial constraints
- ▶ the economic climate
- ▶ our workforce profile.

The human resources team has identified that a key outcome of its activities is to extend the average time of tenure with the office. In doing so, the office stands to gain efficiencies that arise from lower staff turnover such as less recruitment effort and cost, increased corporate knowledge, and improved consistency and effectiveness of our core business activities. We will do this by focusing on six key areas:

- ▶ recruitment
- ▶ career management
- ▶ managing performance
- ▶ learning and development
- ▶ developing and maintaining a positive workplace culture
- ▶ workforce planning.

Staff survey

In March 2009 we conducted the second staff survey for the office. The results provided a measure of employee satisfaction at an organisation-wide level. The response rate was extremely high, with 93% of staff participating in the survey. This year we had the added advantage of being able to compare results with the first staff survey, which was conducted in 2007. In some instances our responses were also compared to a 'State of the Service' benchmark to provide a broader APS-wide perspective.

Overall the results show that the majority of Ombudsman office staff remain satisfied with the office as an employer and almost 90% of staff agreed that they are proud to tell others that they work for the office. In many areas we significantly exceeded the 'State of the Service' benchmark. This level of satisfaction with our working environment reflects positively on all staff.

Using sophisticated statistical analysis to assist us, we have been able to prioritise organisational improvements to drive overall staff satisfaction with the office. The analysis highlights the two main areas for improvement as career progression, and recognition and feeling valued.

There are several other areas that have less influence on overall satisfaction than the areas above, but still have a significant influence on how staff feel about the office. They are:

- ▶ internal communication
- ▶ information technology (IT) and information systems
- ▶ recruitment and selection
- ▶ work–life balance.

We will review and further develop our human resources policies and guidelines to reflect responses from the staff survey.

Workplace relations

On 15 December 2008 a new collective agreement between the office and the Community and Public Sector Union came into effect. The Commonwealth Ombudsman Collective Agreement 2008–2010 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 162 employees are covered under the office's collective agreement. Conditions are provided for the office's six Senior Executive Service (SES) staff under s 24(1) of the Public Service Act. No staff are employed under Australian workplace agreements or common law contracts.

The collective 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. Determinations under s 24(1) provide for SES 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.

Staffing profile

At 30 June 2009 the actual number of employees was 171, including the Ombudsman and two Deputy Ombudsmen. One hundred and forty-three employees were full-time. Twenty-eight employees (16% of employees) were part-time and of these, 27 were ongoing. The full-time equivalent number of employees for the year was 152.

During the year, 49 employees were engaged on an ongoing basis and 45 ongoing employees left the office, equating to a turnover rate of 26% (compared to 22% in the previous year).

Table 4.1 shows the numbers of employees, by gender and Australian Public Service (APS) classification and salary range. Table 4.2 shows the office's staffing profile by location.

TABLE 4.1 STAFFING PROFILE BY LEVEL, GENDER AND SALARY RANGE AT 30 JUNE 2009

At 30 June 2009 (at 30 June 2008)						
APS classification and salary range	Men		Women		Total	
	Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1 \$37,152 – \$41,064	–	–	–	–	– (–)	– (–)
APS2 \$42,046 – \$46,626	–	–	–	–	– (–)	– (–)
APS3 \$47,892 – \$51,691	1	–	1	–	2 (2)	– (1)
APS4 \$53,377 – \$57,954	5	2	18	–	23 (24)	2 (6)
APS5 \$59,534 – \$63,130	6	1	12	–	18 (17)	1 (–)
APS6 \$64,302 – \$73,864	18	1	24	3	42 (41)	4 (2)
EL1 \$82,431 – \$89,013	16	1	27	–	43 (37)	1 (1)
EL2 \$95,075 – \$107,789	11	–	15	–	26 (24)	– (1)
SES \$135,112 – \$152,171	2	–	4	–	6 (6)	– (–)
Statutory officers	2	–	1	–	3 (3)	– (–)
TOTAL	61	5	102	3	163 (154)	8 (11)

Note: under the previous certified agreement and the current collective 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.

Note: 'EL' is 'Executive Level'.

TABLE 4.2 STAFFING PROFILE BY LOCATION AT 30 JUNE 2009

Location	Men	Women	Total
ACT	47	74	121
NSW	5	10	15
NT	1	1	2
QLD	2	7	9
SA	3	4	7
TAS	–	–	–
VIC	5	8	13
WA	3	1	4
TOTAL	66	105	171

Career development and training

The office continues to focus on learning and development opportunities for staff. Our learning and development framework is based on three elements—leadership, corporate and core business programs. During the year we finalised a suite of 11 training modules designed specifically to develop core competencies and skills in investigations, inspections, writing, administrative law, office practices and recordkeeping. These core training modules are conducted regularly and all staff are required to attend the sessions. Other learning and development programs centre on performance management.

Each staff member is encouraged to undertake learning and development programs that are designed to promote their capability in relation to their corporate and core business training and development. This approach is now complemented by other initiatives such as career mapping, expansion of the staff induction program and an emphasis on managers mentoring staff career development.

Our learning and development framework will be supported by a new electronic scheduling system which will identify training and other learning and development opportunities, provide online booking facilities and record the training history for each employee. This will be used as part of an improved performance management process.

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

- ▶ ethical conduct
- ▶ leadership skills
- ▶ relationship management
- ▶ performance management
- ▶ administrative law
- ▶ recruitment and selection processes
- ▶ 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, risk and fraud management 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.

Occupational health and safety

The Ombudsman reports each year against the statement of commitment signed in 2005, to actively work towards achieving the targets set out in the Occupational Health and Safety and Rehabilitation Performance Improvement Targets for Commonwealth Premium Paying Employees (2002–2012) strategy.

During the year there were no accidents or injuries reportable under s 68 of the *Occupational Health and Safety Act 1991* (OH&S Act) and there were no investigations conducted 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. Staff who work from home are also given workplace assessments.

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 2008–09 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 managing OH&S
- ▶ 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 to representatives
- ▶ provided harassment and bullying awareness workshops
- ▶ conducted regular simulated fire 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
- ▶ implemented a national Health Month that comprised a diverse range of health and wellbeing activities and information sessions.

The Ombudsman actively promotes employee activities that lead to a healthy lifestyle. Accordingly, the Executive agreed to the inclusion of a 'promoting good health' allowance in the collective agreement 2008–2010. This is available to all staff as a reimbursement for health-related lifestyle expenses.

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 issues.

These measures contribute to the maintenance of the very low rate of accidents and compensable injuries in the workplace. Our workers compensation record is good, with unplanned leave rates decreasing. The average amount of unplanned leave for the office has decreased from almost 11 days a year in 2006–07 to less than eight days in 2008–09. We do not expect it to reduce further next year, given the rate of illness in the community in winter 2009.

FINANCIAL MANAGEMENT

From 1 July 2008, the office transferred the management of its financial reporting from an outsourced provider to an internal operation. This activity provided substantial challenges for our finance team, including the establishment of appropriate audit controls, strengthening the team's skills and capabilities, and the introduction of robust frameworks for reporting. The transition proved successful and provided the office with some financial gains and a significant improvement in control over the quality of financial information.

Financial performance

Revenue received from ordinary activities was \$20.756 million in 2008–09. The office received \$19.364 million in appropriation revenue, \$1.483 million more than in 2007–08. Following the Northern Territory Emergency Response (NTER) the office received \$0.202 million in 2008–09, and will receive a further \$0.800 million as a prior year's output in 2009–10 to provide services both to Indigenous communities and other people who may wish to make complaints about the actions of agencies involved in delivering the NTER. The funding also enabled us to assist NTER agencies to develop better complaint-handling procedures. The office received \$0.566 million as a result of its acquittal of the NTER 2007–08 no win–no loss funding, that is, as delayed funding for the 2007–08 financial

year. The office received further funding in 2008–09 of \$0.261 million at Additional Estimates for the ‘Excision and refugee status processing’ arrangements. The funding allows the office to provide independent external scrutiny of the processing by the Department of Immigration and Citizenship (DIAC) of non-statutory refugee status claims by offshore entry persons. DIAC is the lead agency for the measure.

Total expenses for the office were \$19.894 million resulting in a profit in 2008–09 of \$0.929 million. This is primarily due to receiving the \$0.566 million in NTER no win–no loss funding related to 2007–08 in 2008–09.

Financial position

The office’s total equity—sum of the office’s assets less its liabilities—has increased by \$0.723 million due mainly to the surplus in 2008–09.

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 total assets increased to \$8.872 million in 2008–09 from \$7.177 million in 2007–08. The increases arose primarily out of an increase in undrawn appropriations. The office’s assets by category at 30 June 2009 were:

- ▶ receivables (amounts due to be paid to the office—75% of total assets)
- ▶ infrastructure, plant and equipment (15%)
- ▶ intangibles (non-physical assets such as software—5%)
- ▶ other non-financial assets (relating to prepayments—4%)
- ▶ cash (1%).

The balance sheet shows cash holdings of \$0.128 million (\$0.160 million in 2007–08). The office’s appropriation receivable also increased by \$1.465 million, from \$4.832 million in 2007–08 to \$6.297 million in 2008–09.

The office’s non-financial assets increased to \$2.125 million in 2008–09 (\$1.873 million in 2007–08), primarily due to purchases of information technology assets and prepaying our suppliers.

Total liabilities increased by \$0.972 million to \$5.665 million in 2008–09 (\$4.693 million in 2007–08). The change in liabilities was primarily due to an increase in employee provisions and other payables.

Procurement and grants

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’s Instructions.

The office published its Annual Procurement Plan on the AusTender website (as required under the Commonwealth Procurement Guidelines) to facilitate early procurement planning and to draw to the attention of businesses our planned procurement for the 2008–09 financial year.

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 tender or direct sourcing. The main categories of contracts relate to information technology, financial services, human resources services, governance and legal advice.

During 2008–09 the office entered into three new consultancy contracts involving total actual expenditure of \$164,721. In addition, three ongoing consultancy contracts were active during 2008–09, involving total actual expenditure of \$71,574. See Appendix 5 for details of new consultancy contracts. (Details are also available at www.ombudsman.gov.au.)

TABLE 4.3 EXPENDITURE ON CONSULTANCY CONTRACTS, 2006–07 TO 2008–09

Year	Number of consultancy contracts	Total actual expenditure
2006–07	7	\$104,395
2007–08	8	\$248,678
2008–09	6	\$236,295

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website (www.tenders.gov.au).

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

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.

The office did not exempt any contracts or standing offers that cost more than \$10,000 (including GST) from publication in AusTender.

The office did not administer any grant programs during 2008–09.

INFORMATION MANAGEMENT AND WORK PRACTICES

We continued to improve our use and management of information and work practices to support the performance of Commonwealth Ombudsman functions. In 2008–09 we continued the whole-of-office strategic approach to information management that started in 2007–08. We are mindful of the increasing reliance on IT for both internal purposes and as a form of communication with the public. We continuously review our information management practices 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.

To this end the office established a business improvement team in late 2008. Their brief is to review our work practices and identify areas for improvement. The team has prepared a number of papers for the office. They provided the impetus to revise our five-category complaint-handling structure and our administrative deficiency workflow. The papers were instrumental in streamlining office processes and improving efficiency. We are currently reviewing our initial management of approaches to the office to capitalise on the initiatives that the office has been working on over the past several years to better manage the increased volume and diverse nature of approaches.

We have also restructured the twin functions of IT and business improvement under the stewardship of one manager at the EL2 level. The expectation is that the dual role of the team will provide for better integration of business planning and the development of our IT capabilities, so that the office's IT development fully meets the business needs of the office.

The Information Management Committee oversees the management of information within the office and meets monthly. The committee monitors and develops plans for improvement in the office's handling and use of information, and the technology that supports this.

The committee has overseen a number of projects including:

- ▶ a project to implement an electronic records management system
- ▶ the revision and application of a business classification scheme which is appropriate and applicable to the office's needs
- ▶ the preparation and application of a number of issues papers to review business practices within the office
- ▶ the implementation of a virtual server network and other redundancy measures to ensure that the office's business practices are secure and continuous
- ▶ the redevelopment of the work practice guidelines and improved electronic accessibility for staff
- ▶ mapping of office workflows to assist in learning and development opportunities for staff and the evaluation of business practices.

In 2009–10 we will continue to work on:

- ▶ developing broader application of the office electronic records management system, in order to better integrate our complaint management system and workflows and further improve our intranet capability to assist in handling approaches and complaints
- ▶ improving IT workflow and change management procedures with particular emphasis on improving our public contact centre capability
- ▶ replacing redundant hardware in a planned and measured fashion
- ▶ enhancing interoperability with other agencies
- ▶ improving internet service delivery.

We implemented a range of other initiatives to improve complaint handling, partly in response to a client survey conducted late in 2007–08, enhanced our quality assurance processes, and revised the way in which we address requests for review of our decisions on complaints. These are described more fully in Chapter 3—*Performance report*.



Michael Woodhead (Commonwealth Ombudsman's office, right) and Ieti Seiuli (Samoan Ombudsman's office, centre) during Michael's placement in Samoa

Samoa

The Office of the Ombudsman in Samoa (Komesina o Sulufaiga) was established in 1988. The current Ombudsman is Mr Maiava Iulai Toma, who was formerly the Secretary to Government and Samoa's Ambassador to the United Nations and the United States of America. The first Samoan Ombudsman was Prof. Jack Richardson, who was also the first Commonwealth Ombudsman.

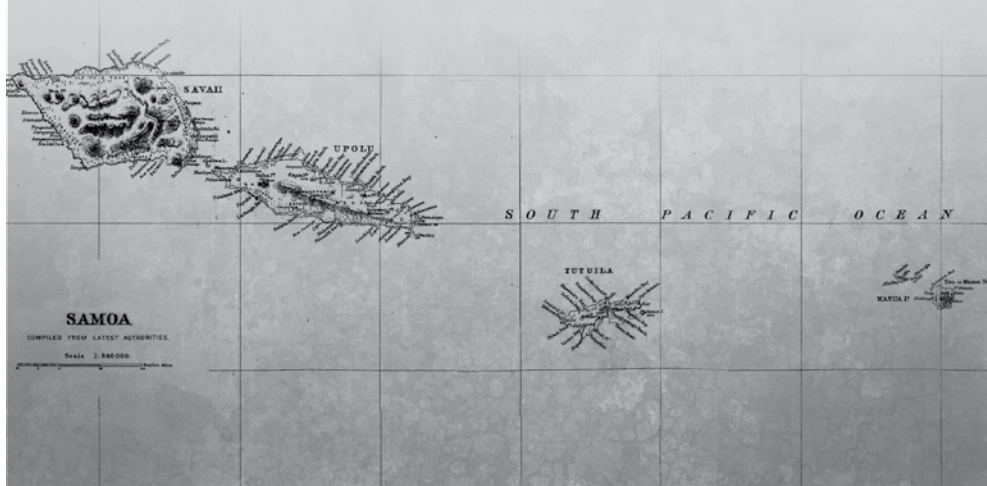
Michael Woodhead from our office spent three months working with the Samoan Ombudsman and staff in Apia from September to December 2008.

Michael worked with the Ombudsman's staff to identify reasons for delays in handling complaints. The main problem areas were that administrative processes were allowed to drift, difficult complaints were not managed well, and agencies failed to respond. Working together, Michael and the Samoan staff addressed these problems by holding regular in-house meetings to discuss complaints, formalising arrangements with agencies and developing good recordkeeping practices.

In addition, the Samoan Ombudsman office changed its outreach focus to government agencies. This resulted in meetings with 10 agencies during Michael's stay to discuss a draft practice statement. The agencies nominated Ombudsman liaison officers, and education sessions for staff were conducted or planned.

The Samoan Ombudsman also established an ongoing relationship with the Samoa Police Service Professional Standards Unit. Michael attended the first three regular monthly meetings held as part of the growing relationship.

Upon his return to Australia, as part of the emerging Pacific Ombudsman Alliance, Michael also made contact with Tongan Ombudsman officials who are building formal police/ombudsman professional working relationships. Michael continues to network with Samoan and Tongan Ombudsman staff and has a further short placement in Samoa in early 2009–10.



Engagement

The Ombudsman's office engages with various stakeholders for a number of reasons:

- ▶ with the community to raise awareness of the role of the Ombudsman and to seek input on various issues
- ▶ with agencies to promote good public administration and improve complaint handling
- ▶ with review bodies and research organisations looking at issues related to promoting good public administration and administrative law
- ▶ with other Australian Government integrity agencies and complaint-handling agencies, and with other Australian Ombudsmen, to share learning experiences and tackle common problems
- ▶ with regional and international partners to promote good ombudsmanship.

This chapter outlines some of these activities and achievements in 2008–09.

COMMUNITY ENGAGEMENT

It is important to ensure that people who use government services, and key stakeholders and community information 'gatekeepers', know who we are, what we do and how to contact us. To get this message to the public is always difficult, but especially so when communicating with audiences outside the main metropolitan areas. Accordingly, getting our message out to people in regional, rural and remote Australia remains a key priority for the office.

In 2008–09 our staff were involved in 219 outreach activities across all states and territories, exceeding our goal to conduct or participate in an average of two focused outreach activities each week during the year. This was a 28% increase on 2007–08, due largely to our outreach work associated with the Northern Territory Emergency Response (NTER).

Our outreach activities included:

- ▶ conducting roundtable discussions with community groups and other special interest groups in all state capital cities
- ▶ 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 about 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
- ▶ distributing Commonwealth Ombudsman publications to relevant information outlets.

In the coming year, a strategic priority for our office is to target outreach, relevant publications and communication activities to key stakeholders, particularly in regional Australia. A related priority is to communicate to Indigenous communities through Indigenous media channels about our role as an oversight agency for the NTER.

We are also updating our internet sites to make it easier for the public to use and navigate.

In 2002 the Ombudsman's office established the Australian National University (ANU) Jack Richardson Prize in Administrative Law. The prize recognises 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 Mr Joshua Neoh.



Outreach at the Australian National University

ENGAGEMENT WITH AGENCIES

In last year's annual report we described the results of a survey we had commissioned of Australian and ACT Government agencies. The survey results suggested a number of areas we needed to address further. One area identified for improvement was our role in providing information on general matters of public administration. In February 2008 we launched a series of Ombudsman e-bulletins, designed to show a sample of recent complaints and the lessons that can be drawn from them. During 2008–09 we produced three e-bulletins, covering themes such as having sufficient information to support a decision, making decisions with proper delegations, recognising the seriousness of a complaint, and ensuring effective communication.

We also introduced a series of fact sheets to assist agencies in various aspects of public administration, with seven fact sheets released during the year. In addition, we are putting more effort into publications and investigations that target broad areas of public administration. During the year the

Ombudsman published the *Better Practice Guide to Complaint Handling*, and an own motion investigation report into the use of interpreters (Report No. 3/2009). Other own motion investigations underway during 2008–09 covered topics such as administration of decision-making under the Compensation for Detriment caused by Defective Administration scheme, and broad investigations into executive schemes and legislative safety net provisions. The reports of these investigations will be released in early 2009–10.

Another area identified for improvement was the level and quality of our engagement with agencies about which we receive few complaints. To address that challenge, in 2007–08 we changed the allocation of responsibilities within the office for dealing with complaints about those agencies which usually generate only a few complaints. For example, our Brisbane office now provides specialisation in dealing with complaints about agencies falling under the Agriculture, Fisheries and Forestry portfolio, while our Sydney office specialises in complaints about agencies in the Health and Ageing portfolio.

This is enabling us to better manage our relations with such agencies, as well as providing a higher degree of consistency in the way we deal with these complaints and a greater capacity to identify any systemic issues. As an example, staff from the office of the Aged Care Commissioner met with staff in our Sydney office. They explained their processes and some of the issues they face. This was particularly useful for our staff investigating complaints about the Aged Care Commissioner's office or about the Complaint Investigation Service in the Department of Health and Ageing.

Similarly, staff in our Brisbane office dealt with a number of complaints about various grant programs and drought assistance schemes managed by the Department of Agriculture, Fisheries and Forestry. Our staff met with senior departmental staff to discuss some of the problem areas we had noted. We are now working with the department to improve its grant management processes. In addition, our staff have close communication with the department's contact officers. This assists those officers to develop a better understanding of our role, assists us in developing a better understanding of agency operations, and facilitates work with the department's line areas in dealing with individual complaints.

The Ombudsman's office was a pilot agency for the whole-of-government 'SmartForms' service provided as part of the Australian Government Online Service Point program. The program, managed by the Department of Finance and Deregulation, aims to enhance the australia.gov.au website to provide people with simple, convenient access to government information, messages and services. The 'SmartForms' service, through the Department of Innovation, Industry, Science and Research, will make it easier for people to find, fill, track and submit government forms. Ombudsman office staff worked with the two departments to develop our new 'Make a Complaint' form and associated computer infrastructure. The new form will become operational early in 2009–10. Agencies from all tiers of government will be able to use the lessons learned when implementing their own 'SmartForms'.

REVIEW AND RESEARCH BODIES

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*. The other members of the committee were Mr Ian Govey and Mr Tony Blunn AO. The committee consulted with a wide range of stakeholders and reported to the Attorney-General in March 2009.

Administrative Review Council

The Ombudsman is an ex officio member of the council, established by the *Administrative Appeals Tribunal Act 1975* Part V. The council provides advice to the government on administrative law issues and reform. During the year the Ombudsman was a member of the sub-committee responsible for a review of administrative decisions in areas of complex and specific business regulation. The council released the report of the review in November 2008. The work of the council is covered more fully in its annual report.

Australian Law Reform Commission

In September 2008 the Ombudsman was invited to be a member of the advisory committee to the inquiry by the Australian Law Reform Commission *Review of secrecy laws*. The inquiry is looking at options for ensuring a consistent approach across government to the protection of Commonwealth information, balanced against the need to maintain an open and accountable government through providing appropriate access to information. The Commission must report to the Attorney-General by 31 October 2009.

Whistleblowing

From 2005 to 2008 the Ombudsman's office was a partner in an Australian Research Council-funded Linkage Project *Whistling while they work*. The project, led by Griffith University, involved six Australian universities and 14 partner organisations, including many Australian public sector management and integrity agencies, and international collaborators. A major report was released under the project in 2008—*Whistleblowing in*

the Australian public sector: enhancing the theory and practice of internal witness management in public sector organisations (ed. AJ Brown, Australia and New Zealand School of Government, 2008).

The House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into a preferred model for legislation to protect public interest disclosures (whistleblowing) within the Australian Government public sector. It drew on the results of the *Whistling while they work* project, and the Ombudsman participated in a roundtable discussion convened by the committee. The committee reported in February 2009. It recommended that legislation be introduced to provide enhanced whistleblower protections, with a specific role for the Ombudsman in a range of matters such as dealing with disclosures and providing guidance and assistance to agencies. The Government has indicated that legislation will be developed in 2009–10.

Immigration detention project

During 2008–09 the office continued its involvement with Griffith University in a three-year project that commenced in 2007–08—*Dilemmas in non-citizen detention and removal: an international comparative study*. The project received funding from the Australian Research Council.

Human rights in closed environments

The office is participating in another Australian Research Council-funded Linkage Project, awarded to Monash University—*Applying human rights in closed environments: a strategic framework for managing compliance*. The project aims to facilitate the implementation of human rights in ‘closed environments’ such as prisons, forensic psychiatric institutions, mental health and disability facilities, community residential units and immigration detention centres. The project objectives include:

- ▶ assessing the readiness of ‘closed environments’ in Australia to incorporate and apply human rights obligations into their daily operations
- ▶ evaluating the likely impact of the human rights legislation on the functioning of closed environments
- ▶ developing practical strategies to facilitate compliance with human rights obligations in closed environments.

COOPERATION WITH OTHER AUSTRALIAN GOVERNMENT INTEGRITY AGENCIES AND COMPLAINT–HANDLING AGENCIES, AND OTHER AUSTRALIAN OMBUDSMEN

The Ombudsman’s office is one part of the Australian Government’s ‘integrity’ group. We meet periodically with agencies that have a similar oversight role, such as the Inspector–General of Intelligence and Security, the Australian National Audit Office, the Australian Commission for Law Enforcement Integrity, the Inspector–General of Taxation and the Australian Human Rights Commission. These meetings enable us to discuss issues in common, and to ensure we complement each other’s work and avoid any unnecessary duplication of effort. In addition, as discussed in the section on Defence in Chapter 6—*Looking at the agencies*, together with the Inspector–General of the Australian Defence Force and the ANU’s Australian Centre for Military Law and Justice, we hosted a seminar *Defence Watchdogs: the administrative oversight of military justice* to mark the 25th anniversary of the establishment of the Defence Force Ombudsman.

We also work with other Ombudsmen and integrity agencies to jointly promote our services. We participated in a joint program of information sessions at 13 universities and technical colleges in Brisbane, Canberra, Hobart, Melbourne and Sydney during Orientation Week in February 2009. Staff from our office joined with representatives from the Financial Ombudsman Service, 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.

In April our office teamed with the office of the NSW Ombudsman, Energy and Water Ombudsman NSW and The Aged Care Rights Service to host information displays at the Royal Easter Show. The collaborative effort was coordinated through our office's participation in JOIN—Joint Outreach Initiative Network—a NSW-based committee of human rights, legal aid and complaint-handling agencies.

In May our office attended Tasmania's AGFEST—the largest farming and rural industry show in Australia—and teamed with the Financial Ombudsman Service, Telecommunications Industry Ombudsman and Tasmanian Ombudsman to staff a large information display. The show presented an excellent opportunity to discuss the various roles and services of the Commonwealth Ombudsman with a broad range of people living in rural Australia.

The Ombudsman is a member of the Australian and New Zealand Ombudsman Association Inc (ANZOA). ANZOA is the peak body for Parliamentary and industry-based Ombudsmen in Australia and New Zealand. Our staff participate in various ANZOA sub-groups, looking at issues such as public relations and communications, learning and development, and information technology.

Deputy Ombudsmen from the different state and territory Ombudsman offices and the office of the New Zealand Ombudsman, as well as a Deputy Ombudsman from our office, meet twice a year to discuss a range of relevant issues, such as relations with Parliament, own motion investigations, quality assurance processes and training, and resource management and complaint-handling procedures.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

The Commonwealth Ombudsman cooperates nationally and internationally with a range of agencies to improve complaint handling and ombudsman services in the Asia-Pacific region. Our office has an International Program that undertakes a range of important activities with Ombudsmen and their offices in Papua New Guinea (PNG), the nations of the Pacific Islands Forum and Indonesia. This work builds linkages and provides mutual support for ombudsman functions, and is funded mainly by the Australian Agency for International Development (AusAID). There were three milestones during the year:

- ▶ we entered into a new memorandum of agreement with the Ombudsman Commission of Papua New Guinea (OCPNG) to run for a minimum of three years
- ▶ the Indonesian Parliament passed legislation to create a new Ombudsman of the Republic of Indonesia, and we started working closely with our Indonesian partners during the transition phase as the new legislation is implemented
- ▶ in collaboration with our Pacific Islands Forum partners, we launched the Pacific Ombudsman Alliance.

Papua New Guinea Twinning Program

Our Twinning Program with the OCPNG commenced in 2005. The original memorandum of agreement between our organisations ended on 31 January 2009. The first stage of the PNG Twinning Program achieved a great deal, including:

- ▶ the signing of a memorandum of agreement between the Royal PNG Constabulary and the OCPNG (more detail is in our 2007–08 annual report)
- ▶ preliminary steps taken towards a memorandum of agreement between the PNG Defence Force and the OCPNG
- ▶ improved efficiencies at the front desk of the Internal Screening Unit of the OCPNG, resulting in an improved capacity to handle an increased number of cases

- ▶ assistance with quality assurance for upgrading OCPNG's electronic complaint management system
 - ▶ a substantial reduction in the backlog of case investigations for the Complaints and Administrative Investigation Division of the OCPNG
 - ▶ an increase in the number of cases escalated from the Internal Screening Unit for further investigation by the Complaints and Administrative Investigation Division, providing a more effective complaint-handling service
 - ▶ an expanded group of Australian Government agencies acted as hosts for staff placements from the OCPNG, including the Inspector-General of the Australian Defence Force and the Australian Commission for Law Enforcement Integrity
 - ▶ a growing camaraderie between OCPNG and Commonwealth Ombudsman staff to share experiences and lessons from ombudsman work
 - ▶ the use of video conferencing to enhance interaction and mutual support between peer groups in both agencies.
- ▶ Another OCPNG officer, who coordinates the memorandum of agreement between the OCPNG and the Royal PNG Constabulary, spent time in our office's Law Enforcement Team and in the office of the Australian Commission for Law Enforcement Integrity.
 - ▶ A specialist from our Public Contact Team spent three months working with the OCPNG's Internal Screening Unit to assist them in enhancing their complaint intake processes.
 - ▶ OCPNG Ombudsman Ms Phoebe Sangetari visited Canberra for senior level discussions on ombudsman functions and management.
 - ▶ We provided support to the OCPNG's human resources management through the short-term placement of a specialist from our office.

Indonesian Australian Ombudsman Linkages and Strengthening activities

The Indonesian Australian Ombudsman Linkages and Strengthening (IAOLAS) activities are part of the AusAID-funded Government Partnership Fund. The original program was extended from June 2009 to June 2010. This will allow the Commonwealth Ombudsman to work with the newly constituted Ombudsman of the Republic of Indonesia (ORI). Indonesia's National Ombudsman Commission was created by executive decree in 2000. In 2008 the Indonesian Parliament passed enabling legislation to put the ombudsman function on a more secure and effective legislative footing. IAOLAS activities, coordinated by our office, supported the following areas during 2008–09:

The Commonwealth Ombudsman and the Chief Ombudsman of Papua New Guinea signed a new memorandum of agreement in early 2009. It updates and strengthens the first memorandum, using the lessons learned over the past three-and-a-half years of our work together. The program will ensure a minimum of two placements from PNG and one placement to PNG each year, as well as short-term specialist exchanges and increased use of electronic communications to strengthen the long-term sustainability of our relationship.

Major activities under the Twinning Program during 2008–09 included:

- ▶ An OCPNG officer spent two months working on Defence Force issues in our office, and a week in the office of the Inspector-General of the Australian Defence Force (ADF) with a team that audited ADF establishments in Western Australia. His work will contribute to an OCPNG project with the PNG Defence Force to revamp its complaint-handling system.
- ▶ In November 2008 the Chief Ombudsman of Indonesia, Mr Antonius Sujata, and two staff visited Canberra for discussions about the creation and operation of a parliamentary ombudsman system. During the discussions, we agreed on our involvement in the 12-month transition phase for the new Ombudsman structure.
- ▶ In January 2009 the Commonwealth Ombudsman and two staff attended seminars and meetings in Jakarta to support the Chief Ombudsman of Indonesia in setting the foundation for the emerging ORI.



Front row (from left) Chief Ombudsman of Indonesia Antonius Sujata and Elisa Luhulina of the Ombudsman's office; back row (from left) Adam Stankevicius, Commonwealth Ombudsman John McMillan and Stephen Ranck all of the Commonwealth Ombudsman's office

- ▶ A Commonwealth Deputy Ombudsman, Dr Vivienne Thom, participated in two focus discussion groups held in regional Indonesia to explain the emergence of the ORI and its greatly expanded jurisdiction from the previous National Ombudsman Commission.
- ▶ Work continued on developing processes to improve internal complaint handling in the Lands Department, with support from the NSW Ombudsman and a team from Gadjah Mada University. The Lands Department has acknowledged that improvements to these processes are vital, given its role in managing Indonesia's land titles system.
- ▶ Two senior Indonesian investigation officers worked with the NSW Ombudsman's office for two weeks to look at the development of better complaint-handling systems through strengthening professional

relationships with agencies within the Ombudsman's jurisdiction.

- ▶ Mr Rully Amirulloh, IT manager of the National Ombudsman Commission in Jakarta, visited our office to work on emerging IT challenges.

Pacific Ombudsman Alliance

The inauguration of the Pacific Ombudsman Alliance in October 2008 was a major milestone in developing relations with Pacific Island Ombudsmen. The Alliance had its origin in 2006 when AusAID sought the Commonwealth Ombudsman's assistance in establishing coordinated regional ombudsman services. This was in response to the *Pacific Plan for Strengthening Regional Cooperation and Integration (Pacific Plan)*. The *Pacific Plan*

was signed by all Pacific Islands Forum leaders in 2005.

The Alliance grew from the network of Pacific Ombudsmen (the Commonwealth Ombudsman, and representatives from Ombudsman offices of the Cook Islands, NSW, New Zealand, PNG, Samoa, Solomon Islands, Tonga and Vanuatu) and more recent work with representatives from Pacific Island nations that do not have an Ombudsman (Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands and Tuvalu). The Alliance is a sustainable and realistic way to meet the goals of the *Pacific Plan* for a mechanism to coordinate regional ombudsman services.

The Pacific Ombudsman Alliance serves to strengthen regional cooperation and coordination between Pacific Island Ombudsmen as well as those working to establish ombudsman functions and like agencies. It provides the institutional form, capacity and resources to coordinate and deliver additional services to all Pacific Islands Forum countries.

The Commonwealth Ombudsman was elected the first chair of the Alliance Board. Our office provides the core of the Board's secretariat

and we coordinate or are directly involved in a range of activities, including:

- ▶ developing ombudsman legislation and improvements in complaint handling in Palau
- ▶ scoping improved complaint-handling processes in Niue
- ▶ revising Tonga's legislation, with further support planned for the next Ombudsman
- ▶ revising Samoa's legislation and support for strengthening the Samoan Ombudsman's operations
- ▶ working to strengthen professional relationships between the Ombudsman and police to improve complaint handling and professional standards in Samoa and Tonga
- ▶ further work to support small island states without an Ombudsman through a working group linked directly to the Pacific Islands Forum Governance Advisor
- ▶ maintaining regular communication with members and stakeholders
- ▶ building an electronic community of practitioners to share resources, advice and experience
- ▶ further review of training needs and production of training materials.



Press conference after the Alliance Board meeting: (from left) Beverly Wakem (Chief Ombudsman New Zealand), Chronox Manek (Chief Ombudsman PNG), John McMillan (Commonwealth Ombudsman), Janet Maki (Ombudsman of the Cook Islands), Bruce Barbour (NSW Ombudsman)

In addition, through Alliance linkages, the New Zealand Office of the Ombudsmen has provided support to Vanuatu and the Cook Islands, and our office has released a staff member to support the Solomon Islands Ombudsman through the Regional Assistance Mission to Solomon Islands.

Other international cooperation

During the year we hosted or participated in meetings with a number of international visitors exploring issues related to good governance. This included:

- ▶ a human rights delegation from Vietnam
- ▶ a delegation from the Ministry of Supervision in the People's Republic of China
- ▶ a delegation from the Bureau for Letters and Calls in the People's Republic of China

- ▶ the Chief Inspector of the United Kingdom Border Agency
- ▶ the Attorney General of the United Kingdom.

The Ombudsman attended the IXth World Conference of the International Ombudsman Institute (IOI), held in Sweden, and which celebrated the 200th anniversary of the Swedish Ombudsman. The conference provided an opportunity for Ombudsmen from around the world to discuss a wide range of topics of mutual interest and to take part in discussions and influence decisions concerning the future goals and work of the IOI. A brief summary of the international history of the Ombudsman function is provided in Chapter 8—*Ombudsmen—200 years of service*.

Oversight of Australian Government agencies

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Solomon Islands

The position of Ombudsman in the Solomon Islands was established in 1978 under the Constitution of Solomon Islands. The current Ombudsman is Mr Joseph Poraiwai, who was appointed in 2008 after working in the office since 1991.

The Commonwealth Ombudsman began close interaction with the Solomon Islands Ombudsman in 2005, followed by several short-term support visits in 2006. This included a seven-week placement by Rohan Anderson of our office.

The immediate challenge facing the Solomon Islands Ombudsman office was to rebuild after an unsettling period following the retirement of the previous Ombudsman in 2006. There was a delay in appointing a new Ombudsman. One of the first actions of the new Ombudsman was to seek assistance from Australia to expand his office, and to make it better known to the wider Solomon Islands population.

The Commonwealth Ombudsman supported Rohan taking a year's leave without pay, so

that he could take up the position of Technical Advisor to the Solomon Islands Ombudsman in the Machinery of Government Program within the Regional Assistance Mission to Solomon Islands.

Since January 2009, Rohan has been working with the Solomon Islands Ombudsman to:

- ▶ reduce the office's backlog of complaints and finalise long-standing cases
- ▶ complete some systemic investigations focusing on different government agencies
- ▶ enhance coordination between the office and agencies
- ▶ improve the complaint intake processes for provincial citizens
- ▶ complete a three-year corporate plan or 'Strategic Ombudsplan'
- ▶ enhance the complaint-handling capacity and skills of investigation officers
- ▶ improve public understanding of the Ombudsman's role.



CHAPTER 6

Looking at the agencies

Most of the approaches and complaints received about Australian Government agencies that are within the Ombudsman's jurisdiction (79%) relate to the following agencies:

- ▶ Centrelink—7,226 approaches and complaints
- ▶ Child Support Agency—2,471 approaches and complaints
- ▶ Australia Post—2,219 approaches and complaints
- ▶ Department of Immigration and Citizenship—1,459 approaches and complaints
- ▶ Australian Taxation Office—1,422 approaches and complaints
- ▶ Department of Education, Employment and Workplace Relations—571 approaches and complaints.

This chapter assesses our work with these agencies in handling complaints and dealing with other broader issues during 2008–09. It also looks at other areas of our work:

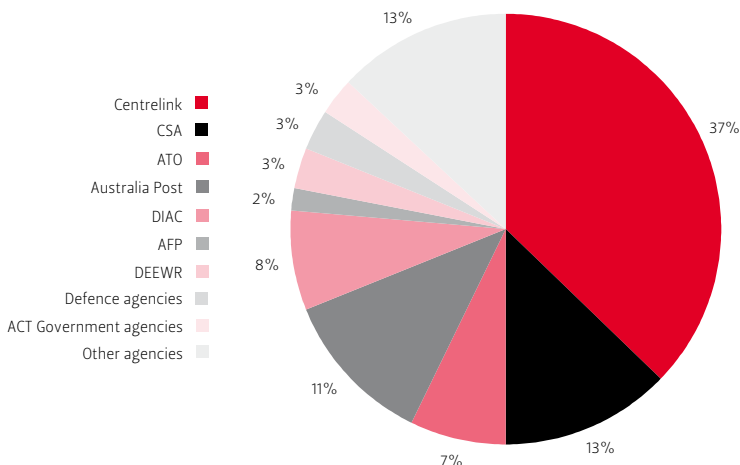
- ▶ as Defence Force Ombudsman, dealing with complaints by current and former members of the Australian Defence Force

- ▶ 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
- ▶ dealing with complaints about some other Australian Government agencies
- ▶ handling complaints about the way agencies deal with freedom of information requests.

The last part of the chapter covers the monitoring and inspections work we undertake for Output 2—Review of statutory compliance in specified areas.

Figure 6.1 shows the number of approaches and complaints received in 2008–09 about agencies within the Ombudsman's jurisdiction. Detailed information by portfolio and agency is provided in Appendix 3—*Statistics*.

FIGURE 6.1 APPROACHES AND COMPLAINTS RECEIVED ABOUT WITHIN JURISDICTION AGENCIES, 2008–09



6

CHAPTER 6 LOOKING AT THE AGENCIES

Australian Taxation Office

The Ombudsman has been investigating complaints about the Australian Taxation Office (ATO) since 1977, when the Ombudsman's office commenced operation. The Ombudsman was given the title of Taxation Ombudsman in 1995 to give a special focus to the office's handling of complaints about the ATO. This was a result of recommendations of the Joint Committee of Public Accounts, which recognised the unequal position of taxpayers and the ATO.

As the only external complaint-handling agency to which taxpayers can bring complaints about the ATO, the Taxation Ombudsman is uniquely placed to draw on our regular contact with taxpayers to assist in improving taxation administration.

COMPLAINTS OVERVIEW

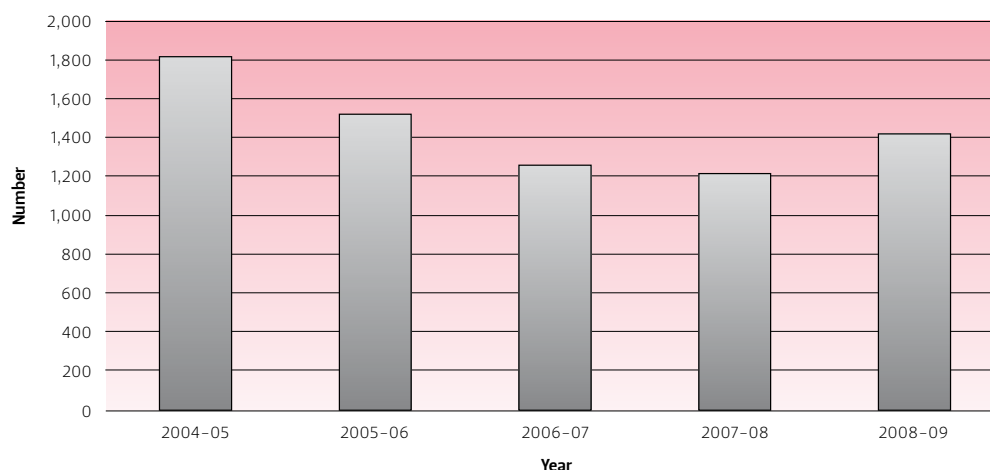
In 2008–09 we received 1,422 approaches and complaints about the ATO, an increase of 17% from the 1,219 received in 2007–08. While this is the highest number of complaints about the

ATO in three years, it is in line with the average number of complaints over the past five years, as Figure 6.2 shows.

The ATO itself also received an increased number of complaints in 2008–09. These increases probably stem from the impact of some significant events during the year, including the tax bonus payment and changes to some ATO systems as part of its Change Program. We will closely monitor Change Program releases during 2009–10 for possible problems.

During the year we finalised 1,400 approaches and complaints, of which 321 (23%) were investigated. While this is more than double the percentage of cases investigated last year, this increase is largely due to a change in categorisation of tax complaint investigations. Most of the complaints we investigate have already been through the ATO's complaint-handling system. As a first stage of investigation we seek information about the outcome of the ATO complaint handling.

FIGURE 6.2 AUSTRALIAN TAXATION OFFICE APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



Previously we did not record this stage as an investigation, but from this year on it will be included as an investigation in our reports.

We achieved one or more remedies in 49% of the cases we investigated. The most common remedies were better explanations (28% of all remedies), apologies (21%), financial remedies (9%) and actions being expedited (7%).

We transferred approximately 14% of the complaints directly to ATO Complaints under the assisted transfer process introduced in 2007. This is a significant decrease from the 25% complaint transfer rate in 2007–08. We have not analysed fully why there has been a drop in the rate of transfers. We consider that the assisted transfer process is a valuable service to assist people to pursue their complaints through the most appropriate mechanism.

MOST FREQUENT COMPLAINTS

The complaints we received covered a broad range of ATO activities and products. The most frequent complaints related to the lodgement and processing of forms (31%), debt collection (15%), superannuation (11%), ATO complaint handling (8%) and taxpayer information (6%). While these have been the most frequent complaint topics in previous years, the most significant change is an increase in the number and proportion of lodgement and processing complaints.

Lodgement and processing

Almost a third of the complaints we received during the year were about lodgement and processing issues, most commonly related to income tax assessments and refunds. Many of the complaints were related to delays in receiving a refund or confusion about the basis for assessment. There was also an increase in lodgement and processing activity in the ATO, following the announcement of the Australian Government's tax bonus payment, which included as an eligibility requirement that a taxpayer had lodged their 2007–08 income tax assessment.

The case study *Processing error resolved* is an example of how we were able to assist a complainant to resolve an ATO processing error that resulted in a debt wrongly being raised against him.

Debt collection

Complaints about debt collection increased from 12% of complaints in 2007–08 to 15% in 2008–09. This followed an earlier increase in 2006–07. The most frequent issues were payment arrangements, debt waiver or write off, actions of debt collection agencies and garnishee and bankruptcy action. In most cases the appropriate outcome from these complaints was to provide the taxpayer with a better explanation about the debt situation and their options for resolving it.

Processing error resolved

Mr A complained to us about an outstanding pay as you go (PAYG) instalment debt. Mr A had been contacted by one of the ATO's outsourced debt collection agencies about payment of the debt. According to Mr A he did not have a PAYG instalment debt because his primary income since 2000 had been Centrelink benefits.

As a result of our investigation, the ATO identified that it had failed to properly remove Mr A from the PAYG instalment system after he had advised it that he would not be lodging income tax returns because he did not receive sufficient income. Mr A was actually entitled to a refund of more than \$3,000.

The ATO apologised to Mr A and paid the refund to his bank account.

In some cases, such as *Unfair garnishee decision*, we highlighted problems with ATO administration of debt collection, leading to fairer decision making.

Superannuation

In 2008–09 close to 12% of the complaints we investigated were about superannuation. The number of such complaints has decreased over the past three years.

One area of increase was in complaints related to superannuation co-contribution. This increase was related to problems with the ATO's implementation of one of its Change Program releases in February–March 2009 that affected superannuation co-contribution payments. The ATO advised that payments to around 200,000 people were delayed as a result. In June 2009 the ATO implemented a 'workaround' that allowed it to expedite payments to people eligible to receive these payments who experienced hardship as a result of the delay (usually people who are relying on their superannuation in retirement or because of adverse personal circumstances). The ATO advised that it is

working with superannuation funds to clear the backlog of payments and interest will be paid for the period of delay. We expect to continue receiving complaints about this issue until the ATO fixes the problem completely.

There was a decrease in complaints from employees about unpaid superannuation (32% of superannuation complaints compared to 47% in 2007–08: a decrease from 52 to 32 complaints). We attribute this decrease to two factors. One is the improved processes the ATO put in place to better manage investigations and recover established superannuation debts, as a result of additional funding provided in the 2007–08 Budget. The other factor is that, following legislative changes to secrecy restrictions, the ATO can now provide more information to employees about progress in investigating unpaid superannuation guarantee. Even though the number of these complaints has decreased, we consider that there is value in further scrutiny of this area of ATO administration and we will cooperate with the Inspector-General of Taxation's review of the administration of the superannuation guarantee charge in 2009–10, discussed later.

Unfair garnishee decision

Ms B complained that it was unfair of the ATO to garnishee her entire bank account balance for a partnership debt of \$60,000. She had only found out about the debt two weeks earlier as previous correspondence had been sent to her former business partner. Ms B had advised the ATO that she could not afford to pay. She agreed to contact the ATO after seeking professional advice about her options, but did not do so by the agreed date. Without attempting to contact Ms B again, the ATO issued a garnishee notice for 30% of the debt, resulting in the total balance of her bank account being sent to the ATO. While the garnishee notice was not legally incorrect, we expressed concern to the ATO that it had not acted consistently with its policy to take into account the likely implications of garnishee action on a debtor's ability to provide for a family or maintain the viability of a business.

The ATO agreed that it should have made further enquiries about the balance of Ms B's account to enable it to make an informed decision about the appropriate action to take. The ATO also advised that it would explore a possible modification to its garnishee practices, to ensure that only a specified and reasonable percentage of the contents of a bank account would be removed under a garnishee.

As part of our process to follow up on recommendations arising from complaints, we will check with the ATO about the implementation of any changes to their garnishee practices and procedures.

The case study *Compassionate response* is an example of how the ATO responded effectively and compassionately to our approach on behalf of a complainant who was seeking the release of superannuation funds held by the ATO.

Taxpayer information

Taxpayers rely on the ATO to accurately record and manage their personal information. If a mistake is made, it is important that the ATO acts appropriately to address this, taking into account how the mistake occurred. The case study *Incorrect assumption resolved* shows how we were able to assist a complainant to have a mistake in processing their personal information corrected.

In 2008–09 we received a number of complaints related to taxpayer information security and compromise. They highlighted two areas of concern. The first is the ATO's approach to resolving a suspected duplication (either two taxpayers using the same tax file number (TFN) or two TFNs thought to relate to the same taxpayer). The case study *Error in resolving suspected TFN duplication* (p. 56) is an example of this type of complaint. The second area of concern is the effectiveness of the ATO's systems and processes for deterring TFN fraud and assisting taxpayers whose identities have been stolen or misused. Cases involving TFN compromise and suspected fraud are complex and involve judgement and sensitivity to resolve.

Compassionate response

Ms C had been diagnosed with terminal cancer with less than six months to live. She had superannuation funds in the Superannuation Holding Accounts special account (administered by the ATO) and she wanted this money paid directly to her so that she could take a holiday with her son before she became too ill to do so. Ms C complained to us that the ATO had advised that it could take three months for her to be able to access her funds. While the ATO normally undertakes to process payments within 21 days of receiving the necessary information, a scheduled upgrade to the superannuation system would interrupt these types of payments for the next few months.

When Ms C complained to us, we asked the ATO to look at the matter urgently. The ATO responded within three days and advised that, because of Ms C's exceptional circumstances, she should complete a withdrawal form and send it to ATO Complaints so that they could issue a manual cheque. This would take two weeks but it was still much sooner than would have occurred if the funds were transferred to her superannuation fund. The ATO Complaints manager took charge of the process to ensure that Ms C received the funds as quickly as possible.

Incorrect assumption resolved

Ms D was a serving Army officer. Her tax agent recorded her title as Captain D when lodging her tax returns. Based on this information, ATO staff made the assumption that Ms D was in fact a male and updated its records to reflect this, without contacting her for clarification.

Ms D made repeated requests to the ATO to correct her record, but it did not do so. At one stage ATO staff asked Ms D if she had had a sex change operation, and subsequently told her that she would have to provide her birth certificate to prove she was female.

As a result of our investigation, the ATO updated its databases without requiring further evidence from Ms D and sent a letter of apology to her.

REVIEWING TAX ADMINISTRATION

In addition to resolving individual complaints, we use information from complaints to identify potential systemic problems in tax administration. Through our external project work, including own motion investigations and less formal reviews, we review the effectiveness of specific areas of tax administration and consider areas for improvement.

During the year we worked on three own motion investigations:

- ▶ the ATO's processes and practices for re-raising debt
- ▶ the operation by several agencies of the Compensation for Detriment caused by Defective Administration (CDDA) scheme (more detail is provided in the Centrelink section of this chapter)
- ▶ the ATO's use of its unannounced access powers.

We also finalised an informal review of aspects of the superannuation guarantee.

We discontinued an own motion investigation into the complaint-handling practices of state tax agents' boards. We decided that this would no longer be pertinent because these boards will be replaced by a national Tax Practitioners Board under new legislation reforming the regulation of tax agent services.

In January 2009 we made a submission to the inquiry by the Senate Standing Committee on Economics into the Tax Agent Services Bill 2008. Our submission was based on observations from the complaints we receive about tax agents and the various state-based tax agents' boards.

If implemented effectively, the reforms are likely to provide a more centralised and structured approach to the regulation of tax practitioners, and should facilitate increased professional accountability and service delivery standards to the benefit of taxpayers, tax professionals and tax administration generally. We look forward to working with the new national Tax Practitioners Board.

Re-raising written-off tax debts

This investigation was initiated in response to complaints we received about the operation of ATO policies to re-raise debts which had been written off many years earlier, sometimes where taxpayers were unaware that they still had a collectable debt. The trigger for a debt being re-raised was a taxpayer receiving an income tax assessment of over \$500 credit. In some cases taxpayers were asked to pay the general interest charge (GIC) applied back to the write-off date. In other cases the GIC was remitted automatically.

The investigation report *Australian Taxation Office: Re-raising written-off tax debts*

Error in resolving suspected TFN duplication

Mr E complained that he had not received tax refunds for the past two years and he could not submit a tax return because he did not have a valid TFN.

When Mr E lodged his income tax return, he discovered that the ATO had processed another person's tax records with his TFN. The ATO had incorrectly decided that he and another taxpayer with similar identifying information were the same person, and merged information together under Mr E's TFN. Mr E's tax return was processed as an amendment, adding the income from the two lodgements together. Our investigation highlighted a lack of action to correct the error or to consider how it could have happened and whether there were appropriate safeguards against it recurring.

As a result of our investigation, the ATO apologised to Mr E, and expedited action to provide a new TFN and his tax refunds. The ATO also reviewed its TFN compromised procedures to ensure that investigating officers are prompted to make adequate enquiries to properly identify if there are two taxpayers with similar details.

(Report No. 4/2009), published in March 2009, identified a number of areas where the ATO could improve its administration of debt re-raise decisions, including:

- ▶ improving communication with taxpayers
- ▶ more comprehensive recording of reasons for decisions
- ▶ ensuring that the criteria used for deciding to re-raise debts are clearly related to whether it is economic to pursue the debt and efficient, effective and ethical to do so
- ▶ monitoring the impact of the ATO's bulk write-off process to ensure it is operating appropriately.

The ATO agreed or partially agreed to all the recommendations in the report. It implemented revised criteria for re-raising debts, with a view to promoting a more consistent approach to the re-raise of debt and avoiding the impact on low income earners that resulted from the previous approach.

Unannounced access powers of the ATO

Many government agencies administer legislation that authorises staff to access premises or information—often described as coercive powers. The ATO administers several pieces of legislation that contain such provisions. One of the best known and most commonly used is s 263 of the *Income Tax Assessment Act 1936* that empowers the Tax Commissioner or his delegate to enter premises, private or business, for the purpose of administering the tax legislation.

The ATO regularly uses these powers to gain access to premises to examine and copy documents. The ATO has in place internal checks and balances, but the use of these powers receives only intermittent scrutiny by external government bodies.

During 2008–09 we commenced an investigation into the ATO's unannounced access powers. The aim of the investigation is to foster good public administration by providing independent oversight of the use of coercive powers and to identify areas for improvement. The report from this investigation will be published in 2009–10.

Informal review of superannuation guarantee charge

During the year we finalised an informal review of ATO administration of the superannuation guarantee charge (SGC). We revised the scope of this review after the ATO implemented changes to SGC administration and received additional funding to address a backlog in unpaid superannuation cases. Our revised review looked at the two main employee complaint issues we had received about the SGC:

- ▶ ATO delay in collecting unpaid superannuation from employers
- ▶ lack of information provided by the ATO to employees about the collection of their unpaid superannuation.

The Commissioner of Taxation agreed in principle with our recommendations that the ATO:

- ▶ continue reviewing the processes and resources used to increase the timeliness of follow-up and finalisation of investigation of employee notifications about employers' failure to pay their superannuation entitlements and collection of established superannuation debts
- ▶ review its business processes to ensure that employees receive advice when no further action is being taken by the ATO to collect unpaid superannuation (pending full implementation of the Change Program)
- ▶ ensure its new systems are able to provide management and client information for the entire process from investigation of unpaid superannuation claims to payment of money collected from employers, and in particular the collection of unpaid superannuation guarantee.

We are continuing to monitor the ATO's administration of SGC and we receive updates about progress with business and systems improvements. In the coming year, we will work closely with the Inspector-General of Taxation in his review of the ATO's administration of SGC.

The review will consider the ATO's:

- ▶ risk assessment strategies for the SGC and ATO implementation of strategies to improve compliance by employers (such as education, employer assistance, audit and enforcement)
- ▶ communication strategies the ATO could adopt with employees who have raised concerns about their employer's compliance, the timeliness of actioning employee notifications and the level of information provided by the ATO to employees about the collection of unpaid superannuation guarantee
- ▶ timeliness in collecting unpaid superannuation guarantee from employers.

Centrelink

In 2008–09 the Ombudsman’s office received 7,226 approaches and complaints about Centrelink, compared to 7,573 in 2007–08, a 5% decrease. Given the volume, complexity and diversity of Centrelink’s work, it is not surprising that we receive this number of approaches and complaints. Figure 6.3 shows the trend in approaches and complaints from 2004–05 to 2008–09.

COMPLAINT THEMES

The largest number of complaints about Centrelink was from people claiming newstart allowance (NSA), followed in order by disability support pension (DSP), family tax benefit (FTB) and age pension. Common issues raised by complainants were Centrelink review of decisions, delays, the management of debt

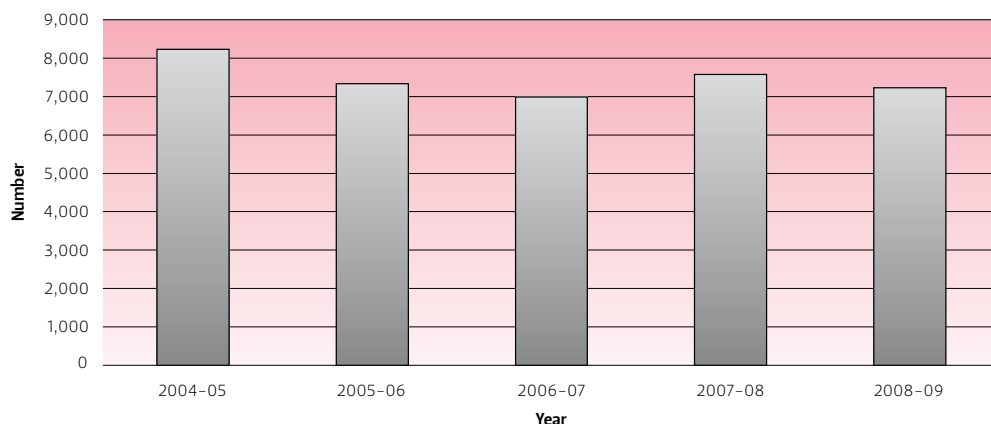
raising and recovery, and payment pending review.

From the beginning of 2009 there was a notable increase in complaints about access to Centrelink services. The large majority of these were calls made to our office by people unable to get through to Centrelink’s normal service or customer relations unit phone lines. Through liaison with Centrelink we were able to identify this trend early on, and inform our public contact officers that Centrelink’s capacity was being affected by the series of natural disasters, including the Victorian bushfires, and the economic stimulus packages. While this did not resolve the issue for those complainants, these timely explanations were valuable in helping to manage their expectations and the demand on our resources for complaint investigation.

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CHAPTER 6 LOOKING AT THE AGENCIES – CENTRELINK

FIGURE 6.3 CENTRELINK APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



We have found that Centrelink is generally very responsive to our enquiries and suggestions. Complaints can be resolved within as little as 24 hours of being received, as the case study *Urgent response* shows.

Often when we investigate an individual complaint, it becomes apparent that the issue being complained about is more widespread or systemic. In these situations we usually ask Centrelink to take a course of action that will ameliorate the problem so that it does not recur. The case study *Misleading information* illustrates how consideration of an individual complaint can provide a systemic solution.

CENTRELINK PAYMENTS AND BENEFITS

Job Capacity Assessments

Job capacity assessments (JCAs) assist Centrelink to determine eligibility for DSP and activity test requirements for activity-tested customers. The JCA program was administered by the Department of Human Services (DHS) in 2008–09, but is now administered by the Department of Education, Employment and Workplace Relations (DEEWR). Centrelink carries out approximately 50% of the assessments.

We received a number of complaints about the JCA process that indicated a lack of confidence in the assessor's understanding of the

Urgent response

Ms F complained about Centrelink's delay in processing her claim for carer payment in respect of her critically ill son. She contacted Centrelink for an update nine days after lodging the claim. Centrelink advised her that it was experiencing a systems problem that prevented her claim from being progressed. Ms F contacted Centrelink a number of times over the next few days, attempting to have the matter resolved, with no success. When she was told the matter could take up to 49 days to correct, Ms F complained to us.

We contacted Centrelink the next day to establish what was delaying the processing of Ms F's claim. Centrelink indicated that a systems error had been identified in her claim and the matter had been referred to Centrelink's systems section to resolve. We asked Centrelink to give the matter some priority, given the sensitivity of the case. As a result, Centrelink resolved the matter and granted carer payment to Ms F that day.

Misleading information

Ms G complained that Centrelink's Disability and Carer Payment Rates brochure stated that the basic conditions for eligibility for DSP include an 'inability to work for at least the next two years as a result of impairment'. Ms G argued that potential claimants who might be eligible for DSP would not apply on the basis of the apparently definitive information in the brochure. More detailed information in other publications explained that the relevant level of incapacity was inability to work for 15 hours or more per week. After we raised the matter, Centrelink undertook to update the brochure from 1 July 2009 to include a reference to the 15-hour rule.

complainant's condition. Although we investigated few of these cases, it was clear that the perception that assessors did not have an adequate appreciation of the complainant's medical condition was widely held.

In early 2008 the Ombudsman's office published an own motion investigation report *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). One of the major recommendations arising from this report was that assessors be encouraged to consult treating doctors where it appears a lack of information about a person's medical condition may affect the assessor's understanding of its impact. The agencies commented that often doctors are unwilling to take the time to discuss their

patients' medical issues over the phone, given they have already completed a medical report form, especially when there is no financial incentive to do so.

The 2009–10 Budget measures included funding for a Health Professional Advisory Unit within Centrelink to give assessors and Centrelink staff making decisions about income support eligibility specialist medical advice to complement a claimant's treating doctor's report. In addition, payments for doctors will be available when they provide additional diagnostic or further information about a claimant at the request of the unit.

We believe that these measures will go a long way in addressing the recommendation. The changes are due to take effect from 1 July 2010.

Limited information

As part of her treatment for leukaemia Ms H commenced aggressive chemotherapy and radiation therapy almost immediately. The DSP medical report completed by her treating doctor indicated that she did not have a terminal condition with a prognosis of less than 24 months and that her condition was likely to improve significantly within the next two years. The doctor did not indicate that he would like to discuss any aspect of his report with Centrelink.

An assessor conducted a JCA on Ms H on the basis of the information provided in the DSP medical report. Although the doctor's diagnosis indicated Ms H had a particularly aggressive and usually terminal form of leukaemia, the JCA assessor did not have the necessary information to identify that Ms H's condition was serious and likely to prevent her from working for more than 24 months.

Centrelink rejected Ms H's DSP claim because it was not satisfied her condition was permanent for the purposes of the social security law. Instead she was granted NSA with an exemption from the activity test on the basis of medical certificates from her treating doctor. Ms H was still required to submit a continuation for payment form to Centrelink every 10 weeks.

The Ombudsman's office noted that in light of her ongoing and exhausting treatment it was physically difficult for Ms H to obtain and submit new medical certificates quarterly and a continuation for payment form every 10 weeks.

As a result of our intervention, Ms H's doctor provided further information that revealed that his initial prognosis and Ms H's own assessment of her circumstances had been overly optimistic. It had become clear that there would be no significant improvement in her condition for at least two years. Based on this information Centrelink decided to review its original decision and grant Ms H DSP from the original date of claim.

Acute and terminal illness

The Ombudsman's 2007–08 annual report highlighted the experience of some people suffering from acute or terminal illness, their inability to access DSP, and the difficulties in having to rely on the activity–tested alternatives such as NSA or parenting payment. In March 2009 the Ombudsman released a report *Assessment of claims for disability support pension from people with acute or terminal illness: An examination of social security law and practice* (Report No. 2/2009). The case study *Limited information* (p. 61), taken from that report, illustrates the problems that people can experience.

The Ombudsman report made seven recommendations for consideration by the four agencies involved—Centrelink, DEEWR, DHS and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

The report recommended the creation of a new category of payment for people experiencing an illness requiring a lengthy period of treatment or recovery, or requiring further investigation to reach a more conclusive prognosis. It also recommended that a list of conditions might be developed that would automatically qualify a customer. In the alternative, the report suggested that consideration be given to allowing longer periods of exemption from activity testing for people who were on NSA or youth allowance.

While not agreeing with the recommendations, DEEWR and FaHCSIA acknowledged the issues and undertook to review them in order to achieve a more sensitive response. Changes made as part of the 2009–10 Budget should go some way to addressing the concerns raised in the report. The Minister for Families, Housing, Community Services and Indigenous Affairs announced a simplification of the DSP assessment to fast-track claimants '*who are clearly or manifestly eligible due to a catastrophic, congenital disability or cancer, enabling them to receive financial support more quickly*'. A new policy will be implemented from March 2010 to allow customers with a serious illness receiving an activity–tested payment to be granted a long–

term exemption from the activity test with a significant reduction in reporting requirements and without the need for referral to a JCA or to repeatedly lodge medical certificates.

The report recommended changes to the advice given to doctors and the format of the report they complete, in order to give them further context on how their responses will be treated in the decision–making process. It also recommended that JCA assessors reviewing the medical report be encouraged to seek further information from doctors. All the agencies agreed on the need to support doctors and facilitate their involvement in the process.

Economic Security Strategy payment

On 14 October 2008 the Government announced the Economic Security Strategy payment (ESSP) that was payable to eligible pensioners, veterans, families and concession card holders. FaHCSIA was responsible for the policy of the payment while Centrelink was responsible for its delivery.

The majority of payments were to be delivered between 8 and 19 December 2008. In order to qualify for the payment, a person had to be in receipt of an eligible pension or family assistance payment, or be the holder of an eligible concession card, on 14 October 2008.

Shortly after the majority of ESSPs had been made in December 2008, we received a large number of complaints from people who were expecting the payment, but had subsequently been advised by Centrelink that they did not qualify. These people told us that they did not qualify because they did not receive an instalment of their eligible payment for a period covering 14 October 2008. Further investigation revealed that people must have received an instalment of their payment for the period including 14 October 2008 in order to qualify for the ESSP. A large number of the complaints we received were from people who qualified for an eligible payment, but their rate had been set to nil for the fortnight that included 14 October 2008 due to casual earnings.

While this criterion was clear in the legislation governing the ESSP, it was not as clear in the

communication regarding the payment, including media releases, advertisements, and fact sheets on the agencies' websites.

At the end of the reporting period we were still in discussion with Centrelink and FaHCSIA about a number of issues stemming from the administration of the ESSP. A draft Ombudsman report had been prepared and provided to the agencies.

Equine influenza assistance

Our 2007–08 annual report discussed some of the issues we observed through complaints about the Equine Influenza Business Assistance Grant (EIBAG) which assisted those affected by the equine influenza outbreak and related movement restrictions. The Department of Agriculture, Fisheries and Forestry (DAFF) held policy responsibility for the EIBAG and Centrelink administered it.

In May 2008 we received five complaints about Centrelink's decision to reject claims for the third round of assistance. The policy guidelines for the third EIBAG specified that, in order to qualify, businesses needed to be located in, or demonstrate that the majority of their income was derived from, a restricted movement zone.

Each of the claims was rejected on the basis that the claimants were not located in a restricted movement zone, nor did they conduct their business activities in one. While this was true, each of the businesses relied on customers that were located in restricted movement zones and therefore derived their income from those zones. DAFF subsequently reviewed and upheld Centrelink's decisions on the basis that the claimants had not provided sufficient evidence to demonstrate that their businesses qualified for the payment.

Upon investigation it appeared that Centrelink had misinterpreted the EIBAG policy guidelines and had been rejecting claimants incorrectly on the basis of whether they were actually conducting business activities in a restricted movement zone, rather than whether their income was derived from a restricted movement zone. Further enquiries revealed that DAFF was aware that Centrelink had misinterpreted the guidelines, yet failed to intervene.

DAFF was, in fact, rejecting these claims on appeal on a different basis: that claimants failed to demonstrate they derived their income from a restricted movement zone. While this was the correct basis, many claimants would have been able to provide further evidence to demonstrate they derived their income from a restricted movement zone, had they been given the opportunity to do so. Given that applicants were not provided with the correct reason for rejecting their EIBAG claims by Centrelink originally, they were denied the opportunity to provide the necessary evidence when appealing to DAFF. DAFF did not acknowledge this. As DAFF would only review a case once, people who would have technically been eligible for the EIBAG missed out.

In November 2008 the Ombudsman published a report *Centrelink and Department of Agriculture, Fisheries and Forestry: Claim and review processes in administering the Equine Influenza Business Assistance Grant (third payment)* (Report No. 13/2008). As a result of this report, Centrelink (in consultation with DAFF) undertook to contact all claimants of the third EIBAG who had been rejected incorrectly and invite them to reapply with evidence that demonstrated they derived income from a restricted movement zone. As a result, an additional \$2,315,000 was paid to 463 claimants whose claims were originally unsuccessful.

This demonstrates how a small number of complaints to the Ombudsman's office can result in far-reaching, substantial remedies for others who may not have contacted us.

SERVICE DELIVERY ISSUES

Alternative servicing arrangements

For several years the Ombudsman's annual reports have referred to the number of complaints received about the withdrawal of face-to-face service options for customers whose behaviour has been inappropriate. The Ombudsman released an own motion investigation report *Centrelink: Arrangements for the withdrawal of face-to-face contact with customers* (Report No. 9/2008) in August 2008.

The report made five recommendations about the implementation of guidelines for alternative servicing which had been in place and supported by a Centrelink Chief Executive Instruction since February 2007. Despite staff training and the issuing of the instruction to support their introduction, the report found that inconsistent application of the guidelines continued. The main areas of concern were the provision of alternative contact details, the duration and review of arrangements, and the consideration of alternative approaches before face-to-face services were withdrawn. The report recommendations included that letter templates include advice about review rights, and that Centrelink record and monitor the implementation and regular review of arrangements. Centrelink agreed to all the recommendations.

We are aware that Centrelink has been reviewing its policy on alternative servicing arrangements since the publication of the report, and that updated guidelines currently under development are intended to address the concerns raised in the report. We have provided comments to Centrelink on these

guidelines. The Ombudsman believes there needs to be greater clarity for both customers and Centrelink officers about how informal alternative service arrangements should be managed, and the continuing right of access to all face-to-face service points under those arrangements made clear to customers. The case study *Banned for life* illustrates this issue.

Reviews and delays

Our 2007–08 annual report noted continuing concerns with Centrelink's internal review processes. Concerns were expressed about:

- ▶ the practice of sending customer reviews to the original decision maker (ODM) when a customer has indicated that they want it referred directly to an authorised review officer (ARO)
- ▶ reviews not automatically progressing to an ARO review when the ODM has affirmed their original decision
- ▶ review forms which advise customers that, even if they ask to go directly to ARO review, the ODM may examine their matter first.

Banned for life

In 2005 Centrelink withdrew face-to-face servicing from Ms J for 12 months, a ban which was later extended to life. Following our intervention in September 2008, Centrelink restored face-to-face services because it had failed to review Ms J's case along with all other alternative servicing arrangements in February 2007 (as required by the Chief Executive Instruction).

In March 2009 Ms J was incorrectly told to leave a Customer Service Centre (CSC) because she was banned. Centrelink apologised to her, and gave her written advice of the arrangements in place. She was able to call the manager of her local CSC directly, or if she needed to visit an agent's office, she should call the CSC manager who would then arrange for her to have an appointment with the agency manager or a 'suitable staff member'.

In response to our enquiry about the failure to provide Ms J with details for a backup contact; start, end or review dates for the arrangement; or advice that she could ask for the arrangement to be reviewed, Centrelink advised that it had *'not entered into an alternative servicing arrangement with Ms J rather we have negotiated how to best meet her servicing needs in a different management response which is likely to have a more positive result'*. Based on this conclusion, Centrelink did not believe it needed to apply the alternative servicing guidelines. Our view is that any decision to limit a customer's contact with Centrelink should be made according to the guidelines on the alternative servicing arrangements.

As the case studies *No DSP* and *No card* show, these problems continue. We have commenced an own motion investigation into Centrelink's internal review processes. We expect to release a report on the outcome of that investigation during 2009–10.

Use of interpreters

In 2009 the Ombudsman's office conducted a cross-agency review of the use of interpreters, with the intention of providing best practice principles against which all agencies could measure their performance and make informed decisions about their potential for improvement.

The Ombudsman's report *Use of interpreters: the Australian Federal Police; Centrelink; the Department of Education, Employment and Workplace Relations; the Department of Immigration and Citizenship* (Report No. 3/2009) identified eight principles for clear and comprehensive policies to guide staff in the use of interpreters. It also considered the provision of staff training, a community language scheme for multilingual staff, recordkeeping, complaint-handling

mechanisms and the way in which agencies address challenges when using interpreters. Encouragingly, Centrelink's policies were found to generally align with best practice principles in the use of interpreters.

Inability to contact by phone

It is not uncommon for the Ombudsman's office to receive a few complaints from people who are experiencing difficulty getting through to Centrelink call centres when contacting the agency by telephone. However, during 2008–09 we received a substantially higher number of complaints about this issue.

We found that Centrelink had been dealing with abnormally large call volumes over 2008–09. Centrelink attributed this to the number of unusual functions it had to perform during the year. These included the delivery and operation of:

- ▶ the Economic Security Strategy payment
- ▶ the Household Stimulus payment
- ▶ assistance relating to the Victorian bushfires
- ▶ assistance relating to the Queensland floods

No DSP

Centrelink rejected Mr K's application for DSP in June 2008. Five days later, he asked for a review of the decision. More than four months after the initial review request, the ODM wrote to Mr K affirming the original decision and advising him that, as previously requested, a review by an ARO was underway. In November 2008 the ARO upheld the ODM's decision, and notified Mr K in writing nearly three weeks later. By that time Mr K had already lodged an appeal with the Social Security Appeals Tribunal, presumably on the basis of verbal advice of the review outcome.

No card

Mr L complained that he had sought a review of a decision not to grant him a Commonwealth Seniors Health Care Card at the end of December 2008. Centrelink advised us that, due to a large backlog of review requests, and given that the matter did not appear to involve an issue of hardship, it would not be given priority. By late April 2009, the matter had still not been seen by an ARO. In response to our investigation Centrelink apologised for the delay, and noted that it was improving its process for transferring cases between sites and staff, and increasing the number of staff to prevent this situation recurring.

- the information line for the Mumbai crisis
- the swine flu hotline.

It appeared to us that Centrelink was handling the call volumes as best it could, given the circumstances. Centrelink advised us that customers would not be disadvantaged as a result of not being able to get through on the phone. For example, if a person was unable to report their income to Centrelink due to telephone congestion, Centrelink would take this into account in making decisions about the person's payment.

While we did not investigate the individual complaints, we were able to explain the reasons for the telephone difficulties to complainants and that they could contact us again if their payments were affected in some manner as a result of not being able to get through to Centrelink.

CROSS-AGENCY ISSUES

Cross-agency issues frequently arise where one agency has policy responsibility for a scheme or payment, and another agency is responsible for delivery. One of the most

common interdependencies involves the relationship between DEEWR and its contracted providers (providers of government employment services—now called Employment Service Providers) and Centrelink.

Income support recipients on activity-tested payments are usually required to register with a provider, and Centrelink supports provider referrals. Because of the relationship between a person's payment and the activities they are required to participate in with their provider, much information is exchanged between Centrelink, DEEWR and its providers.

Sometimes this exchange is automatic, and invisible to the parties involved. At other times, the exchange relies on a manual intervention by one or more parties. Complainants to this office are often put at a disadvantage in not knowing where and how to pursue an issue if the boundaries of responsibility are not clear. In some cases this confusion extends into the agencies themselves. In these cases it is imperative that agencies define their respective roles through clear procedures and guidelines and liaise with each other frequently on these. The case study *Too voluntary* shows one such case.

Too voluntary

Mr M was on DSP and was a voluntary job seeker. Mr M complained that DEEWR would not allow him to participate in an intensive employment support program even though DEEWR had referred him to it in March 2007. Mr M had tried to clarify with both Centrelink and DEEWR why he was not able to participate in the program, to no avail.

On contacting Centrelink to investigate his complaint, we established that Mr M's referral to the program stalled because his DSP was cancelled six days before the referral. Centrelink explained that the cancellation occurred due to a systems error which resulted in Mr M's report of earnings not being registered. Centrelink discovered the error and restored Mr M's DSP in April 2007. Centrelink advised us that, while information on payment restoration automatically transfers to DEEWR where job seeking is compulsory, this does not happen for voluntary job seekers. It must be done manually.

Ultimately, although Mr M had been on DSP since May 2006, he had to wait until July 2008 to be eligible for intensive support, an avoidable 12-month delay. In response to our investigation, Centrelink apologised to Mr M, and undertook to update internal reference materials to ensure that future restorations for voluntary job seekers are recorded on the DEEWR system.

COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE ADMINISTRATION

We have been undertaking an own motion investigation into the administration of the Compensation for Detriment caused by Defective Administration (CDDA) scheme by Centrelink, the Australian Taxation Office and the Child Support Agency. The Department of Finance and Deregulation is responsible for the policy underpinning the scheme, and the practices of the other agencies were used to illustrate the complexities and challenges in administering the scheme.

The final report, to be published in August 2009, focuses on the accessibility of the scheme to potential claimants, the

treatment of evidence in support of claims, and the moral, rather than legal, obligations which underpin decision making under the scheme but which are often frustrated by a legalistic approach to its administration.

LOOKING AHEAD

This year we have been closely monitoring preparations for changes under the same sex legislation and employment service reforms, both of which come into full effect from 1 July 2009. Through regular liaison with Centrelink and stakeholder groups in the community, we have been able to contribute constructively to the identification of issues that may lead to complaints in relation to these changes. We will monitor their implementation closely.

Child Support Agency

6

CHAPTER 6 LOOKING AT THE AGENCIES – CHILD SUPPORT AGENCY

The Child Support Agency (CSA) is a program within the Department of Human Services. The CSA has two main functions:

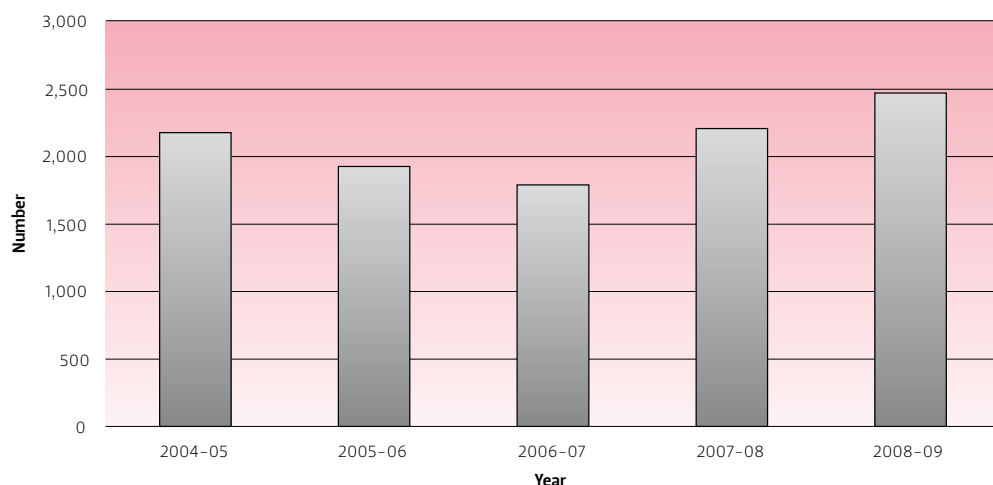
- ▶ to make administrative assessments of child support payable by a parent to the person caring for their child (usually the child's other parent)
- ▶ to register, collect and transfer amounts payable for child support from the liable parent (the *paying parent* or *payer*) to the person with primary responsibility for caring for the child (the *receiving parent* or *payee*).

The CSA works in the difficult area of family breakdown, and it is not unexpected that there can be a complaint from one or other party. A particular challenge facing the CSA is to ensure that its processes do not unintentionally inflame or disrupt the relationship between separated parents, or unduly affect the arrangements those parents have made for their support of their children.

In 2008–09 we received 2,471 approaches and complaints about the CSA. This was an increase of 12% from the 2,208 complaints and approaches we received in 2007–08, and the highest number since 2002–03 (2,515). This increase was greater than for any other major agency. Our analysis of the complaints does not point to any single reason for the continued growth in CSA complaint numbers. We have identified some prominent themes, discussed below. Figure 6.4 shows the trend in approaches and complaints about the CSA over the last five years.

Many of the complaints we receive about the CSA's decisions could be addressed in another way. For example, a parent could lodge an objection to a disputed decision with the CSA or apply to the Social Security Appeals Tribunal for review. The CSA also has an internal complaints service to deal with other matters not subject to review, such as complaints about delay, rudeness, or general service

FIGURE 6.4 CHILD SUPPORT AGENCY APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



delivery. In general we expect people to use these options before we consider investigating a complaint. Given the complexity of the system, sometimes it is necessary for us to contact the CSA to get a proper understanding of the nature of a person's complaint and the avenues available to the person to address it.

We investigated 29% of the CSA complaints that we finalised in 2008–09. When we investigate complaints, we focus on identifying whether the agency has acted reasonably in the particular case. We assess this in the context of the CSA's role, the relevant legislative framework, and taking into account the circumstances of the payer and payee, and by extension, the children. We also consider whether the complaints we receive indicate any systemic weaknesses in the CSA's processes. We draw such issues to the CSA's attention through the individual complaint, by discussing the broader problem with senior CSA staff in one of our regular meetings, or by conducting an own motion investigation.

OWN MOTION INVESTIGATIONS

CSA's response to allegations of fraud

In November 2008 we published a report *Child Support Agency, Department of Human Services: Responding to allegations of customer fraud* (Report No. 12/2008). The report highlighted inadequacies in the CSA's processes for identifying customer fraud, including its arrangements for assessing fraud reported by a member of the public. We made five recommendations. Four recommendations were aimed at improving the CSA's processes in order to better safeguard the integrity of the child support scheme. The other recommendation was for the CSA to reconsider its handling of a specific case, where its failure to investigate a parent's income led to the other parent suffering financial loss.

The CSA accepted all our recommendations about its processes for responding to customer fraud. The CSA also agreed to provide a remedy to the specific complainant, compensating her for her legal costs and refunding the child support that she had overpaid.

Departure Prohibition Orders

In June 2009 we published a report *Child Support Agency: Administration of Departure Prohibition Order powers* (Report No. 8/2009). This report analysed the CSA's processes for making a Departure Prohibition Order (DPO), which can be used to stop a parent with a child support debt from leaving Australia. The report examined a sample of DPO decisions. We found weaknesses in the CSA's procedures, and deficiencies in each case examined. We made eight recommendations in the report. Six recommendations were aimed at improving the CSA's administration of its DPO powers. We also recommended that the CSA review all the cases where a DPO was in force to ensure that the decision was valid and appropriate, and that the CSA consult with its policy department (the Department of Families, Housing, Community Services and Indigenous Affairs) about the suitability of the current arrangements for challenging DPO decisions. The CSA largely accepted the recommendations.

COMPLAINT THEMES

New child support formula

On 1 July 2008 the legislative formula that the CSA uses to make an administrative assessment of child support changed. Our 2007–08 annual report acknowledged the CSA's thorough preparation for the start of the new formula, including the efforts it made to ensure that its customers were aware of the changes. Our monitoring of CSA complaints in 2008–09 did not suggest any major implementation problems.

We received a small number of complaints that suggested the CSA's computer system was not programmed to handle all the possible variations in the family arrangements of its customers. In at least four cases where the child was in the care of a person other than a parent, the CSA was unable to make an accurate child support assessment promptly. One carer did not receive any child support for nine months because the CSA was unable to make an assessment of the child's parents' liabilities under the formula.

Objection delays

Our 2007–08 annual report noted the CSA's considerable backlog of objections—that is, customer requests for an internal review of a CSA decision. In most cases the CSA is obliged to make a decision on an objection within 60 days of receiving it. In 2007–08 it met this obligation in only about 77% of cases. The CSA introduced new arrangements for the distribution and monitoring of objections, which have reduced the backlog and improved the timeliness of its decisions. The CSA has also built expertise in particular teams that concentrate on specific types of objections, which it says has improved the quality of its decisions. It finalised 85% of objections within 60 days in 2008–09. This is better, but the CSA is still not meeting the timeframe required by Parliament in a substantial number of cases.

Estimate reconciliations

Initially a child support assessment is based on a parent's most recent tax assessment. If the parent's income has reduced, he or she can elect to have the CSA use an estimate of their current income. Once the parent lodges their tax return, the CSA compares the estimate with the tax assessment. If the estimate was too low, the CSA adjusts the assessment. This process is referred to as an 'estimate reconciliation'.

In our 2007–08 annual report we noted that as at 31 March 2008 the CSA had around 200,000 unreconciled estimates. This is an area of ongoing concern. In June 2009 the CSA advised us that it had around 207,000 cases with incomes that needed to be reconciled, and a further 190,000 unreconciled estimates awaiting lodgement of the parents' tax returns. In the 2009–10 Budget the CSA was allocated \$85.8 million over three years to complete the outstanding reconciliations. We continue to monitor the CSA's progress in this area.

Failure to collect child support

Around 12% of the complaint issues that we investigated related to the CSA's alleged failure to collect child support. This was the most common issue we investigated, as it was in 2007–08. We consider this is an important part of our role in relation to CSA complaints.

For privacy reasons, the CSA is generally reluctant to provide the payee with detailed information about the steps that it has taken to collect outstanding child support and it does not include the payee in any negotiation with the payer to reach a suitable payment arrangement. However, the CSA can provide that information to the Ombudsman's office for the purposes of an investigation. Even though we are not able to pass on all the details to the complainant, we are often able to provide an objective assessment of whether the CSA has taken reasonable action to collect arrears from the payer. In some cases, the CSA will take extra steps following our investigation.

The 2009–10 Budget allocated the CSA \$223.2 million over four years to reduce the growth in child support debt and maintain customer service standards. We will continue to monitor the CSA's performance in this area.

Payee overpayments

A payee can be overpaid when the CSA retrospectively reduces the child support assessment, or if by error the CSA paid an amount to the payee without first having received it from the payer. In 1998 this office published a report of its investigation of the CSA's processes for raising and recovering child support overpayments from payees: *Child support overpayments—A case of give and take?* Following that report, we received few complaints about payee overpayments. This was partly due to changes to the child support legislation, which limited the CSA's power to make a retrospective decision. The CSA also improved its approach to overpayments in response to that report.

This year we started to receive complaints that the CSA had intercepted tax refunds to recover overpayments from people who had previously been payees. Some of these debts were more than a decade old. In some cases the CSA had never provided the person with a written explanation of the debt.

Our investigation of these cases revealed that the CSA had started recovering these old debts after 1 January 2008, when its power to intercept and apply tax refunds to a child

support overpayment was reinstated. Approximately 20,000 cases were involved. The CSA has now accepted that it may not always be reasonable for it to recover these debts after such a long delay. In several cases the CSA has agreed to explore the possibility of waiving at least part of the debt because of the circumstances in which the debt arose and the fact that recovery may leave the person worse off than if they had not been overpaid. The case study *No deductions* shows one such case. The CSA is currently reviewing all payee overpayments over five years old to decide whether it is now appropriate to recover them.

Confusing CSA letters

Complainants regularly tell us that they find the CSA's letters hard to understand. Many people find it difficult to follow the CSA's assessment notice, which sets out all the information that the CSA uses to work out the rate of child support, as well as showing the total amount payable. We consider that individual CSA notices are reasonably clear.

However, the CSA often sends multiple notices to people, covering different periods. They rarely include a covering letter that clearly explains why they have issued the different notices or what information has changed. In 2008–09 we brought three such cases to the CSA's attention, and asked them to consider how they could present information more clearly to their customers, especially those who have more than one child support case. The CSA has agreed that it should improve its letters to address the problems that we highlighted.

Managing complex cases

Given the sensitive area that the CSA works in, it is important that it carefully considers the possible impact of a decision upon the people who will be affected before it makes that decision. The CSA may need to check its understanding of the facts before it makes a change to a case, to make sure that nothing else has changed. Where it is likely to make a decision with retrospective effect, it should

No deductions

Ms N complained that the CSA took her tax refund of \$900 in July 2008, without warning, to recover an overpayment that occurred in 1997.

The CSA had paid \$4,000 to Ms N as child support in 1996 and 1997. The CSA had notified the employer of Ms N's former husband (Mr O) to deduct these amounts from his salary, and it had made payments to her for the same amounts. In 1997 the CSA reconciled its accounts and found that no deductions had been made, because Mr O had left his job.

In 1997 the CSA told Ms N that she had been overpaid. It negotiated to recover the debt from her ongoing child support payments. The CSA did not send Ms N a statement for the debt or advise her of the balance. When her child support case ended in 2004, she believed the debt was settled. However there was still \$2,500 owing.

When Ms N complained to the CSA in 2008 about it taking her tax refund, they acknowledged they failed to provide her with advice about the debt after 2004. The CSA released her tax refund, but said she still owed \$2,500.

When we investigated Ms N's complaint, we found that she had been receiving a Centrelink benefit at the time of the overpayment. This payment had been reduced by \$1,300 because of the child support that she had been overpaid. She was not able to ask Centrelink to pay her the \$1,300 because of the time limits for a person to claim arrears. We pointed out to the CSA that recovering the full amount of the overpayment from Ms N would leave her \$1,300 out of pocket. The CSA agreed to our suggestion that it approach the Department of Finance and Deregulation for approval to waive recovery of at least that part of Ms N's debt. The CSA undertook to seek waiver of the entire amount.

explain any alternatives to the parents before finalising the decision.

Sometimes a simple error can lead to complex problems, as the case study *Wrong date* shows.

In other cases, agreements and court orders for child support are complicated and can be interpreted in a number of ways with different results. We investigated three complaints about the CSA's administration of complex court orders or agreements. Those complaints suggest that the CSA needs to improve its processes for identifying inherently complex cases, deciding how it will administer them, communicating those decisions to the parents, and advising them of their rights to challenge the decision if they disagree. The case study *Fares in lieu* shows one example of the difficulties that can arise.

Interaction between family tax benefit and child support

The child support scheme interacts with, and can affect, some payments administered by Centrelink. For example, a person must take 'reasonable maintenance action' for a child after separation, in order to qualify for additional family tax benefit (FTB) for that child. In most cases, 'reasonable maintenance action' involves applying to the CSA for an assessment of child support, and either collecting 100% of the assessed amount privately from the other parent or applying to the CSA for collection.

In most cases, Centrelink advises an FTB recipient or applicant about the requirement to apply to the CSA for an assessment of child support payable by their former partner/child's parent. The trigger for that advice is usually when the person tells Centrelink that they have

Wrong date

In 2001 Mr P and his former partner made an agreement about the rate of child support that he would pay for their children. The CSA accepted the agreement and issued an assessment for the agreed amount. The agreement was to last for three years, with annual updates for inflation.

The CSA adjusted the assessment each year as required by the agreement. However, it made a mistake one year and changed the end date of the agreement to the date the youngest child would turn 18. Neither Mr P nor his former partner realised the mistake. Mr P paid child support to the CSA each month according to the CSA's assessment and the CSA transferred the money to his former partner.

In June 2008 the CSA rang Mr P to tell him that it had discovered the agreement should have ended in 2004, and that the usual child support formula would apply to his case from that date. The CSA officer told him that he now owed the CSA an additional \$37,000. He later received notices from the CSA which advised that he actually owed more than \$65,000.

Mr P complained about the CSA's failure to give him advance notice of the intended change. He said that the care arrangements for the children had varied since he and his partner made the agreement, and that he had made a number of payments that the CSA could have credited against his debt. These would affect the accuracy of the CSA's decision. He said that the CSA did not give him any advice about his options, or even an opportunity to tell them about these matters.

During the course of our investigation, the CSA allocated a special case officer to Mr P and his partner to assist them to work through their child support options. As a result, Mr P's debt was reduced substantially. We advised the CSA that we considered that the earlier process it followed for correcting the error was not appropriate, given the time that had passed and Mr P's reasonable reliance on the CSA's advice of what he was required to pay.

separated, or that they now have care of a child. The CSA and Centrelink also share certain information about changes of care for children, or when FTB or child support is cancelled. Each agency reviews their records when they receive advice about a change in the other agency's records, to see if they need to amend the case. Any failure in those liaison and review arrangements can lead to substantial detriment to a parent with care of a child.

We investigated a number of complaints about the interaction between the CSA and Centrelink in relation to the reasonable maintenance action test. These complaints revealed a range of problems, including a lost opportunity to receive child support, a person receiving a reduced rate of FTB, and a liability to repay substantial amounts of FTB to Centrelink. In some cases Centrelink decided to waive recovery of the FTB debt and the CSA considered paying compensation to the payee for their lost opportunity to receive child support. We intend monitoring this problem in the coming year.

CSA's 'capacity to pay' investigations

The CSA's 'income minimisers' project is one way in which it seeks to ensure the integrity of the child support scheme. This project targets cases where a parent's taxable income is not a true indicator of their capacity to support their children, either because of the way their financial arrangements are structured (including some legitimate arrangements for tax purposes), or because they are involved in the 'cash economy'. If the CSA believes that the parent has a greater capacity to pay, it can start a process to change the assessment, which includes an investigation into the parent's capacity to pay.

We have investigated several complaints which raised concerns about the CSA's processes for managing personal information in the course of these investigations, including information about related people, such as a parent's new partner. We will conduct a more detailed investigation of the CSA's 'capacity to pay' process in 2009–10.

Fares in lieu

Mr Q and his former wife obtained court orders about residence and contact for their children, in anticipation of the children moving interstate with their mother. As part of the proceedings, they agreed that Mr Q would pay the cost of the children's airfares for their contact visits with him. The agreement stated that these payments were 'in lieu of child support payments'.

Mr Q provided a copy of the agreement to the CSA after it issued an assessment of child support payable by him. The CSA considered the agreement and decided that it would administer it by crediting any amounts that Mr Q paid for airfares against what he had been assessed to pay under the child support formula. Mr Q was still liable to pay any difference to the CSA. Mr Q complained repeatedly to the CSA about this interpretation. He said that he and his former wife intended that he would only have to pay the cost of the children's airfares, and not be liable for any additional child support.

We investigated Mr Q's complaint. We found that although the CSA had considered the interpretation of the agreement on several occasions, it had never provided Mr Q and his former wife with advice about its decision in a form that they could object to, nor any advice about their rights in this regard. The CSA accepted our finding that the process it had followed had been deficient and undertook to advise the parties of their objection rights. The CSA told us that it was already in the process of delivering training to its staff about interpreting court orders and agreements, and that it would review its procedural instructions to ensure that they emphasise the need to provide customers with written advice of the interpretation and their right to object to it.

Defence

6

CHAPTER 6 LOOKING AT THE AGENCIES – DEFENCE

Our office 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 2008–09 we received 609 defence-related approaches and complaints, compared to 562 in 2007–08. This represents an 8% increase in complaints.

DEPARTMENT OF DEFENCE

We received 157 approaches and complaints about the Department of Defence in 2008–09, compared to 135 in 2007–08. Of the

complaints we investigated, the three main sources of complaint were:

- ▶ recruitment into the ADF
- ▶ the payment of financial compensation
- ▶ applications for honours and awards.

The number of complaints we investigated about honours and awards increased from 2007–08. Because the eligibility requirements for specific honours and awards are clearly set out in ministerial determinations and letters patent, our investigations normally focus on the accuracy of Defence's application of those rules to an individual's circumstances. The main cause of complaint to our office was where Defence had declined to give an award on the basis that its records showed the member was not eligible. However, the member believed that Defence's records did not accurately reflect their service.

In almost all of these complaints, investigation was made more complicated by the length of time that had passed. Many of our complaints related to service in the ADF more than 30 years ago. In the absence of supporting records to confirm a person's service, we do not believe that denying an honour to a member is unreasonable. However, in some cases alternative

TABLE 6.1 DEFENCE-RELATED APPROACHES AND COMPLAINTS RECEIVED, 2004–05 TO 2008–09

Agency	2004–05	2005–06	2006–07	2007–08	2008–09
Australian Army	190	169	145	138	141
Defence Housing Australia	28	29	36	28	43
Department of Defence	165	138	106	135	157
Department of Veterans' Affairs	216	276	256	139	160
Royal Australian Air Force	69	80	57	48	45
Royal Australian Navy	78	54	50	59	49
Other (see breakdown for 2008–09 in Appendix 3)	12	4	20	15	14
Total	758	750	670	562	609

documentation and records are enough to reasonably establish a member's entitlement, as the case study *Officially not there* shows.

We do not normally investigate the reasons for establishing a certain award, or the limits of the eligibility criteria. These policy issues are more appropriately dealt with by the new Defence Honours and Awards Tribunal, which is an independent body set up to consider issues arising in the area of Defence honours and awards. In July 2008 the Government appointed the first members to the Tribunal. The inaugural chair, Emeritus Prof. Dennis Pearce AO, is a former Commonwealth and Defence Force Ombudsman.

AUSTRALIAN DEFENCE FORCE

We received 235 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 245 in 2007–08.

Of the complaints we investigated, the most frequent cause of complaint was about the ADF's internal complaint system, the redress of grievance (ROG) process. The ROG process has been the subject of much debate and inquiry over the past 10 years. In May 2008 the regulations governing the redress process were changed. One of the main changes was the introduction of a time limit of 90 days for a commanding officer to investigate and decide on a member's grievance. This was an important change.

If a member is not satisfied with the commanding officer's decision, the member may refer the matter to the Chief of their service. There is no time limit for consideration by the Chief, and we are receiving an increased number of complaints about delay. The delay usually occurs in the preparation of a brief prior to the Service Chief's decision, as the case study *Four of the same* shows.

Officially not there

Mr R considered he was entitled to the Australian Service Medal, as he served for more than 30 days in Malaysia in 1988. The Central Army Records Office had no record of Mr R serving in Malaysia, and the Directorate of Honours and Awards refused Mr R's application. After investigation by our office, Defence reviewed his application and accepted the statutory declarations by colleagues who testified that they served with him in Malaysia. A decision was then made to award Mr R the Australian Service Medal with Clasp 'SE ASIA'.

It seemed that Mr R's deployment was as a last-minute replacement for another ADF member, and was not officially recorded. Our office also investigated whether Mr R had suffered any detriment to his pay and allowances by not being officially recorded as being in Malaysia at that time.

Four of the same

Within a few days in February 2009 we received four separate complaints by four Army members who had requested their ROG be referred to the Chief of Army. The requests had been made in July, August and September 2008. When we asked Defence about the status of these ROGs, we learned that none of the referrals had yet been allocated to a case officer. Two were due to be allocated in March 2009, and two were unlikely to be allocated before June 2009.

Although we consider these delays to be unreasonable, we were unable to recommend that any of the complaints be given priority over any other complaints in the queue. Instead, we decided to question the processes and systems used by Defence, with the aim of improving timeliness for all redresses that have been referred to the Service Chief. This is ongoing.

We raised our concerns about the delays with the Senate Committee on Foreign Affairs, Defence and Trade in June 2008, in its public hearings to gather evidence for its fourth progress report into the reforms to Australia's military justice system. We were also consulted by the Honourable Sir Laurence Street AC, KCMG, QC and Air Marshal Fisher AO (rtd), who were appointed by the Chief of the Defence Force (CDF) to conduct a review into the effectiveness of the overhauled military justice system. The delays in the ROG process were noted in Sir Laurence and Air Marshal Fisher's *Report of the Independent Review on the Health of the Reformed Military Justice System*, released in March 2009.

We are concerned that the excellent structural and process reforms that have been put in place in the last few years are in danger of being undermined by this single bottleneck. Our experience shows that confidence in an internal complaint system is essential. If confidence is lost because there is seen to be excessive delay at any stage, then the system will not be used.

The Ombudsman wrote to the CDF in June 2009, drawing his attention to our assessment of the potential pitfalls. We noted that the ADF put considerable effort into ensuring that decisions were beyond reproach. We queried with the CDF whether this thoroughness should be consciously balanced against the dangers of excessive delay.

Defence has acknowledged that the delay is of concern, and is of the view that the cause lies in resource constraints rather than any systemic failings. We are continuing to work with Defence on this issue.

25th anniversary of the Defence Force Ombudsman

December 2008 marked an important event in the history of administrative oversight of military justice—the 25th anniversary of the establishment of the Defence Force Ombudsman in December 1983. In the last 25 years, our office has been joined by other oversight bodies, notably the Inspector-General of the Australian Defence Force (IGADF). Academic interest in military justice

has grown also, as shown by the establishment in 2008 of the Australian Centre for Military Law and Justice (ACMLJ) at the Australian National University.

On 26 November 2008 our office, together with the IGADF and the ACMLJ, hosted a one-day seminar at the Australian War Memorial to examine the military justice system. The seminar looked at the challenges arising in administrative oversight of military justice, and what is needed to ensure fairness in complaint handling, grievance resolution and administrative inquiries.

A range of senior practitioners and commentators in the area of military justice spoke. The speeches were a starting point for engaged and interesting discussion. Key speakers included:

- ▶ the Hon. Warren Snowdon MP, then Minister for Defence Science and Personnel
- ▶ Senator Mark Bishop, Senator for Western Australia and Chair of the Senate Committee on Foreign Affairs, Defence and Trade
- ▶ Lieutenant General Peter Leahy AC (rtd), Director of the National Security Institute, University of Canberra
- ▶ Prof. John McMillan, Commonwealth and Defence Force Ombudsman
- ▶ Mr Geoff Earley, IGADF
- ▶ Prof. Robin Creyke, Director ACMLJ
- ▶ Dr Matthew Groves, Law Faculty, Monash University
- ▶ Ms Di Harris, Director-General, Fairness and Resolution Branch, Department of Defence
- ▶ Mr Neil James, Australia Defence Association.

The seminar was preceded by dinner at the Australian War Memorial, where Prof. Dennis Pearce spoke of his early experiences in monitoring military justice.

A full program of speakers and copies of presentations and speeches are available on our website at www.ombudsman.gov.au.

To celebrate the 25th anniversary, we also released a publication *Defence Force Ombudsman: Twenty-five years of service*. This publication describes the changes we



have noticed in 25 years of investigating complaints about the ADF and the way in which the changes in the ADF reflect changing community attitudes.

Over the last 25 years, complaints to our office have centred on the main concerns of ADF members and their families—pay, entitlements, relocations and dismissals. Our work in this area has resulted in numerous changes to legislation and policy, and has also provided assistance to many thousands of people. The work of the DFO has also shown that the need for sound and accountable administration is as applicable to Defence as it is to all government agencies.

This publication is available on our website, or on request.

DEPARTMENT OF VETERANS' AFFAIRS

The Department of Veterans' Affairs provides a wide range of services to nearly half a million Australians. During 2008–09 we received 160 approaches and complaints about DVA, compared to 139 in 2007–08, a 15% increase.

The single biggest group of DVA's clients are World War II veterans and their families, followed by a substantial number of Vietnam veterans. An increasing number of DVA's clients are younger people who have left the ADF and now require medical treatment for injuries or illnesses resulting from their ADF service.

A varied client base means that DVA engages with many other organisations where their responsibilities overlap. For example, older veterans' medical and accommodation needs are also met by Commonwealth and state

agencies with responsibility for aged care and health provision. This sharing of responsibility presents challenges for DVA in administering veterans' entitlements, and for our office in investigating complaints.

In particular, DVA must necessarily maintain a close liaison with Defence. For example, if an ADF member is injured during their service, the ADF takes responsibility for medical treatment and rehabilitation. When the member leaves the ADF, the responsibility moves to DVA. Both Defence and DVA aim to make this transition as seamless as possible, ensuring that the quality and timeliness of the medical treatment is maintained without disturbance. To add to the complexity, DVA is also responsible for administering some entitlements for currently serving ADF members, as the case study *Wrong guidance* shows.

Inquiry into RAAF F-111 deseal/reseal workers and their families

In July 2008 we gave evidence to the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into compensation for former F-111 deseal/reseal workers and their families. We also provided a written submission. In previous annual reports we have described the complaints made to our office about claims made to DVA under the ex gratia scheme, and the administrative challenges the scheme presented for DVA.

Previously this office had raised our observations about the administration of the claims with the Secretary of DVA. The Secretary responded fully and openly, acknowledging some areas for improvement and explaining the process in more detail. We were satisfied with the Secretary's response, and did not take any further action.

Our submission to this inquiry highlighted the following problem areas in processing claims:

- ▶ deficiencies in the original records created by the RAAF
- ▶ a lack of guidance for assessors on gathering and using evidence to assess claims
- ▶ maintaining adequate staffing resources to assess claims
- ▶ delay in processing more complex or unusual claims
- ▶ the quality of recordkeeping on claim files created by DVA.

The committee reported in June 2009, concluding that our criticisms in relation to DVA's use of evidence in assessing claims was a 'cause for deep concern'.¹ The report made 18 recommendations, including extending the health care scheme and the ex gratia payments to former RAAF members who had previously been excluded. The Government has not yet responded to these recommendations.

Wrong guidance

The Defence Home Ownership Assistance Scheme (DHOAS) commenced on 1 July 2008. It provides home ownership subsidies for eligible serving ADF members, including Reserve members, and is administered by DVA on behalf of Defence.

Defence provided policy guidance to DVA on the intent of the scheme. This policy guidance was incorrect, in that it required Reserve members to perform 20 days service during the financial year *before* becoming eligible for DHOAS. The legislation provided that Reserve members were eligible *unless* they failed to perform 20 days service (in other words, members could get the subsidy but then lose it if they failed to perform the required service).

We received five complaints in July 2008 from Reserve members whose applications for DHOAS had been denied. We investigated this matter further with Defence. Defence accepted our interpretation of the legislation, and issued further policy guidance on Reserve members' entitlements to DHOAS. The affected members were able to put in new applications, which DVA fast-tracked for assessment.

¹ Joint Standing Committee on Foreign Affairs, Defence and Trade *Sealing a just outcome: Report from the Inquiry into RAAF F-111 Deseal/Reseal workers and their families*, June 2009, paragraph 5.143.

DEFENCE HOUSING AUSTRALIA

Defence Housing Australia provides housing and relocation services for all members of the ADF. DHA maintains properties and manages leases with property owners. DHA staff also calculate and process allowances and entitlements for ADF personnel who are moving to a new posting as part of the relocation process.

Over the past 12 months we received 43 approaches and complaints about DHA, compared to 28 in 2007–08. The complaints we investigated were mostly about the quality or standard of accommodation, including the classification of the property under the current classification policy.

DHA operates under contract to Defence. DHA is responsible for the administration and delivery of Defence's housing and relocations policy. We receive many complaints which are, on the face of it, about a decision by DHA. However, the complaints are often about the policy that underpins that decision. We sometimes find that, even though DHA has acted in accordance with the rules, the member's complaint is that the policy underlying those rules has operated to disadvantage the member in their particular case. As shown in the case study *Reasons for no removal entitlement*, we investigate the reasons for that policy with Defence.

Reasons for no removal entitlement

Mr S lived in his own house at the time he stopped continuous full-time service in the Navy Reserve. Once he had finished working, Mr S wanted to buy, and move into, a house in another suburb within the same posting location. Mr S was only entitled to a removal if he moved to a different posting location, or if he moved from service or rented accommodation.

After investigation, we accepted DHA's view that it had applied the rules correctly. We then investigated the reasons for this policy with Defence. Defence's view was that the removals policy was about supporting its operational effectiveness. If Defence required someone to live at a particular location, it would offer support with accommodation during the posting and a removal out of that accommodation at the end of service. However, there was no operational requirement to assist members to move between properties they owned in the same location.

We considered that the policy was reasonably open to Defence. We were able to provide a further explanation to Mr S about the intent of the policy.

Education, employment and workplace relations

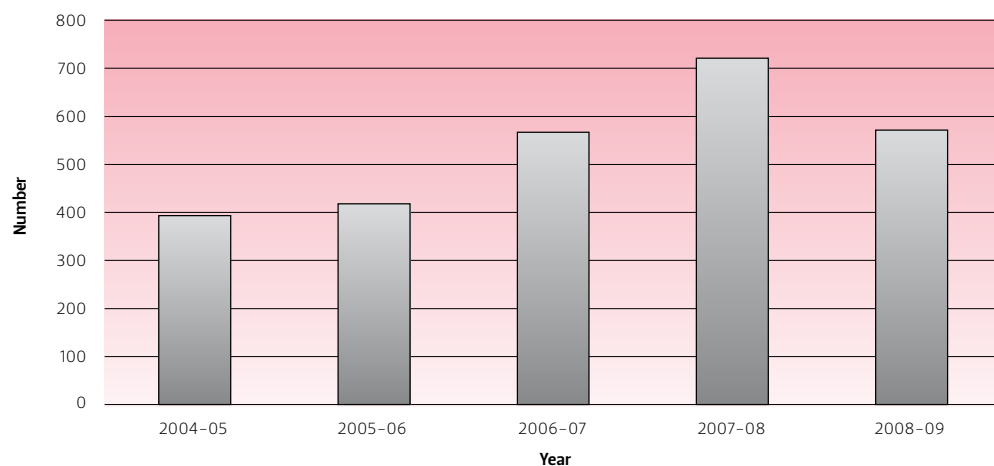
In 2008–09 the Ombudsman’s office received 571 approaches and complaints about the Department of Education, Employment and Workplace Relations (DEEWR). This is a significant decrease compared to the 721 approaches and complaints we received in 2007–08, and marks a return to the complaint numbers in 2006–07 (567). Figure 6.5 shows the trend in approaches and complaints about DEEWR (and the former Department of Employment and Workplace Relations) over the past five years.

There has been a decrease in the number of complaints about the General Employee Entitlements and Redundancy Scheme (GEERS). It has been encouraging to note that the majority of GEERS decisions we have reviewed have been well considered and consistent with the scheme’s operational arrangements. Most of the complaints received about GEERS were from unsuccessful applicants who disagreed with DEEWR’s decision on the merits of their cases. We will

continue to monitor GEERS complaint numbers as we anticipate that the global financial crisis may have an impact on this program.

The approaches and complaints we received during 2008–09 mainly related to DEEWR’s handling of complaints about providers of Australian Government employment services, a large proportion of which are Job Network Members (JNMs). If a job seeker complains to the Ombudsman’s office about their provider we will generally refer them back to DEEWR so that the department has an opportunity to address the issue. During the year we noticed that many job seekers approached us again after complaining to DEEWR, although on investigation, we found that DEEWR was acting to investigate or address their complaint. We have shared this observation with DEEWR, and in the coming year will work to identify the cause of this possibly unnecessary escalation, which is an issue independent of the Employment Services Reform.

FIGURE 6.5 DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



Other areas of concern we identified in 2008–09 regarding DEEWR include:

- ▶ complaints about job seeker transfers between employment service providers
- ▶ Trades Recognition Australia (TRA) complaints
- ▶ cross-agency issues.

JOB SEEKER TRANSFERS

The job seeker transfer process, which facilitates the transfer of a job seeker between two JNMs, has always generated a significant number of complaints for this office. Difficulties arise where the nominated receiving JNM refuses to take on the job seeker, or where the current JNM does not release the job seeker even though the relationship between the job seeker and the JNM may have deteriorated to such an extent that it is no longer productive.

Another problem can arise where the job seeker has not been properly assessed and has been referred to a JNM that is not able to meet their needs, as illustrated in the case study *No transfer*.

TRADES RECOGNITION AUSTRALIA

TRA provides occupational skills assessments for tradespeople intending to migrate to Australia and domestic trade skills

assessments for Australian residents in some trade occupations. There was a marked decrease in complaints about TRA over 2008–09 to almost half the number made in 2007–08, and to a very similar level to 2006–07. This supports the view we expressed last year that the 2007–08 spike resulted from the closure by TRA of Pathway D, a skills assessment pathway based solely on a person's work experience rather than formal training. There have been no similar skills pathway closures since then.

The majority of the complaints we receive about TRA involve applicants not understanding the reasons for TRA's decisions. These complaints are often resolved by TRA providing a more detailed explanation for an unsuccessful outcome to the complainant through the Ombudsman's office. When we last reported on this issue, we noted that TRA had undertaken to review the content of its decision letters. There appears to be some improvement in the detail provided to applicants in these letters. However, in line with the Ombudsman's *Better Practice Guide to Complaint Handling* published this year, we believe that more detailed information and explanation, particularly where claims are rejected, would address many of the complainants' concerns.

DEEWR had scheduled the introduction of a new Migration Assessment Policy (MAP) to

No transfer

Mr U complained to our office about the length of time taken by DEEWR to process a request for a transfer by agreement from one JNM to another. DEEWR was unable to facilitate this request as the other JNM declined to accept Mr U.

Shortly after, as a result of inappropriate behaviour by Mr U, his JNM placed a temporary service restriction on him. He was unable to attend his JNM in person, but could still access services by phone and through JNM kiosks. The JNM also requested a transfer due to irretrievable breakdown in the relationship. Three weeks later DEEWR determined that it was not possible to meet this request, as no other JNM was willing to accept the transfer.

After our intervention DEEWR requested a new job capacity assessment for Mr U. After the assessment, Mr U was referred to the Personal Support Program which offered more assistance to address his non-vocational barriers to employment. This occurred some two-and-a-half months after his initial request for transfer.

replace the Uniform Assessment Criteria from 1 September 2008. All international TRA applications received from 1 September 2008 were expected to comply with the guidelines set out in the MAP. On 29 August 2008 DEEWR decided to delay the implementation of the MAP indefinitely. This late withdrawal meant that applicants directly, or through their agents, may well have prepared applications against the wrong guidelines, and led to complaints to this office.

CROSS-AGENCY ISSUES

The interaction, overlap or gap between the responsibilities of various agencies and bodies involved in employment services and support continues to challenge complainants to this office. It can be exceedingly difficult for complainants to know where and how to address problems that arise in relation to their income support and associated activities. This confusion often extends to agency staff, compounding the negative experience of the complainant, as the case studies *Revolving door* and *No response* show.

Revolving door

Ms V had been participating in Work for the Dole until she found part-time work. She was exited from the program at that time, but several months later was referred to Work for the Dole again despite her doing enough work hours to satisfy her activity requirements.

Ms V complained about this issue to her JNM, which referred her to Centrelink. Centrelink referred her back to her JNM and provided the contact number for DEEWR's customer service line. She contacted DEEWR the same day and was again referred to the JNM.

On investigating Ms V's complaint to us, we found that neither Centrelink nor DEEWR had accepted responsibility for resolving her problems. Ultimately it was determined, and agreed by the agencies, that a limitation in the design of the computer system used by all agencies was the major cause of Ms V's problem. Centrelink and DEEWR have expressed confidence that new systems supporting the Employment Services Reform model from 1 July 2009 will not have the same limitation.

No response

Mr W complained about an unreasonable delay in paying him under the Indigenous Tutorial Assistance Scheme. He had emailed his contact in DEEWR but not received a response. Our investigation found that email 'out-of-office' messages were not sent to external parties. While there were good reasons for this policy, neither Mr W nor relevant staff in DEEWR were aware of it. When the person looking after Mr W's case went on leave he wrongly assumed that Mr W would receive his message with alternative contact details. Mr W believed his emails were being ignored.

Following our investigation DEEWR clarified this policy and the reasons for it. DEEWR made all staff aware of the circumstances in which out-of-office messages would and would not be received, and promoted the use of shared mailboxes or applying mailbox rules to divert mail from an absent staff member's mailbox to those who are present. This was a pleasing response to an issue which was likely to affect many people dealing with the agency.

Immigration

As our 2007–08 annual report noted, while handling complaints about immigration administration continues to be a prominent part of our work, we are taking a more comprehensive and integrated approach to the review of immigration administration. We achieve this through a program of inspections of immigration detention facilities, own motion investigations into systemic issues, monitoring of compliance and removal actions, and ongoing engagement with the Department of Immigration and Citizenship (DIAC) through regular meetings and consultation on proposed initiatives. This approach has been helpful in providing early warning and promoting more speedy resolution of administrative problems.

In addition to the statutory review of two-year detention cases which commenced in 2005, in August 2008 the Minister for Immigration and Citizenship and the Ombudsman agreed that the Ombudsman should regularly review all

cases where a person has been held in detention for six months or more. Our work has also broadened with a new oversight role for immigration activities on Christmas Island, which has been the central point for processing irregular maritime arrivals.

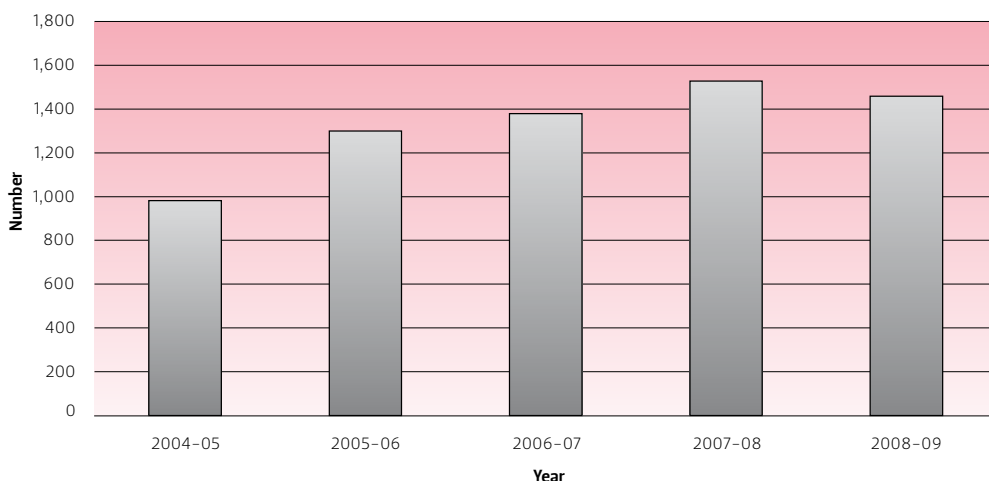
COMPLAINT HANDLING

Changes to internal complaint-handling processes

It is usually better for an agency to be given an opportunity to address a complaint before the Ombudsman becomes involved. However, until this year the office tended to deal with a high proportion of complaints about DIAC without referring them first to the department.

DIAC's internal complaint-handling section, the Global Feedback Unit (GFU), was established in August 2005. We monitored its

FIGURE 6.6 DEPARTMENT OF IMMIGRATION AND CITIZENSHIP APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



operations and found that, by early 2009, the GFU had matured to the point where it was appropriate to refer more complaints to it in the first instance. In general DIAC was meeting its performance standard of resolving the majority of complaints within 10 days. Consequently, in April 2009 we adopted the same approach as we follow with other agencies.

Overall this should allow for a faster and more effective outcome for people with a complaint. Consistent with our handling of complaints about other agencies, we may investigate matters that are urgent, sensitive or suggest a systemic problem without referring the person to the GFU. We continue to monitor the quality and the timeliness of DIAC's complaint handling and liaise about any issues identified.

One area of continuing difficulty is the timeliness and quality of responses to detention-related complaints, and we do not refer these to the GFU.

Complaints

In 2008–09 we received 1,459 approaches and complaints about DIAC, a 5% decrease on the 1,528 received in 2007–08. Figure 6.6 shows the number of approaches and complaints received from 2004–05 to 2008–09.

In 2008–09 the following areas of DIAC's administration were a particular focus of complaint:

- ▶ problems in Immigration Detention Centres (IDCs)
- ▶ delays in refunding security bonds
- ▶ delays associated with security clearances
- ▶ continuing concerns about processes under s 501 of the *Migration Act 1958* (Migration Act) which allows for the cancellation of visas on character grounds, including 're-cancellation' and 're-detention'.

The case study *Delayed refund* is an example of the problems that can occur for people in trying to obtain a refund of a security bond.

Delayed refund

Ms X's niece, Ms Y, wished to travel to Australia from the Philippines. In 2006 DIAC processed an application for a sponsored family visa application for Ms Y. DIAC sent Ms X (the sponsor) a letter advising that a security bond would be required as part of the visa application process. Ms X paid the security bond to DIAC.

Ms Y did not travel on that visa. In 2007 she sought and obtained a second visa for travel to Australia. The security bond lodged for the first visa application was used for the second application. Ms Y travelled to Australia, adhered to the visa conditions and returned to the Philippines.

Ms X then attempted to have DIAC refund the bond. She contacted DIAC a number of times asking about the bond, and then faxed DIAC the security bond 'refund arrangement' form in November 2007. Ms X still did not receive a response from DIAC and complained to us in August 2008.

Our investigation revealed that DIAC's records were confusing and inaccurate in places. The bond money was recorded in the first visa application, but the second visa application had no reference to it. Following our involvement DIAC resolved Ms X's complaint satisfactorily. DIAC apologised to Ms X for the problems and worked with her to correct the records on the system. DIAC also undertook to review its arrangements for processing refunds of security bonds.

In 2007–08 we received a number of complaints about the time taken to process requests made under the *Freedom of Information Act 1982* (FOI Act). The Ombudsman released an own motion investigation report about DIAC's processing of FOI requests in June 2008 (*Department of Immigration and Citizenship: Timeliness of decision making under the Freedom of Information Act 1982* (Report No. 6/2008)). DIAC has improved its FOI processing and this is reflected in a decrease in the number of FOI-related complaints.

Between June and October 2008 we received approximately 80 complaints from skilled migration applicants who considered that DIAC had dealt with their application unfairly. The majority of complainants were hairdressers from India and Pakistan who had applied for a skilled independent (Migrant) (Class BN) subclass 136 visa. The complainants had lodged their applications before September 2007. DIAC refused the applications on the grounds that the applicants had not met the required skill levels, even though they had received a positive skills assessment from Trades Recognition Australia (TRA), the authority responsible for setting the relevant skills standard.

Our investigation found that DIAC had added further rigour to the skills assessment process by conducting its own additional checks, and as a result had identified a high number of non-genuine claims. We found that, while it was open to DIAC to decide to refuse the applications, some improvements in the transparency of DIAC's decision making would assist future applicants for skilled migration visas.

We recommended that DIAC improve its processes and procedures in a number of areas, including:

- ▶ better liaison between DIAC and assessing bodies (including TRA) to increase consistency in skills assessments
- ▶ amending DIAC's information products and TRA's assessment letters to help applicants understand the roles of DIAC and TRA
- ▶ speeding up the processing of applications.

OWN MOTION INVESTIGATIONS AND SYSTEMIC ISSUES

In 2008–09 the Ombudsman published three own motion investigation reports about DIAC.

In July 2008 the Ombudsman released *Department of Immigration and Citizenship: The Safeguards System* (Report No. 7/2008). The Safeguards System is a risk management system that DIAC uses to inform its decision makers of the types of checks or steps that need to be undertaken for particular visa applications and for applicants with certain characteristics. The investigation found that DIAC needs to strengthen its accountability framework and improve Safeguards content, currency and recordkeeping. DIAC accepted all of the Ombudsman's recommendations. In February 2009 DIAC informed us that four of the five recommendations had been fully implemented. The fifth recommendation, requiring amendments to the Migration Regulations 1994, was implemented in May 2009.

In March 2009 the Ombudsman published *Use of interpreters: Australian Federal Police; Centrelink; Department of Education, Employment and Workplace Relations; and Department of Immigration and Citizenship* (Report No. 3/2009). The investigation examined whether DIAC and the other agencies have clear and comprehensive policies in place to guide staff in the use of interpreters. The investigation also considered the provision of staff training, a community language scheme for multilingual staff, recordkeeping, complaint-handling mechanisms and the way in which agencies address challenges in sourcing interpreters.

The Ombudsman found that DIAC needs to improve its policies and training for staff on the use of interpreters. The report recommended that DIAC take a lead role in promoting interagency cooperation and the use of interpreter services by developing an updated *Language Services Guidelines* and *Model for Assessing Translating and Interpreting Requirements* for all government agencies. DIAC accepted the recommendation and agreed to update the guidelines.

In April 2009 the Ombudsman released an abridged version of the report *Department of Immigration and Citizenship: The case of Mr W* (Report No. 6/2009). The Ombudsman conducted a review of Mr W's case in response to a request from DIAC. The investigation examined the decision to detain Mr W, his place of detention, the way his torture and trauma claims were handled and his health care while in detention. Other matters considered included DIAC's assessment of his requests for ministerial intervention, his removal from Australia and the way DIAC handled complaints made on his behalf once he had departed. The report also criticised identification processes and recordkeeping. The Ombudsman made a number of recommendations, all of which were accepted by DIAC.

Three further own motion investigations were in progress as at 30 June 2009.

The first investigation focuses on DIAC's management of invalid visa applications. If a person whose visa application is invalid is not informed promptly, the person may become an unlawful non-citizen and be liable for detention, and their options for applying for other visas may be severely limited. We expect to issue a report on this investigation in July 2009.

The second investigation relates to the cancellation of visas without prior notification under s 128 of the Migration Act. Non-citizens who have been granted a visa can have that visa cancelled without notice if they are outside Australia at the time of the cancellation decision. Our investigation examines whether the powers are being used appropriately, and we expect to produce a report later in 2009.

The third investigation, due for completion in September 2009, relates to the manner by which some people in detention were released following the Federal Court decision in *Sales v Minister for Immigration and Citizenship*, but were subsequently re-detained under amended legislation. The investigation will focus on the information that was provided to these people about their release, the circumstances of each person's release and the manner in which they were re-detained.

An example of the problem, dealt with in an Ombudsman two-year detention report (No. 517/09), concerned an allegation by a person that he had received no warning from DIAC of his re-detention, that the detention occurred abruptly in his own backyard, that he was released the following day only to be re-detained again, and that DIAC officers made enquiries of neighbours about his family circumstances.

We also continued to work with DIAC to address a number of systemic issues, including delay by DIAC in refunding security bonds and visa holders' access to Medicare benefits. Following an investigation in 2008, we concluded that both Medicare Australia and DIAC have improved their communications and processes which allow eligible DIAC clients to access benefits. The majority of complaints to the Ombudsman by DIAC clients regarding eligibility for Medicare related to misunderstandings that were able to be addressed relatively quickly. We will continue to monitor this matter.

MONITORING AND INSPECTION OF DIAC'S DETENTION, COMPLIANCE AND REMOVAL ACTIVITIES

Detention

People who come to Australia by boat and are unauthorised arrivals are currently detained and processed on Christmas Island. The detainees on the island are mainly offshore entry persons—those who entered Australia at Christmas Island or another place excluded from Australian territory for migration purposes. They cannot lodge a valid protection visa application unless the Minister personally decides to permit the application. A small number of detainees on the island are able to lodge protection visa applications and seek independent merits review by a tribunal, as they entered Australia at a point which has not been excised. Both groups of people usually make claims for refugee status.

In 2008 the Government announced changes to the way in which the claims of offshore entry persons would be processed, including

the introduction of a non-statutory refugee status assessment (RSA) process. Features of the new RSA process include free migration agent assistance for asylum seekers who appear to engage Australia's international protection obligations, independent review of unfavourable RSA assessments, better procedural guidance, and oversight by the Commonwealth and Immigration Ombudsman.

The Ombudsman agreed to carry out the oversight function under the own motion powers of the *Ombudsman Act 1976*, and we received additional funding for this function.

During 2008–09 Ombudsman office staff visited Christmas Island four times to get a better understanding of the process, identify issues that need to be addressed, and take complaints. On these visits our staff looked at the entire immigration processing experience from arrival on the island until the point of grant of a visa or removal from Australia.

The arrivals management and subsequent health, law enforcement and immigration processes on Christmas Island involve multiple Australian Government agencies, contracted service providers, non-government organisations and legal representatives. Ombudsman office staff monitored the processes followed by DIAC and the contractors who manage detention centres (G4S), including interviews with offshore entry persons as well as bio-data collection. They also attended multi-agency meetings.

In addition, our staff observed Australian Federal Police (AFP) interviews and arrest procedures, as well as property processes involving the AFP, the Australian Customs and Border Protection Service and the Australian Quarantine and Inspection Service. Staff attended two reviews of RSA decisions by independent reviewers. These reviews are conducted afresh by people who are not DIAC employees, and include interviews with the claimants.

Ombudsman staff regularly met with detainees on Christmas Island and their legal representatives, members of the Christmas

Island community and those involved in providing services and support to people who are detained at the IDC, in alternative detention and in community detention.

The visits provided Ombudsman staff with a greater understanding of the role and practices of each stakeholder and an opportunity to consider the overall integrity of the immigration process. The first two visits occurred while the old facilities were still in use, and the last two after the new Christmas Island IDC had opened.

We received more than 80 complaints from people in detention on Christmas Island. The issues investigated in these complaints included delays in access to dental treatment, the length of time taken to reach RSA decisions, requests for culturally appropriate food and clothing items, access to English classes, problems with phones in the IDC, property issues, excursion requests and the suitability of detention arrangements and accommodation.

Many of the issues raised by these complaints are systemic and stem from the limited options and resources on the island itself. We assess the complaints against the standard of services available to the greater Christmas Island community, the detention standards and national detention practices.

There are many challenges inherent in the delivery of the immigration process on Christmas Island. Not only are many of the asylum seekers traumatised by their past experiences or even the circumstances of their voyage into Australian waters, but difficulties are often exacerbated by resource limitations and the isolation of the island.

Through informal and formal mechanisms, the Ombudsman has commented on many issues including:

- ▶ accommodation options in the IDC, alternative detention and community detention
- ▶ the care and wellbeing of vulnerable people such as unaccompanied minors, families and survivors of torture and trauma

- ▶ the timeliness of RSA decision making
- ▶ access to medical, dental and optical services
- ▶ access to support and recreational facilities
- ▶ effective communication with detainees and between agencies
- ▶ use of, and access to, interpreters.

We have noted improvements in key areas such as:

- ▶ the presence of independent persons to observe processes involving unaccompanied minors
- ▶ greater cooperation and communication between the various agencies involved in the Christmas Island taskforce
- ▶ prioritisation of cases involving survivors of torture or trauma, unaccompanied minors and families
- ▶ the use of accredited interpreters, where accreditation exists, and greater awareness of the issues that may affect the efficacy of interpreters
- ▶ increased continuity in DIAC corporate knowledge by the introduction of six-month placements for DIAC staff in key positions on the island.

There is scope for further improvement and the Ombudsman will continue to raise issues with DIAC as they are identified. All the agencies involved in the immigration process on Christmas Island were cooperative and forthcoming with information, and demonstrated a commitment to transparency and accountability.

Immigration detention inspections program

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 G4S of the visits approximately 30 minutes in advance.

The issues we have focused on in our inspections reflect complaints received and matters raised during client consultative meetings in the IDCs. During the year we conducted inspections at all IDCs. We provided DIAC with feedback on a range of issues, including:

- ▶ the handling of complaints
- ▶ placements within IDCs
- ▶ random searches
- ▶ recreational activities
- ▶ the operation of the G4S 'shop' within the IDC
- ▶ the availability of information about our role and access to our complaint forms
- ▶ advertising of translation and interpreting services
- ▶ case management reviews
- ▶ transfers to other places of detention.

In addition we carried out two announced visits to the Case Management Section at the Villawood IDC (VIDC) and in DIAC's Melbourne office to inspect case management review records.

The immigration detention standards require that each IDC have a system in place for dealing with complaints from detainees. During an unannounced visit at the VIDC in November 2008 we found that the system in place did not comply with the relevant procedures and was ineffective.

The absence of an effective complaint-handling mechanism at the VIDC is likely to have contributed to an increase in the volume of complaints received by our staff during monthly visits to the centre. In many cases the complaints raised with our staff could have been addressed simply and quickly by G4S if an effective and timely complaints mechanism had been in place. We have noted some improvements and will continue to monitor the situation.

Loss of personal property following a transfer between IDCs or within an IDC was identified in our last annual report as a common cause of

complaint from people in detention. We have investigated this as a systemic issue and expect to discuss the report of our investigation with DIAC later in 2009.

Compliance and removals

We continued to actively monitor DIAC's compliance and removals functions throughout 2008–09. Ombudsman staff undertook a program of file inspections, site visits and observations of DIAC's compliance field operations. Through these monitoring activities we were able to assess the effectiveness of DIAC's policies and procedures governing the department's role in locating, identifying, detaining and removing unlawful non-citizens.

In our feedback to DIAC we have identified a number of areas for improvement including:

- ▶ the timing of post-detention interviews for people detained in remote locations
- ▶ establishing 'reasonable cause to believe' that a person of interest will be located at a time and place identified in a warrant application
- ▶ recordkeeping systems that do not yet provide a 'single view of the client'
- ▶ assessing the need for, and providing, security escorts for people being removed on aircraft
- ▶ DIAC's handling of voluntary removal clients who subsequently demonstrate reluctance or uncooperative behaviour
- ▶ transferring case records between interstate removals teams
- ▶ coordination between visa cancellation teams and removals teams dealing with clients serving prison sentences.

Our file reviews have found improvements in recordkeeping and the documentation supporting compliance operations. The tighter controls that have been implemented over warrant and non-warrant operations show that DIAC's compliance teams are responsive to the issues and concerns we have raised. During the year we also provided feedback to DIAC on the effectiveness of changes to the database for managing compliance operations.

In July 2008 the Minister for Immigration and Citizenship announced a new set of values governing the detention of unlawful non-citizens. This announcement had significant implications for DIAC's compliance and removals activities. We attended DIAC briefings and provided comment on policy development as the department implements the Minister's announcement.

Our office continues to monitor DIAC's response to the 247 immigration detention cases, which were the subject of a number of Ombudsman reports published in 2006 and 2007. In addition, we continue to review reports from DIAC of further cases where a person has been detained but later released after being determined to be lawfully in Australia.

The character test—s 501 of the Migration Act

The Migration Act provides that where a person is considered not to be of good character, DIAC can refuse their visa application or cancel their visa. In 2006 the Ombudsman investigated the impact of the provisions on long-term Australian residents. The 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)—made a range of recommendations designed to improve the processes and legislation in relation to this provision. DIAC accepted the recommendations and took steps to implement them.

We have continued to monitor the administration of the provisions and the progress of implementation of the recommendations. It is pleasing to report that in June 2009 the Minister issued revised guidelines for the administration of the provisions which incorporate many of the Ombudsman's recommendations. In particular, the guidelines require decision makers to give favourable consideration to a person who arrived in Australia as a minor and has spent their formative years here.

Our review of individuals in detention has also established that in recent months the Minister

has agreed to release some people into the community who have had their visa cancelled under the character test. They have been advised that they will be considered for a permanent visa after spending two years in the community, giving them the opportunity to demonstrate that they are of good character.

We investigated a number of complaints during the year which involved the cancellation of visas where the person had arrived in Australia as a minor and had established ties in the community. The case study *Poor submissions* illustrates one such investigation.

REPORTING ON PEOPLE HELD IN IMMIGRATION DETENTION

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 for Immigration and Citizenship with an assessment of the appropriateness of the person's detention arrangements under s 486O of the Act.

The number of cases which have been the subject of repeated consideration by the Ombudsman over several years has diminished. In announcing a new set of immigration detention values in July 2008, the Minister identified three groups as being subject to mandatory detention:

- ▶ all unauthorised arrivals, for management of health, identity and security risks to the community
- ▶ unlawful non-citizens who present unacceptable risks to the community
- ▶ unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Where a case has not fallen clearly into any of these groups the Ombudsman has requested that the Minister review whether continuing detention is consistent with the immigration detention values.

Recurring issues in our preparation of s 486O reports have been:

- ▶ the physical and mental deterioration of people who have been subject to confinement in IDCs
- ▶ the difficulty of justifying detention in an IDC solely on the grounds that a person's identity cannot be conclusively established
- ▶ the adverse consequences of releasing a detainee on a bridging visa with no work rights.

Poor submissions

Mr Z approached our office expressing his frustration about the fact that his visa had been cancelled and re-enlivened a number of times under the provisions of the character test. At the time Mr Z raised his concerns he was serving a sentence in a correctional centre. Mr Z had migrated to Australia with his parents in 1973 when he was three.

The Minister cancelled Mr Z's visa in December 2000. Our review of DIAC's file identified a number of deficiencies in the DIAC submission to the Minister which resulted in that decision. In our view neither Mr Z nor his family had an adequate opportunity to present reasons that would support a decision not to cancel his visa. Therefore the processes failed to meet natural justice requirements. In addition, when DIAC reviewed the cancellation process in 2007, the submission to the Minister was incomplete.

We raised our concerns with DIAC. We requested that DIAC revise the submission and refer the matter to the Minister again so that he could decide whether to exercise his public interest powers and grant Mr Z a visa so that he could remain in Australia.

TABLE 6.2 REPORTS UNDER S 486N AND S 486O OF THE MIGRATION ACT, 2008–09

	Report on person*									
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	Total
s 486N reports received from DIAC	31	17	11	14	2	3	1	4	1	84
s 486O reports sent to the Minister	51	24	15	15	2	3	6	4	–	120

* The first report is after a person has been in detention for two years, and subsequent reports are made every six months: some reports may be combined.

Table 6.2 shows that DIAC provided 84 reports under s 486N during 2008–09, just under half the number provided in 2007–08. The table also shows the number of s 486O reports the Ombudsman provided to the Minister. The Minister tabled 116 reports in Parliament.

The case studies *Daughter lost* and *Work rights* show some of the facets of our work in this area.

In his 'New Directions' policy statement of July 2008 the Minister for Immigration announced *'the Department will have to justify why a*

Daughter lost

Mr A was an Iranian citizen who was detained for four years and four months from 2001 to 2005. While he was detained with his daughter in Baxter IDC there were allegations of sexual abuse that were investigated and dismissed. Subsequently his daughter was removed from Australia without his knowledge. The Ombudsman's report no. 516/09 under s 486O of the Migration Act noted that Mr A had been deceived into allowing DIAC staff to take his daughter from the IDC; that DIAC had proceeded with the removal contrary to its own legal advice; that DIAC had ignored advice that Mr A and his daughter should be transferred from the IDC at the earliest opportunity; that the removal had wrongly been recorded as having taken place with the custodial parent's consent; and that DIAC staff may have breached the Australian Public Service Code of Conduct.

The Ombudsman's report recommended that DIAC, through internal review, reflect on the case and use it to identify weaknesses or gaps in its policy and procedures. The report also recommended that DIAC should assist the daughter's migration to Australia to be reunited with her father and that an apology be sent to Mr A and his daughter. The Ombudsman formally drew the attention of the Secretary of DIAC to a possible breach of the Code of Conduct as a result of DIAC staff giving misleading advice to Mr A.

Mr A was granted a permanent protection visa in April 2008.

In his statement to Parliament when the report was tabled in May 2009, the Minister remarked that the report was most disturbing and highlighted the adverse impact of long-term detention on both the physical and mental health of detainees like Mr A and his child. The Minister noted that the policy of this government was not to hold children in immigration detention centres.

The Minister noted that an internal management review of Mr A's case had commenced and that a letter of apology had been sent to Mr A and would be sent to his daughter. He acknowledged that there may be a case to compensate Mr A and his daughter, and asked DIAC to pro-actively assist Mr A's daughter and ex-wife to obtain a visa to migrate to Australia should they wish to do so.

person should be detained. Once in detention a detainee's case will be reviewed by a senior departmental official every three months to certify that the further detention of the individual is justified'.

Reflecting the Minister's New Directions, DIAC and the Ombudsman agreed that DIAC would provide a report to the Ombudsman every six months while a person is detained and that the Ombudsman would report back to the Secretary of DIAC on the appropriateness of the person's detention arrangements. The Ombudsman would provide a consolidated report to the Minister on a regular basis. The

new review process runs parallel to the statutory process whereby the Ombudsman reports to the Minister on detentions of more than two years. In practical terms the new non-statutory review regime provides faster feedback from the Ombudsman to DIAC and more frequent external scrutiny of individual detention cases.

DIAC provided the first report to the Ombudsman in April 2009. Reports have covered people detained for periods from six months to 18 months, and the Ombudsman has provided a report on a number of cases to the Secretary of DIAC.

Work rights

Mr B was detained in April 2006 after being located as a visa over-stayer. He was released on a bridging visa in April 2008.

In May 2007 Mr B was diagnosed with an adjustment disorder, and in April 2008 he was provisionally diagnosed with bipolar affective disorder. Conflicting independent medical assessments were made in June and July 2008, which diagnosed post-traumatic stress disorder, major depression and anxiety, but not bipolar disorder. Mr B told us that prior to being detained, he had never experienced any mental health issues.

Mr B's visa conditions did not allow him to study, work or claim benefits and at the time of the Ombudsman's review, he survived on support from a rural charity. The Ombudsman recommended that DIAC provide Mr B with a visa that allowed him work rights until his immigration status was resolved. In November 2008 Mr B was granted work rights. He remained on a bridging visa at the end of June 2009.

Indigenous issues

Now in its second year, the office's Indigenous Unit deals with complaints about the Northern Territory Emergency Response (NTER) and other Indigenous programs in the Northern Territory (NT) where the Australian Government is involved. This year the office secured funding to continue its role in the NTER for the next three years. This reinforces the significant role that the office can play in supporting and promoting effective administration of the NTER and service delivery of other programs to Indigenous Australians.

Our initial focus was to visit as many of the prescribed communities as possible to provide information about our role, learn about the intervention, collect complaints and feedback, and in turn provide feedback to delivery agencies. Building on our early observations and knowledge, we have broadened our efforts to include:

- ▶ a more strategic approach to outreach activities
- ▶ improvements to our complaint handling and resolution practices
- ▶ more analysis of systemic issues and regular feedback to agencies
- ▶ a greater focus on engagement with agencies and working cooperatively with them to resolve issues
- ▶ enhanced engagement with community stakeholders
- ▶ identifying and addressing challenges posed by multi-agency and cross-jurisdictional involvement in the NTER measures and other Indigenous programs.

OUTREACH ACTIVITIES

This year we conducted 82 visits to communities and town camps in the NT, many of which were repeat visits. We aim to visit some communities twice and, where possible, to have a more regular presence in others. We now spend more time in communities to maximise the opportunity to obtain feedback from local people, service providers and other community stakeholders and groups. We talk to local people about the NTER measures more broadly and we allow sufficient time for people to raise issues and complaints with our staff.

This approach has enabled our office to develop a better understanding of the different issues affecting different communities. It means that we are well placed to both investigate complaints and to provide feedback to agencies on issues, emerging themes and areas of concern. Agencies have reported that the general feedback we provide has helped refine policy and improve service delivery, and has alerted them to potential problem areas at an early stage.

The office has also conducted joint outreach with other community and government agencies. We will continue to develop these collaborative relationships in order to maximise our outreach, share resources and better understand the issues.

ENGAGEMENT

Government agencies

A key focus of the Indigenous Unit this year has been to improve our engagement with the government agencies involved in NTER and Indigenous program delivery in the NT. This has included:

- ▶ regular liaison meetings with the key agencies both at the national/policy level in Canberra and the local/operational level in Darwin
- ▶ working closely with the agencies on key issues and holding forums and briefings to provide feedback, receive updates and discuss strategies for improving specific areas of service delivery or administration
- ▶ providing briefings on the role of the Ombudsman's office and our approach with the NTER and Indigenous program delivery.

We welcome the assistance that we have received from the agencies and their willingness to work cooperatively with us to resolve issues and exchange information. For example, we visited one community with Centrelink staff to observe the way in which they approached the extension of income management. This assisted our office to gain a better understanding of issues raised by income-managed customers. Such monitoring activity provides another mechanism for this office to give feedback to government agencies involved in the NTER.

We have also worked with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and Centrelink to both raise general awareness of issues and to ensure that the issues identified in complaints about income management and the BasicsCard are taken into account when improvements are being made to these areas. We provided this feedback as part of our investigation into individual complaints as well as through specific meetings between FaHCSIA, Centrelink and this office.

By way of example, we received a large number of complaints about the difficulties that people face in accessing balances on their BasicsCard, and provided this feedback to the agencies. As balances cannot be accessed at the point of sale, people have reported embarrassment and difficulties when trying to do their grocery shopping without easily knowing the balance on their card. There are now computer access points in some customer service centres, and phones in more than 60 community stores which are 'hot linked' to the income management line. Centrelink released a Freecall 1800 number in July 2009 for customers to obtain their BasicsCard balance.

We are looking to enhance our agency liaison activities and to identify other strategies by which we can provide feedback and updates both to agencies and to the general public on the work that we are doing in the NTER. This may include information bulletins on our website, regular reports to senior level staff in agencies to highlight issues and observations, and increasing the frequency of liaison meetings with the main agencies involved in the NTER.

Community organisations

This year we also focused on greater engagement with community agencies and organisations. In addition to providing an important source of information on key issues, these organisations can direct their clients to our services if they have complaints or issues.

We held community round table meetings in Darwin and Alice Springs. We invited community agencies, organisations and advocates working with Indigenous issues in the NT. These forums focused mainly on providing information about the role of the Ombudsman's office and our approach in the NTER. We intend holding these forums twice a year. The focus of future meetings will be for people to raise issues, concerns or general feedback in relation to the NTER or other Indigenous programs in the NT, and for us to provide general feedback on our activities and systemic issues we have dealt with.

Northern Territory Ombudsman

Another important relationship for this office is with the Northern Territory Ombudsman's office. Two officers of the Indigenous Unit are based in Darwin and share offices with the NT Ombudsman's office. We have met with the NT Ombudsman, Deputy Ombudsman and staff to discuss strategies for working together.

Increasingly, complaints and issues raised with this office cut across local, territory and Commonwealth government responsibilities. This is not surprising given the greater integration and cooperation across the tiers of government in Indigenous program delivery. Often this division is not easily defined or understood.

Due to the nature of the NTER and provision of Indigenous programs and services to communities in the NT, there is an opportunity for the Commonwealth and NT Ombudsman offices to work more closely together to conduct outreach to Indigenous communities, investigate complaints, undertake joint investigations into systemic issues, share information, facilitate joint briefings on particular topics and undertake joint marketing and communication strategies. These strategies are an important step forward in continuing to provide effective oversight and complaint management where all levels of government are jointly involved in policy development and service delivery affecting Indigenous Australians.

ISSUES EMERGING FROM COMPLAINTS AND FEEDBACK

We have received more than 300 complaints and obtained significantly more information through discussions with communities that we do not record separately as complaints. Through complaint investigations and feedback provided to us during outreach activities, we are well placed to identify problems and report these to agencies. We also provide another important avenue of communication about government programs and decisions to Indigenous people in the NT.

Often complaints can be quickly resolved by people being given up-to-date, comprehensive information about issues affecting them or their community.

This year we have used knowledge gained from complaint investigations, feedback and outreach in making submissions to the:

- ▶ NTER Review Board
- ▶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs for its inquiry into community stores in remote Aboriginal and Torres Strait Islander communities
- ▶ Senate Standing Committee on Community Affairs for its inquiry into the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009.

Through complaint investigations we have also been able to achieve some good outcomes for individuals, including:

- ▶ clarification of Centrelink payments and income management allocations
- ▶ reversal of a Centrelink debt and repayment of money paid towards the debt
- ▶ clearer explanations of decisions affecting people, including why people are subject to income management
- ▶ assisting people to receive payment for work performed on NTER programs
- ▶ the installation of a phone in a community that had been trying to get one for 25 years
- ▶ assisting people to understand how the BasicsCard works
- ▶ monitoring government progress with the construction of community dumps, health care centres, child care facilities and sport and recreation facilities and providing updates to individuals.

Income management

Last year we reported on a number of issues in relation to income management, including communication about how it works, the availability of material and information in

Indigenous languages and people's access to their money. These themes have persisted in the complaints received this year. Many of these concerns have been specific to the BasicsCard.

The introduction of the BasicsCard was a positive development for many income-managed customers. It provided another allocation avenue by which people could access their income-managed funds, and offered increased flexibility as to where the funds could be spent.

Centrelink produced material to assist customers to understand how the BasicsCard worked, including information sheets and a video which is shown to customers before they receive their card. Despite this, we received a large number of complaints from people from many different communities, of diverse ages and varying literacy levels, and from different language groups, which showed that people do not fully understand how the BasicsCard works.

One particular issue, highlighted earlier, is the limitations on how people can find out the balance on their BasicsCard. We fed these concerns back to the government agencies and also provided information to complainants about the specific options available to them to find out their balances.

Another issue complainants highlighted was the difficulties people face when they want to

transfer money from their Centrelink income management account to their BasicsCard. One complainant reported that she was placed on hold for her entire lunch break when she telephoned Centrelink to transfer money to her card. As she was calling from her mobile phone, the call cost more than \$10.

The introduction of income management increased Centrelink's service delivery requirements to Indigenous people in the NT. Customers are required to have higher levels of interaction and involvement with Centrelink than previously. They are also faced with a significant change in how their welfare payments are managed, the consequential requirements upon them and the need for them to understand how it all works. We have received a large number of complaints stemming from both the extra requirements on Centrelink's service delivery and customers not fully understanding the new system. The case study *Credit in the wet* provides an example.

In this case, the customer was not seeking an exemption from income management, but he did not know what his options were and possibly used the wrong terminology when he contacted Centrelink. However, this office is of the view that his contact with Centrelink and his queries should have prompted Centrelink to take a more holistic view of the matter and explore options to resolve the situation in a timely manner.

Credit in the wet

Mr C was income-managed by Centrelink. He contacted Centrelink to enquire about income management and exemption from income management. Mr C explained to Centrelink that he was unable to access any community stores during the wet season when the river rises. Mr C therefore purchased essential supplies to last him through the entire season and paid for this bulk purchase with his credit card. As Mr C's funds were income-managed he was unable to pay off his credit card. In response to Mr C's enquiries, Centrelink informed him that due to the area he lived in he could not be exempt from income management. Mr C sought internal review of the decision but was not successful.

Following our enquiries, Centrelink contacted Mr C to discuss his situation and explore different options. After it was understood that Mr C's core issue concerned the payment of his credit card, Centrelink agreed to set up a regular allocation towards Mr C's credit card using his income-managed funds.

Communication and consultation

Over the past year there has been a range of developments in the NTER measures and other Indigenous programs across Australia as well as in the NT including:

- ▶ the introduction of a BasicsCard for income-managed customers to access their income-managed welfare payments
- ▶ the Council of Australian Governments' (COAG) National Partnership Agreement on Remote Indigenous Housing, the new remote housing system to improve living conditions in the 73 prescribed communities in the NT, and the Strategic Indigenous Housing and Infrastructure Program aimed at construction and capital works
- ▶ the announcement of reforms to employment services, including the Community Development Employment Projects program
- ▶ the release of the Government's Future Directions discussion paper to guide consultation with Indigenous people about the future of the NTER
- ▶ COAG's agreement on the Remote Service Delivery National Partnership and the role of the Coordinator-General for Remote Indigenous Services for 29 Indigenous communities, 15 of which are in the NT.

We acknowledge the significant challenges that the introduction of new programs present for government agencies. A particular challenge for agencies is to provide people with information about these programs and ensure they understand what is happening and how it will affect them and their community. This is a common theme in many of the complaints we receive.

Concerns about the Government's communication and consultation with people and communities about the NTER and other Indigenous programs remain. People are often concerned about changes happening in their communities without their input being sought.

Complaints and observations stemming from our outreach activities indicate that

communication strategies may not always be successful because of the following:

- ▶ passive communication rather than active communication—for example, placing important information on the internet and not elsewhere
- ▶ lack of interpreters
- ▶ cross-cultural communication issues
- ▶ crucial material not being available in required languages
- ▶ information targeted only at intermediaries, including shires, government business managers and elders, and not at the people affected
- ▶ one-off information sessions for community residents
- ▶ key messages and important information being delivered in one format only
- ▶ different approaches of government business managers and how broadly they engage with all levels in the community.

Implementation challenges in remote communities

People often report that their community is different, or that the community already had strategies in place to address issues of concern. The NTER was an emergency response and by its nature needed to be implemented quickly and across the board. However, after two years and with the redesign of NTER measures currently being considered, the Government has an opportunity to build on what it has learnt since the intervention commenced and use its consultation activities to better understand the needs and views of individual communities. Feedback and complaints highlight a need for more consultation and efforts to ensure a more flexible approach to program implementation, taking into account the characteristics and needs of particular communities.

For example, one complaint we investigated in relation to the School Nutrition Program (SNP) drew attention to the challenges faced by agencies when attempting to quickly

implement programs across a large number of communities, where the policy intention of the program is to work closely with communities to develop tailored solutions.

The SNP aims to improve school attendance and children's nutrition by providing breakfast and lunch to school aged children in the NT. It also aims to provide employment opportunities for local Indigenous people. The case study *Lunch program for school students* shows how communication problems led to concern in one community.

This case highlighted the complexities involved in implementing programs in remote communities where the success of these programs relies on community support and input. The enormity of this challenge cannot be overstated and should be factored into any planning to ensure that a 'one size fits all' approach is not adopted and that communities are engaged in planning and decision making about matters that affect them.

Lunch program for school students

Ms D complained, among other things, that the Department of Education, Employment and Workplace Relations (DEEWR) did not tell the women in one community that they were not successful in being approved to run the SNP to prepare lunches for the schoolchildren in their community. In addition, DEEWR had decided to give the SNP to another provider who was not a community member. Ms D said that the women in the community still wanted to do the SNP and they were unhappy with DEEWR's decision.

Our investigation showed that DEEWR visited the community on a number of occasions to explore options for the delivery of the SNP. A number of parties were involved in these discussions and different options were being considered. It appeared that consideration of the different options at the same time, the women not always being available to speak with DEEWR, and the urgency to get the SNP up and running, led to a breakdown in communication and some additional challenges for DEEWR in ensuring that all parties were kept in the loop in finding a solution.

The focus to get the SNP established within limited timeframes appeared to impact on the objectives of working with the community to find a solution that would have community support and create local employment opportunities. As a result the women in the community did not support the SNP and they missed out on job creation and skill development opportunities.

DEEWR returned to the community in early 2009 and negotiated a new SNP which involves the women in the community now preparing the lunches for their children to eat at school.

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.

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* in this chapter.

AUSTRALIAN FEDERAL POLICE

Complaints made by members of the public about the actions of members of the AFP remained an important part of the Ombudsman's law enforcement work. This year marked a focus on the Ombudsman's oversight of the AFP conduct and complaint system through the reviews conducted under Part V of the *Australian Federal Police Act 1979* (AFP Act).

At the start of 2008–09 there were some cases that remained outstanding that were handled by the AFP and oversighted by the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). That Act was repealed in December 2006. At the end of 2008–09 three cases remain outstanding and will soon be completed.

Under the arrangements the Ombudsman's office applies to all agencies, most people with complaints about the AFP are asked to raise their complaint with the AFP first. If a person is dissatisfied with the process or the outcome of the AFP consideration and complains to the

Ombudsman's office, we may investigate the complaint. Under the AFP Act the Ombudsman is notified by the AFP of complaints it receives that are categorised as serious conduct issues.

Review of complaint handling

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, including records of the handling of complaints about ACT Policing. Generally two reviews are conducted each year. The Ombudsman reports to the Commonwealth Parliament annually, commenting on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of any inquiries ordered by the federal minister.

The most recent report to the Commonwealth Parliament, covering review activities conducted during 2007–08, was tabled in November 2008. The report noted that the AFP had made extensive preparations for its new complaint-handling system and had a genuine commitment to making it work. Nevertheless, room for improvement was identified in relation to the:

- ▶ technology used by the AFP for recording, managing and tracking complaints
- ▶ timeliness of the AFP's handling of minor complaints, which was consistently well below the benchmarks that the AFP had set itself
- ▶ need for the AFP to make use of complaint information to improve practices and procedures on an organisational basis
- ▶ AFP attitude to, and dealings with, complainants.

During the reporting period the office conducted inspections to review the AFP's

administration of complaint handling in September–October 2008 and March 2009. The report arising from the first review was finalised in April 2009 and the report arising from the second review should be finalised in the first quarter of 2009–10.

This year's reviews noted a pleasing improvement in most areas of AFP complaint handling from the previous years. In particular, the AFP provided resources to upgrade its information technology system for recording and managing complaints, which is expected to result in better functionality and reporting capabilities. Timeliness in the handling of minor complaints improved. The AFP also improved its practices and procedures for dealing with complainants. Further details on these reviews will be contained in the 2009 report to Parliament.

Complaints received

During 2008–09 we received 351 approaches and complaints 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:

- ▶ inappropriate action, such as excessive delay, failure to act or inadequate investigation
- ▶ minor misconduct, including harassment/bullying, inappropriate behaviour and traffic matters
- ▶ customer service, such as discourtesy, inadequate service or failure to provide advice
- ▶ serious misconduct, for example breach of Commissioner's Orders or code of conduct, bribery or intimidation
- ▶ use of force, such as excessive force or discharge of a firearm.

Half of the approaches and complaints were about AFP members acting in their ACT Policing role. Our work in this area is described in more detail in the *ACT Ombudsman Annual Report 2008–2009*, available at www.ombudsman.act.gov.au.

Complaints finalised

Section 38 of the Complaints Act, now repealed, requires a report on the operations of the Ombudsman under that Act during the year ended 30 June 2009. This section of the report deals with those matters.

No new complaints under the Complaints Act were received during 2008–09. We completed the oversight of 52 complaints containing 113 complaint issues.

Of the 113 issues oversighted, 11 had been referred to the AFP's workplace resolution or conciliation process. Under the Complaints Act this process allowed members of the public to provide feedback about their interaction with police; provided AFP members with the opportunity to clarify misunderstandings; and facilitated a more timely and flexible response to complaint issues than did formal investigation.

Conciliation was successful in two of these cases, involving three issues. We decided that investigation was not warranted in respect of one issue after considering the AFP's initial evaluation of the complaint.

The AFP investigated 109 issues (including seven where conciliation had been attempted), which were then reviewed by the Ombudsman's office. The Ombudsman considered the 109 issues and requested further investigation by the AFP for 24 issues. The Ombudsman accepted the AFP's findings in the majority of issues. The Ombudsman's office investigated three complaints comprising six issues. We made four recommendations on four issues in two cases. The AFP agreed with two recommendations in one case and disagreed with the recommendations in the other case. In the third case, our investigation determined the AFP investigation and outcomes were satisfactory.

The case studies *Conflict of interest* and *Excessive force* describe the outcome of two investigations Ombudsman office staff carried out in relation to complaints made under the Complaints Act.

Conflict of interest

This special investigation was conducted under the Complaints Act to examine a complaint made by an AFP member regarding the conduct of a Professional Standards (PRS) interview.

Complainant E was alleged to have contacted another AFP member F inappropriately via email and text messages. When PRS interviewed E, E alleged that the PRS interviewer G was biased and had a conflict of interest. At the interview G told E that G was a very good friend of the AFP member F who had made the initial allegation of inappropriate communication.

Our investigation report found that G had a real or perceived conflict of interest in relation to complainant E. The officers involved in the interview did not have an adequate appreciation of what constituted such a conflict, nor did they deal with it appropriately. Our investigation report concluded that AFP procedures and guidelines in relation to conflict of interest were not sufficient. We recommended that the AFP should develop written procedures and detailed guidance for AFP members to assist them in identifying and avoiding conflicts of interest in carrying out their duties. The Ombudsman had made a similar recommendation in relation to another case in the previous year.

The AFP Commissioner responded in May 2009 endorsing the report's recommendations and advising that the AFP is drafting a national guideline on conflict of interest, and that recognising and treating conflicts of interest were an aspect of the AFP's values education. The Ombudsman was advised that the Deputy Commissioners and the Chief Operating Officer had, as a consequence, conducted presentations on AFP values in all AFP locations.

Excessive force

Mr H complained that the AFP used excessive force to arrest him. He was injured and sprayed with capsicum spray. Mr H also complained about the theft of a small sum of money, and that the AFP had released information about his arrest to the Australian Defence Force (ADF) and were rude to him.

The AFP had approached Mr H and questioned him about the welfare of his friend. The police reported that Mr H was belligerent and uncooperative and they attempted to place him in protective custody. The police used force including capsicum spray.

The AFP investigation found that the release of information to the ADF was inappropriate and addressed the issue. The remaining complaints of excessive use of force, theft and rudeness were not substantiated.

Ombudsman office staff investigated the complaint by Mr H. We examined the AFP's investigation of the complaint and the transcripts for the taped records of conversations with the complainant and the AFP members involved in his arrest. We also examined closed circuit television footage of the ACT City Watchhouse which showed the amount of money Mr H presented to police at the time of his arrest was incorrectly counted and that no theft had occurred.

The Ombudsman was satisfied that the evidence supported the AFP's findings and concluded that the actions of the AFP were not unreasonable.

We finalised 354 complaints about the AFP under the Ombudsman Act. In 186 cases we referred the complainant to the AFP on the basis that a complainant should contact the relevant agency before asking the Ombudsman to conduct an investigation. We referred the complainant to other agencies and oversight bodies for a small number of complaints and treated some as information enquiries. We completed investigations of 39 complaints. Some investigations, commenced during the period, are yet to be completed. The case study *Wrong interpretation* shows the outcome from one complaint we investigated under the Ombudsman Act.

Overall, 90% of all AFP approaches and complaints under the Ombudsman Act were finalised within three months of receipt and 94% were finalised within six months. This reflects the large number of complaints that were dealt with by telephone.

Twenty complaints or 6% of AFP complaints under the Ombudsman Act took longer than six months to resolve.

Own motion investigations

In our 2007–08 annual report we noted that a joint AFP/Ombudsman review of ACT Policing's Watchhouse operations had been released in June 2007 and that a joint steering committee

was established to follow up the recommendations.

The Ombudsman wrote to the AFP Commissioner in August 2008 following the finalisation of the steering committee's report on the implementation of the review's recommendations. The Ombudsman referred to three areas that required attention—governance, detainee health and wellbeing, and use of force. The Ombudsman noted he would continue to closely monitor complaints about Watchhouse operations. The Chief Police Officer of the ACT undertook to conduct an ACT Policing review of the implementation in approximately six months.

In March 2009 the AFP provided the Ombudsman with the *Report to ACT Chief Police Officer on Implementation of Recommendations of the June 2007 Review of ACT Policing's [Regional Watchhouse] Operations*. The report demonstrated a thorough acquittal of the recommendations of the Watchhouse review. The issues raised by the Ombudsman have either been addressed or are in the final stages of completion. Training in appropriate use of force in the Watchhouse has been implemented and amendments to Commissioner's Order 3 are in train. One issue outstanding is the removal of hanging points in the Watchhouse, for which ACT Government funding is being sought.

Wrong interpretation

Ms J complained that when she went to the ACT City Watchhouse to see her son who had been detained earlier that day, she was denied access to him.

Our investigation established that when her son was admitted, he was asked the question *'If anyone should call here whilst you are in custody saying that they are a friend of yours, a member of your family or a legal practitioner acting on your behalf, do you have any objections to them being told you are here?'* The answer given was *'Yes, that's fine'*. The Constable recorded the answer to the question as *'Yes'*. This then marked the record with an indication that he had requested privacy. When Ms J asked to visit her son, the duty officer noted that her son had asked for privacy and refused her request.

When we investigated the complaint, the AFP advised us that the question relating to privacy had been reworded. The question now asked is *'If anyone calls the Watchhouse, can we tell them you are here?'* This question appears to be less open to misinterpretation.

We will continue to monitor Watchhouse practices and conduct in the context of addressing complaints. The Watchhouse review is available on our website at www.ombudsman.gov.au.

In October 2008 the Ombudsman completed an own motion investigation on the AFP's use of powers under the *Intoxicated People (Care and Protection) Act 1994 (ACT)*. The Ombudsman made a number of recommendations to improve training, procedures and recordkeeping in relation to dealing with intoxicated people. The report is available on our website.

In August 2008 the Ombudsman published an abridged report of an investigation *Australian Federal Police: Engagement of consultant* (Report No. 8/2008). The full investigation report was not published due to security considerations. The investigation centred on an allegation of a perceived conflict of interest in the engagement of a consultant, due to a personal relationship between the consultant and a senior officer of the AFP.

The investigation found that there was no evidence of improper influence by the senior officer. However, there was a potential conflict of interest that was not well managed. The Ombudsman recommended that the AFP review its procurement guidelines, that the AFP review certain practices of the AFP procurement policy area, and that the AFP develop written procedures and detailed guidance for AFP members to assist them in identifying and avoiding conflicts of interest in carrying out their duties.

The AFP accepted the recommendations.

Following a complaint by a member of the public that a senior AFP officer misused his

authority to send AFP officers to intervene in a civil dispute, the Ombudsman decided to conduct an own motion investigation into the complaint and the way the AFP handled it. The investigation is expected to be finalised early in 2009–10.

AUSTRALIAN CRIME COMMISSION

Complaints about the ACC are managed under the Ombudsman Act. The ACC also notifies the Ombudsman's office about significant matters, allowing us to consider whether further investigation by Ombudsman staff is warranted. In 2008–09 we received four approaches and complaints about the ACC and finalised five approaches and complaints.

The Ombudsman commenced an own motion investigation into the gathering, storing and dissemination of information by the ACC. The investigation is expected to be finalised early in 2009–10.

AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

The Ombudsman can refer allegations of corruption against law enforcement officers to the Integrity Commissioner. No allegations were referred during 2008–09; the Integrity Commissioner finalised one matter referred in 2007–08.

CRIMTRAC

In June and July 2008 the Ombudsman's Office contributed to a CrimTrac privacy impact assessment on a proposal for an automatic number plate recognition system. The assessment was conducted by a consultant (a previous Privacy Commissioner) as part of the consideration of a proposed CrimTrac project.

Postal industry

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CHAPTER 6 LOOKING AT THE AGENCIES – POSTAL INDUSTRY

The Commonwealth Ombudsman has carried out the role of Postal Industry Ombudsman (PIO) since 6 October 2006.

The PIO was established to offer an industry ombudsman function for the postal and courier industry. Australia Post is automatically subject to the PIO's jurisdiction. Other postal industry participants can register with the PIO, enabling the PIO to investigate complaints made about them.

At 30 June 2009 the following registered private postal operators (PPOs) were subject to the jurisdiction of the PIO:

- ▶ 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.

PIO COMPLAINTS OVERVIEW

The PIO received 2,026 approaches and complaints in 2008–09, a 7% increase on 2007–08. Table 6.3 shows the number of approaches received, and complaint investigations commenced and completed, over the course of the year.

The PIO can only investigate activities relating to the provision of a postal or similar service. Complaints about other aspects of a postal provider's operations (such as employment matters or environmental issues) cannot be considered.

The Commonwealth Ombudsman still has jurisdiction over those administrative actions of Australia Post that do not fall within the jurisdiction of the PIO.

A complaint about Australia Post may be transferred from the Commonwealth to PIO jurisdiction, or vice versa. This can occur because the investigation would be better handled in the other jurisdiction, or in order to use the more extensive formal powers of the Commonwealth Ombudsman in investigating a complaint. Further detailed PIO reporting, such as the number of times complaints were transferred from the PIO jurisdiction to the Commonwealth jurisdiction, is provided in Appendix 4.

TABLE 6.3 APPROACHES AND COMPLAINTS RECEIVED, AND INVESTIGATIONS, BY THE PIO, 2008–09

	Australia Post	Private postal operators	Total
Approaches and complaints received	2,013	13	2,026
Investigations commenced	704	4	708
Investigations completed	645	3	648

Activities

In May 2009 we contacted all registered PPOs, providing them with a copy of the Ombudsman's *Better Practice Guide to Complaint Handling* and a questionnaire designed to help them better understand how the role of the PIO interacts with the daily operations of PPOs.

The aim of this exercise, apart from wider distribution of the *Better Practice Guide*, was to analyse why we receive relatively few complaints about PPOs. We will consider this issue further when the questionnaires are returned, with a view to deciding whether we need to take other steps to raise our profile with customers of PPOs.

We have also continued to liaise with other postal industry stakeholders, particularly the Post Office Agents Association.

AUSTRALIA POST COMPLAINTS OVERVIEW

In 2008–09, we received 2,219 approaches and complaints about Australia Post. Figure 6.7 shows the number of approaches and complaints received about Australia Post over the last five years, and the division between

Commonwealth Ombudsman and PIO jurisdictions in 2007–08 and 2008–09. Some of the major investigations and themes we have worked on this year are discussed in the rest of this section.

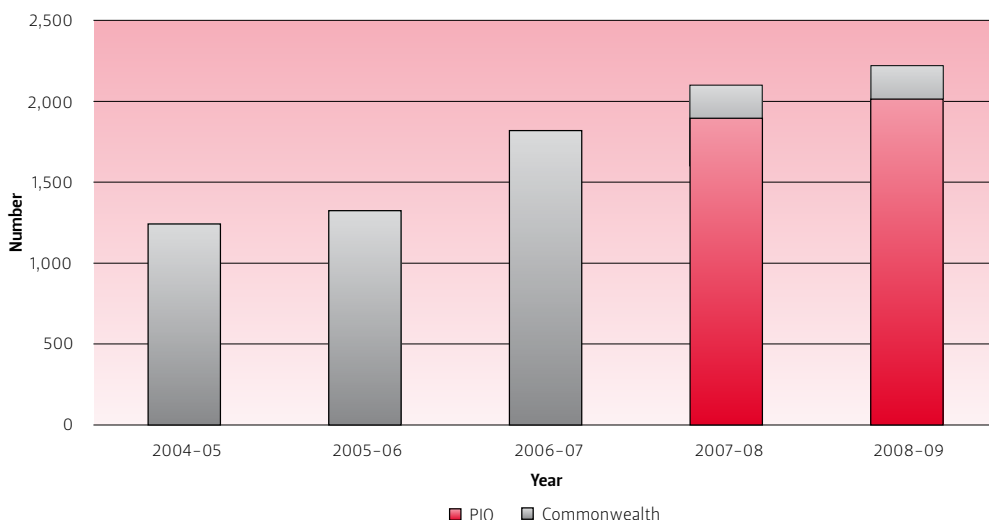
Use of notification cards

During 2007–08 we commenced an own motion investigation into the way Australia Post uses cards to notify addressees that mail is awaiting collection. The investigation report was published in December 2008.

The report, *Australia Post: Use of notification cards* (Report No. 14/2008), concluded that a number of issues affected the reliability of the carding process. Human error was one, but we also noted ambiguity in the instructions provided to employees and contractors around such issues as when delivery had to be attempted, and what forms of identification were acceptable for release of items over the counter.

In addition, we concluded that instances of lost items could be reduced through a clearer link between the card left and the item it related to (for example, a peel-off barcode that could be removed from the card and fixed to the item being returned for collection). More stringent

FIGURE 6.7 AUSTRALIA POST APPROACH AND COMPLAINT TRENDS, 2004–05 TO 2008–09



recording procedures at offices receiving items to be held for collection would also reduce the number of lost items.

In response to the report, Australia Post undertook to review the wording on the various cards to provide greater clarity to addressees, to improve training, and to review existing strategies to reinforce correct procedures. Australia Post also agreed to consider improving processes for matching a parcel to the addressee, subject to issues of practicality.

Polls to gauge community support for changes to mail delivery services

During the year we completed an investigation into the methodology adopted by Australia Post for carrying out polls to ascertain whether there is community support for changing mail delivery services—for example, providing a delivery service where one was not previously available. We released the report, *Australia Post: Community polling practices: gauging community support for changes to postal delivery services* (Report No. 1/2009), in March 2009.

We concluded that it was reasonable for Australia Post to want to establish whether the community actively supported a change, before delivery arrangements were altered. However, the investigation identified concerns with Australia Post's practice of treating a non-response to its poll—which is circulated as a written form which has to be returned to Australia Post—as effectively a 'no' vote.

The report recommended that Australia Post review its methodology with a view to addressing these concerns. Australia Post agreed to do so.

Complaint about service delivery and complaint handling

In March 2009 the Ombudsman issued a report of an investigation carried out into the way a complaint about a registered post item had been handled (*Australia Post: Complaint about service delivery and complaint handling regarding a registered post article* (Report No.

5/2009)). The sender had paid for an acknowledgment of delivery card to be returned to them, but did not receive one. The item was said to have contained valuable jewellery.

Our report identified that the delivery person had failed to obtain a signature as required, although the item had in fact been delivered. The concerning aspect of the case was the failure of Australia Post's customer contact centre to follow up properly on the complaint, giving the complainant the impression that the item had not been delivered.

Australia Post's response advised that a number of the issues identified in the Ombudsman's report were being addressed through its development of national complaint-handling guidelines. The investigation of this complaint highlights the importance of that work and we will continue to monitor progress of the development and implementation of those guidelines.

Mail redirection service

We noted in our last annual report that we receive a significant number of complaints every year about mail redirection. These complaints are notable for the levels of frustration and even distress experienced by people who do not know where their mail is. The Ombudsman decided to investigate this issue on his own initiative, and released the report *Australia Post: Administration of the mail redirection service* (Report No. 7/2009) in June 2009.

The report concluded that the redirection service relies heavily on manual intervention, and there is significant scope for human error to affect the process. When this occurs, it is important that complaints are handled quickly and efficiently so that problems are corrected. The report made a number of recommendations aimed at improving the redirection service. In response, Australia Post committed to reviewing certain aspects of the redirection service with a view to improving accuracy and dealing with complaints more effectively.

Delays in processing inbound international mail

In our last annual report we discussed our investigation into the involvement of the Australian Quarantine and Inspection Service (AQIS) in delays to inbound international mail in Australia.

Following a successful Christmas season in 2008 when backlogs remained at manageable levels and of short duration, we finalised our investigation into the issue. We concluded that steps taken by AQIS should reduce the likelihood of severe delays recurring. These steps included directing increased resources at screening inbound international mail, together with proposed refinements to the way in which mail at risk of breaching quarantine regulations is identified.

Our Brisbane office, which has responsibility for liaison with AQIS, will continue to monitor the issue on a six-monthly basis.

Express Post

In the mid-1990s the Ombudsman's office had an extended interaction with Australia Post on the subject of its Express Post service. In our annual reports for 1995–96, 1996–97 and 1997–98 we discussed some of the issues around the service, particularly the nature of the Express Post guarantee, compensation, and the exclusions printed on the envelope.

We decided to follow up with Australia Post on some of these issues, given that we continue to receive some complaints about Express Post and the nature of the guarantee provided to customers.

Following analysis of the complaints we received, together with information from Australia Post about the volume of items carried by the service, we concluded that the issue did not warrant further investigation. While it is important that customers understand that the 'guarantee' offered by Express Post is limited, the incidence of service failure is low and the terms of the guarantee are printed on Express Post envelopes.

Compensation levels

A review of old files held by the Ombudsman's office showed that the maximum compensation usually payable for a letter or parcel sent by ordinary mail that is lost or damaged in the post has remained at its current level of \$50 for many years.

The Ombudsman decided to investigate the reasons for this. We are in correspondence with Australia Post on the issue and aim to conclude the investigation in 2009–10.

'Safe drop' of bulky items

In September 2008 Australia Post instituted its 'Safe Drop' program nationwide. This allows bulky items that do not fit in an addressee's letterbox to be left in a safe place, instead of being taken back to the post office and carded for collection as would previously have been the practice. Items can only be left if they are out of view of the street, and safe from weather and pets. Items requiring a signature on delivery cannot be left.

This was a significant change in delivery practices, and we have been monitoring the number of complaints we receive that appear to relate to the Safe Drop program, whether from people who object in principle, or from customers who complain because delivery people are not following the rules and are leaving items in exposed locations.

We intend to provide feedback to Australia Post on our experience of the operation of the Safe Drop system once it has been in place for a year. If any issues of concern arise we will ensure that Australia Post is aware of them and request its comment.

Customer contact centres

In our last annual report we discussed some of the issues that we see arising out of the way in which Australia Post handles customer complaints.

These issues have also been evident this year. The investigation report on complaint handling regarding a registered post article, referred to

earlier, is just one example of a complaint that became problematic because of the way in which it was handled.

In saying this, we acknowledge the work of the many Australia Post customer service officers who do their jobs in an effective and committed fashion. The recurring themes that we have identified tend to involve limitations in Australia Post's complaint management systems, and issues around training and policy guidance, rather than misconduct by individual officers.

The recent publication of our *Better Practice Guide to Complaint Handling* highlights our focus on the benefits of effective complaint-

handling processes for organisations, as well as the importance of such systems for customers.

We do not intend to investigate Australia Post's customer contact centres at this stage, because we have been aware for some time that Australia Post is in the process of implementing national complaint-handling guidelines. These were referred to in Australia Post's response to our report into its handling of a complaint about a delivery officer in 2007. By the time our next annual report is published, we expect that that review will have been completed, and that we will have had an opportunity to assess whether implementation of the national complaint-handling guidelines has improved complaint-handling processes.



Bear essentials

A consignment of teddy bears was shipped from Europe to a retailer in Australia. However, after the addressee paid the customs duty they were not delivered. This caused distress not only for the addressee, but for the retailer's customers who had ordered them for Christmas.

Enquiries revealed that the bears had been returned to sender without any attempt having been made to deliver them. Our investigation found that no explanation could be provided as to why they were not delivered, or why they had been sent back.

We arranged with Australia Post that when they got back to Europe, the bears would be repatriated at Australia Post's expense. We are assured that all the bears are now happy and doing well.

Australia Post will also be rationalising its existing structure of six customer contact centres into two centres, in Melbourne and Brisbane. This rationalisation, and the associated changes to systems and internal procedures, may have a significant effect on Australia Post's complaint handling. Again, we will consider the outcome of that process before conducting an investigation into Australia Post's complaint handling.

In establishing its new structures and procedures, Australia Post will be able to draw

on the recommendations of our last two investigation reports that dealt with Australia Post complaint-handling issues. We also trust that Australia Post will have regard to the Ombudsman's *Better Practice Guide to Complaint Handling*.

The case studies *Bear essentials*, *Different stories* and *Triple dipping* illustrate the diverse nature of the complaints we handled about Australia Post during the year.

Different stories

Mr K believed that he should not receive unaddressed mail delivered by Australia Post, as a sign in the letterbox area of his apartment block requested no unaddressed mail be placed in any of the letterboxes.

On contacting Australia Post Mr K was advised that if he did not want unaddressed mail, he needed to fix a sign to his individual letterbox. This is because each mail recipient has the right to choose whether to receive unaddressed mail or not. However, when Mr K complained to one of the senders of an unaddressed mail item, he was told that Australia Post had agreed it should not deliver to any of the letterboxes at his apartment block.

Mr K was dissatisfied with what appeared to be conflicting information given by Australia Post. We were able to contact Australia Post and confirm that the information given to Mr K directly was correct—that it was up to individual box owners to choose whether to opt out of unaddressed mail.

Although Mr K would have preferred a different outcome, and not to have to fix a sign to his individual letterbox, he was appreciative of our clarification of the position.

Triple dipping

Ms L's local Member of Parliament approached us about a problem Ms L had experienced when using Billpay at an Australia Post outlet. Owing to a problem with the clearing bank that provided the service, her account had been debited three times, leaving her out of pocket.

We contacted Australia Post to ask for details of what had happened and what Australia Post had done as a result. Australia Post was able to assure us that it had taken prompt and appropriate action when it became aware of the problem. Australia Post had identified the issue as a learning opportunity and was working together with the bank to avoid any recurrence.

Although the actual problem had not been of Australia Post's making, Australia Post showed a willingness to tackle the issue and to implement preventive measures. We were able to advise Ms L's Member of Parliament accordingly.

Other agencies

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CHAPTER 6 LOOKING AT THE AGENCIES – OTHER AGENCIES

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, insurance companies, friendly societies and most members of the superannuation industry.

We receive a small number of approaches and complaints each year about APRA. However, in the second half of 2008–09 we received an increased number of complaints about the processing of applications for early release of superannuation.

There are a number of grounds upon which a person may apply for early release of superannuation entitlements. The increase in complaints to the office related to applications for early release made by people who were facing foreclosure or exercise of a power of sale by a lending institution with a mortgage over their principal residence. The increase in complaints may have been the result of an overall increase in applications of this type made to APRA.

The main complaint themes were processing times by APRA and the clarity of information it provided about the requirements for an application to be approved. We note that APRA has addressed the processing times and made changes to its requirements and information products during this period. We will continue to monitor the handling of early release applications over the next year.

AUSTRALIAN QUARANTINE AND INSPECTION SERVICE

During 2008–09 the Ombudsman's office started a new compliance auditing role for the Australian Quarantine and Inspection Service

(AQIS). AQIS is one of three elements within the Department of Agriculture, Fisheries and Forestry responsible for quarantine in Australia.

In June 2006 the Senate Rural and Regional Affairs and Transport Legislation Committee released the report on its inquiry *The administration by the Department of Agriculture, Fisheries and Forestry of the citrus canker outbreak*. The inquiry considered the 2004 outbreak of citrus canker in Emerald, Queensland. Citrus canker is a highly contagious plant disease that is not usually found in Australia. The outbreak had significant effects on the local economy and implications for Australia's biosecurity. It occurred at a farm where an employee had earlier made allegations that the farm owners and employees were involved in the illegal importation of plants from overseas.

The committee made five recommendations. One of the recommendations was that *'twice a year, the Commonwealth Ombudsman review all investigations carried out by AQIS to assess whether they have been conducted by appropriately trained staff, in a timely manner, in accordance with all the relevant legislation and according to the rules adopted by AQIS' executive'*.

The office received additional funding in 2008–09 to begin implementing the committee's recommendation. Our approach to this function is to first undertake a broad investigation of AQIS's Compliance and Investigation Unit (CIU) processes. The CIU undertakes investigations into alleged breaches of the quarantine system, where offenders may be subject to prosecution by referral to the Commonwealth Director of Public Prosecutions, or be issued with a letter of warning or letter of advice.

In February 2009 we commenced an own motion investigation into the CIU's policies, procedures, case management systems and quality assurance processes. The report of this investigation will be released in August 2009. We plan to follow this with a series of reports focusing on individual CIU investigations.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Ombudsman's office received 144 approaches and complaints about the Australian Securities and Investments Commission (ASIC) in 2008–09.

The main themes in the complaints were:

- ▶ the imposition of late review fees for late notification of changes to company details in response to a company's annual review
- ▶ the quality of reasons given for decisions not to investigate complaints about companies and for decisions on requests for waiver of late fees
- ▶ communication and registry issues.

A number of companies, mostly small businesses, complained that they had received invoices for late review fees accumulated over a number of years. These fees related to the failure of the companies to provide information which they believed they had already given to ASIC. We found that the problems arose as a result of changes made under the Corporations Legislation Economic Reform Program (CLERP 7) in 2003. CLERP 7 abolished the requirement to lodge annual returns and introduced a new annual review process.

The companies that complained to us had provided the information prior to the CLERP 7 changes, but at that stage ASIC did not need to capture the data and did not save it on its database. Once ASIC was required to capture the data as a result of the CLERP 7 changes, it included a note in its new annual company statement format that it had no record of the information. However, the companies overlooked the note. The late fees only became due when the information was lodged, but increased with each unmet 'request' made by way of a note on a company statement. The result was that the companies were not specifically warned that the amount of fees payable on lodgement was growing.

We raised with ASIC whether it had failed to:

- ▶ give prominence about the requirement to provide the information
- ▶ follow up companies and advise them that the information remained outstanding and that the fees due on lodgement were increasing

- ▶ consider each request for a fee waiver on its individual merits and to provide proper reasons for decisions.

Issues of a different kind arose in some other complaints about late fees. We raised with ASIC issues about the adequacy of the electronic notification to companies that the online annual company statement was ready for viewing, the design of the fee invoice, and the order in which payments made by companies were allocated to reducing accumulated charges or to meeting the current fees.

Towards the end of 2008–09, ASIC advised us of a range of measures relating to late fees, including:

- ▶ a review of all other similar cases affected by the CLERP 7 changes and an improved notification to those companies
- ▶ improvements to the manner of notifying companies that the annual company statement is available for viewing online
- ▶ improvements to the design of the fees invoice so that it is clearer when fees must be paid, in order to avoid further fees being incurred
- ▶ allocation of payments first to paying any outstanding annual company review fees rather than the oldest amount owing, in order to reduce late fees on the outstanding annual review fees
- ▶ steps would be taken to provide better reasons for decisions on requests for waiver of fees.

We will monitor the progress of these proposed improvements.

HEALTH AND AGEING

In 2008–09 the Ombudsman's office received about 150 approaches and complaints about the Department of Health and Ageing and associated portfolio agencies such as the Therapeutic Goods Administration (TGA).

The main complaint issues were:

- ▶ investigations conducted by the department's Aged Care Complaints Investigation Scheme (CIS) about the quality of care in residential aged care facilities

- ▶ access to pharmaceuticals on the Pharmaceutical Benefits Scheme or other programs
- ▶ investigation decisions and processes of the TGA, including access by complainants to information about investigation results.

Aged care

The *Aged Care Act 1997* establishes the position of Aged Care Commissioner, whose functions include the examination of complaints about investigations undertaken by the CIS. The Aged Care Commissioner may make recommendations to the Department of Health and Ageing.

The Ombudsman and the Aged Care Commissioner have a memorandum of understanding which

provides that, unless there is reason to do otherwise in a specific case, the Ombudsman's staff will advise people whose complaints might be dealt with by the Aged Care Commissioner to raise their complaint with the Commissioner in the first instance. However, we will consider investigating complaints about the processes adopted by the Aged Care Commissioner or complaints about the department's response to recommendations made by the Aged Care Commissioner.

The case study *Reviewable decision* shows how, as a result of an Ombudsman office investigation, the department changed its view on dealing with complaints about classifications under the 'residential classification scales' (RCS). The RCS was used to set the level of Commonwealth

Reviewable decision

Mr M was a resident in an aged care facility. On entry to the facility Mr M was given the lowest classification on the RCS. Mr M had been assessed by Centrelink as eligible to pay an income-tested fee. However, as no government subsidy was payable for the lowest RCS classification, Mr M was not required to pay the fee.

The next year the facility reviewed Mr M's classification and gave him a higher classification. He was not advised until the Department of Health and Ageing wrote to him saying that he was now required to pay an income-tested fee for his care. Mr M disputed the new classification. Mr M encountered delays in the handling of his initial complaint and eventually the department advised him that neither the CIS nor the Aged Care Commissioner could consider the matter because it concerned funding rather than care matters. The next year the facility returned Mr M to the lowest classification, which supported his view that the intervening classification had been incorrect. Mr M then complained to us.

In response to our initial enquiries, the department advised us that the CIS could not review RCS classifications because they were a matter between aged care providers and the department for the purpose of determining subsidies and they did not concern the health, safety and wellbeing of residents. The department advised that its RCS review process examined how care providers applied the RCS by risk-based sampling to ensure classifications were made properly.

We considered that the RCS classifications were administrative decisions that had a direct effect on individuals and that a person should be able to seek review of an unfavourable RCS classification. On reconsideration, the department advised that it was possible to view the RCS classifications as decisions about the amount of service to be provided to a person, and from this perspective the CIS could investigate such decisions to see if a person was being over-serviced or under-serviced. The department will treat future complaints about RCS classifications from residents in this way.

The CIS investigated Mr M's complaint and found that the facility had incorrectly classified Mr M during the intervening year. The residence agreed to refund the income-tested fee Mr M paid during the year he was classified at the higher level.

government subsidy payable to a facility for a resident's care. The subsidy payable affected the level of any income-tested fee payable by a resident to a facility if Centrelink had assessed their income as being above a threshold amount. If an income-tested fee was payable, the government subsidy reduced accordingly.

Special access program

From late 2008, we began to receive complaints from medical professionals and parents of children who had applied for, or had access to, government-subsidised human growth hormone treatment under the special access program for human growth hormone as a pharmaceutical benefit. The complaints raised a number of administrative issues with the program including:

- ▶ delays in decision making affecting supplies of the medication, which could interrupt treatment
- ▶ onerous administrative processes for medical professionals and parents, including a requirement that parents complete statutory declarations if they had used up all the supplies earlier than expected by the department
- ▶ lack of consultation and communication.

We raised these issues with the department. The department promptly resolved the decision-making and supply issues by increasing staffing in the program unit and improving priority setting. The department also advised that it was implementing a range of other improvements to the program, including reviewing the application and information requirements, developing educational material for the families of patients, improving communication and consultation with medical professionals, and dispensing with the statutory declaration requirement.

We continue to monitor the issues raised by these complaints.

Information about TGA investigations

A common theme in complaints we receive about regulatory agencies is that the people who complain to such agencies do not always get detailed feedback about the results of their complaints. In some cases agencies take an unduly narrow view on what information they can provide to people who have complained to them. In other cases there may be specific reasons, such as not wanting to prejudice an ongoing investigation. The case study *Not registered* shows one such example.

Not registered

Mr and Mrs N were importers of complementary medicine products. The TGA advised them that a particular product was not included on the Australian Register of Therapeutic Goods and therefore could not be sold as a complementary medicine in Australia.

Mr and Mrs N agreed to not sell the product in Australia but were concerned that it appeared that competing businesses continued to do so. They felt that if their competitors were not pursued, those businesses that wished to sell the product legally and therefore sought its inclusion on the register would be at a commercial disadvantage. While Mr and Mrs N would need to put their business on hold and go through the costly approval process to be able to sell their product, others could continue business and possibly benefit from any approval Mr and Mrs N obtained. Mr and Mrs N provided information to the TGA about websites that they had seen advertising the product for sale to Australian customers. They later complained to us that the TGA did not appear to be taking any action.

On investigation, the TGA advised us about the action it was taking and some of the challenges it faced involving regulation of products that may be advertised on websites based overseas. While the TGA was taking action, it could not advise Mr and Mrs N of the details because the information might affect its ongoing investigations.

We were able to review the information and advise Mr and Mrs N that the steps taken by the TGA were not unreasonable, without disclosing the confidential information.

In other cases we have found that information could not be disclosed to complainants because it contained confidential commercial material about other businesses. However, both types of information can be provided to the Ombudsman's office, so that we can monitor the reasonableness of the TGA's actions.

Nevertheless, it is important that agencies consider in each case what information can be disclosed to complainants when advising them of the outcome of their complaints.

WORKPLACE AUTHORITY

One of the roles of the Workplace Authority during 2008–09 was to assess workplace agreements for compliance with the 'fairness test' under the *Workplace Relations Amendment (A Stronger Safety Net) Act 2007* (the Act).

From late 2008 we received a number of complaints from employers that they had been given 14 days to respond to notifications that their workplace agreements did not comply with the fairness test. In response to the notifications, employers were required to either vary the agreement, or to lodge undertakings to vary the agreement, so that it complied with the fairness test. If this did not occur, or the varied agreement still did not pass the fairness test, the agreement would be terminated and the conditions applying to the employees under their last industrial instrument would be revived.

Once notified of the outcome of an assessment under the fairness test, an employer had a further 14 days to calculate and pay any compensation due to employees arising from the period of non-compliance with the fairness test. Under the Act sanctions of up to \$30,000 could be imposed for non-compliance with the requirement to pay compensation within this 14-day period.

The 14-day time periods were prescribed by the Act. While the Act provided for the making of regulations to enable the extension of the initial 14-day period, none were made. This meant the initial 14-day period could not be extended.

A number of employers complained that they received notifications that their agreement did

not pass the fairness test some 12 months or more after lodging the agreement for assessment. While lodgement receipts advised that they would be contacted about the outcome of the assessment, some employers believed the absence of contact from the Workplace Authority meant their agreements were compliant and were surprised to be notified a year later that this was not the case.

During this period the law had changed and the employers required time to obtain advice about whether to vary their agreements or allow them to terminate and make new agreements under the new laws. Moreover, due to the passage of time, calculation of compensation had become more onerous as some employees covered by the agreements were no longer employed by the employer who lodged the agreement and the volume of employer records had increased. Still others complained that the unanticipated need to pay compensation within such a short period gave rise to cash flow problems.

On investigation of the complaints the Workplace Authority advised us that:

- ▶ the fairness test had been introduced on 1 July 2007 but covered agreements made from 7 May 2007 onwards, immediately creating a large and continually growing amount of work for the Authority
- ▶ the Workplace Authority did not have adequate systems to track all agreements through the assessment process until November 2007
- ▶ in mid-2008 an audit discovered a cohort of agreements lodged before November 2007 for which assessments had not been finalised
- ▶ there was no process for advising the employers, whose agreement assessments had not been finalised, of the delay and what this meant for them
- ▶ all fairness test assessments were finalised by 19 December 2008
- ▶ the replacement 'no disadvantage test' legislation provides longer timeframes
- ▶ the Office of the Workplace Ombudsman, which was responsible for enforcement of non-compliance with the requirement to pay compensation, was aware of the delays in assessments.

The time periods in the Act were clearly set in anticipation of the assessments being processed over a much shorter period of time than eventuated. Upon discovering the delayed cases, the agency should have written to the employers advising them of this fact and when they might expect notice of an assessment. We were advised by the Office of the Workplace Ombudsman that it would take into account all matters raised by employers in regard to compliance timeframes and that the impact of the delays could be addressed through negotiated payment plans where necessary. Nevertheless, it remains a concern

that the delays will have caused problems for a number of employers in the form of increased compliance costs and inconvenience.

We understand that the Workplace Authority will continue to assess agreements made before 1 July 2009, union collective agreements made before 30 September 2009 and individual transition employment agreements made before 31 December 2009 under the 'no disadvantage' test, up until 31 January 2010. The Workplace Authority's other functions transferred to Fair Work Australia and the Fair Work Ombudsman from 1 July 2009.

Freedom of information

This is likely to be the last full year for the current arrangements for investigating complaints under the *Freedom of Information Act 1982* (FOI Act). The Government has circulated a draft Bill for a reformed FOI Act drafted to commence from 1 January 2010. In parallel, the Government has circulated a draft Bill that proposes to create a new statutory agency, the Office of the Information Commissioner, which would be responsible for oversight of information access and related matters in the Commonwealth. The Office of the Information Commissioner will be headed by the Information Commissioner (a new office holder) and supported by the Privacy Commissioner (an existing office holder) and the Freedom of Information Commissioner (a new office holder). The Ombudsman would retain jurisdiction to deal with FOI and privacy matters, but would ordinarily transfer any such complaint to the Office of the Information Commissioner.

In 2008–09 we received 204 approaches and complaints about FOI matters. Of these, 29% were about Centrelink, 11% about the Department of Immigration and Citizenship and 10% about the Child Support Agency. We finalised 221 approaches and complaints about FOI, of which we investigated 51%. As with most previous years, the main complaint issues were delay, the imposition and remission of fees and charges, and decisions not being explained well.

There were also more complex issues, including some arising from the FOI Act requirement that an agency assist a person who wishes to make an FOI request. Our experience is that compliance with this requirement could sometimes be better, especially where agencies simply fail to act on attempted requests that are technically invalid. Delay, confusion and resentment can arise where a person does not know what is required, and the agency does not tell them. The usual reason for invalidity is that a person has not paid, or requested remission of, the application fee. This problem would be

relieved by the proposed FOI reforms, which remove the requirement for an application fee.

Some agencies continue to read requests literally, as if they were carefully drafted contract clauses or legislative provisions. This can lead to routine requests for uncontentious information being read so narrowly that they cover no documents likely to be of interest to the applicant, or so many documents that the agency says that it cannot manage the request or that the applicant must pay substantial charges.

Many agencies have schemes, either administrative or legislative, to enable a person to obtain documents about the handling of their matter without requiring an FOI request and at no charge or a minimal charge. The interaction of these schemes and the FOI Act can be problematic, with FOI requests being read as requests for some other kind of access. We have taken the view that someone who wants to make an FOI request (and thereby have access to formal time limits, review rights and a statement of reasons) should not be prevented from doing so. However, if an agency can provide all or most of what an applicant wants in a simpler, quicker and cheaper way, it should do so after consulting the applicant.

During the investigation of one complaint, we identified an anomaly in the current legislation. If a person is seeking access to documents and makes a complaint to the Ombudsman, they are precluded from applying to the Administrative Appeals Tribunal (AAT) until the Ombudsman has finished dealing with the matter. The time limit for appeal to the AAT is extended correspondingly. However, if a person complains that they have been consulted about the release of documents that refer to them and are resisting access, the time limit for appeal to the AAT is not extended. We suggested that this be addressed in the reformed FOI legislation.

Monitoring and inspections

The Ombudsman's responsibility for inspecting the records of law enforcement and other enforcement agencies, and reporting on those inspections, expanded significantly in 2008–09 in terms of the number of agencies inspected and reports produced. Our role requires the inspection of records related to:

- ▶ telecommunications interceptions by the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and the Australian Commission for Law Enforcement Integrity (ACLEI)
- ▶ access to stored communications by Commonwealth law enforcement agencies (the AFP, the ACC, ACLEI), other enforcement agencies (such as the Australian Customs and Border Protection 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.

During 2008–09 we carried out 30 inspections, a 60% increase on the number of inspections carried out in the previous financial year. We inspected the records of 15 different agencies, compared to five in 2007–08. The increase was predominantly due to increased access to stored communications by agencies, as described later.

As for 2007–08, changes made to the *Telecommunications (Interception and Access) Act 1979* (TIA Act) in 2006, which permitted access to stored communications, required

Definitions

Telecommunications interception is the recording of telephone conversations or other transmissions passing over a telecommunications network. Interceptions occur under warrant for the purposes of obtaining information relevant to an investigation.

Stored communications typically refers to emails and text messages, but may include images or video, which are electronically stored by a telecommunications carrier or internet service provider. For example, an SMS message is stored by a carrier and sent when the intended recipient is able to take the message. Stored communications access occurs under warrant for the purposes of obtaining information relevant to an investigation.

Surveillance devices are typically listening devices, cameras and tracking devices used to gather information relating to criminal investigations and the location and safe recovery of children. The use of these devices will, in most circumstances, require the issue of a warrant.

A *controlled operation* is a covert operation carried out by law enforcement officers under the *Crimes Act 1914* (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.

inspection of a number of 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.

Across all regimes, it was pleasing to note the attention given by agencies to improving compliance with statutory requirements and enhancing recordkeeping and administrative practices in general. All agencies inspected showed a willingness to implement our recommendations and improve practices.

Particular note should be made of the overall improvement in compliance by the ACC and the AFP in their recordkeeping for telecommunications interceptions and in the use of surveillance devices. Both organisations have put considerable effort into training and policy development relating to compliance, which seems to be having a positive effect. In particular, the efforts of the ACC to implement an agency-wide compliance strategy are commendable.

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 Attorney-General 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 2007–08 to the Attorney-General in September 2008.

We carried out two inspections each of AFP and ACC records in 2008–09. ACLEI did not have any relevant activity requiring inspection of records. We concluded that there was general compliance by the AFP and the ACC with the detailed recordkeeping requirements of the TIA Act. However, we made several recommendations after each inspection to improve recordkeeping and administration. Each agency accepted the recommendations. They have since implemented a further range of measures and initiatives to improve recordkeeping.

We note that agencies continue to develop their capacity to intercept data and to keep pace with the changing technological aspects of telecommunications interceptions. This aspect of the regime is expected to feature more heavily in future years, especially with the increasing use of voice over internet protocol communications.

STORED COMMUNICATIONS

Under Chapter 3 of the TIA Act, the Ombudsman is required to inspect the records of enforcement agencies in relation to their access to stored communications, to ensure the records comply with the relevant provisions of the Act. During the year we carried out 17 inspections of stored communications records—two each of the AFP and the Australian Customs and Border Protection Service; and one each of the ACC, Australian Securities and Investments Commission, Corruption and Crime Commission of Western Australia, New South Wales (NSW) Crime Commission, NSW Police, NSW Police Integrity Commission, Northern Territory Police, Queensland Police, South Australia Police, Tasmania Police, Victoria Police, Victoria Police (Ethical Standards Division) and the Western Australia Police.

The stored communications regime covers lower threshold offences than for telecommunications interceptions, and access to the scheme is therefore broader and the ‘checks and balances’ more limited. An example of the less restrictive manner in which the regime was implemented is shown in the definition of ‘enforcement agency’, which includes any agency that may impose a pecuniary penalty. Not surprisingly, increasing numbers of agencies take advantage of this facility to investigate crime and gather intelligence, placing a considerable burden on the resources of the Ombudsman’s office.

The most concerning feature of the inspections we carried out in 2008–09 was that a number of purported stored communications warrants had been signed by persons not appointed to be issuing authorities under the TIA Act. Otherwise there was generally a satisfactory level of compliance by each agency.

Discussions are still continuing with the agencies to ensure that access to stored communications is lawful and occurs in compliance with the TIA Act. We also continue to hold discussions with the Attorney-General's Department in relation to the interpretation of a number of provisions relating to stored communications and the effect that these provisions have on carriers and agencies.

SURVEILLANCE DEVICES

Under the *Surveillance Devices Act 2004* (SD Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI each year to ensure their records comply with the requirements of the Act. 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 2008–09. ACLEI did not have any relevant activity requiring inspection of records. As the NSW Police had utilised provisions in the SD Act, we also inspected its records.

We provided reports to the Attorney-General in August 2008 and March 2009 for tabling in Parliament. These reports contained the results of inspections finalised during the preceding six-month periods (January to June and July to December, respectively).

Overall there was a significant improvement in the agencies' level of compliance, and they were assessed as being compliant with the SD Act. The areas where improvement could be made varied and no single issue stood out.

CONTROLLED OPERATIONS

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 quarterly and annual reports to the Attorney-General and Ombudsman is adequate.

During the year we conducted four inspections of controlled operations records—two each at the AFP and the ACC. We 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. An annual report for 2007–08 was presented to Parliament in September 2008.

The quarterly reports are required to contain information on the conduct of completed controlled operations, including details on the handling and possession of illicit goods. In previous years our focus has been on whether the information is reported in a timely manner and any dealings in illicit goods are within the bounds of the authority of a controlled operations certificate. During 2008–09 we took a broader view of our role in relation to the handling and possession of illicit goods, and have commenced testing the accuracy of the reported information. In general, we have found that the records presented for inspection have been more limited than we require, and we are working with the agencies to identify appropriate records and source documentation.

OWN MOTION INVESTIGATIONS

During 2008–09 we undertook two own motion investigations of the ACC's use of 'examination' powers under the *Australian Crime Commission Act 2002*.

The first investigation focused on the issuing of summonses and notices under the Act. We published a report *Australian Crime Commission: Use of certain powers under Division 2, Part II of the Australian Crime Commission Act 2002* in August 2008 (Report No. 10/2008) and provided a copy to the Parliamentary Joint Committee on the Australian Crime Commission as part of its inquiry into the *Australian Crime Commission Amendment Act 2007*.

The committee released its report in September 2008. It noted the Ombudsman's contribution and made two recommendations relating to Ombudsman oversight of the ACC's examinations process. The Attorney-General's Department is currently preparing a government response in consultation with this office and the ACC.

In light of the committee's proposal on the Ombudsman's oversight function, we conducted a further investigation to gain a better understanding of the examinations process. We considered the wider powers available to the ACC in relation to examinations and reviewed records relating to the use of these powers. The findings of that investigation have not been published.

BENEFITS OF COMPLIANCE AUDIT

Those agencies that are regularly inspected by this office now show a high level of compliance with legislative provisions. While it was common some years ago (and occurred last year) to find incidents of powers being used without warrant or other gross breaches of the

legislation, this year there were few breaches of the legislation. Although problems persist and there is still room for improvement, agency practices have improved noticeably.

Such an improvement demonstrates the value of compliance audit as an oversight mechanism. While compliance audits do not purport to address the merits of the use of certain powers in individual cases, the audits improve the manner in which individual cases are brought before relevant authorities. As a result there is improved compliance at a systemic level. In short, compliance audits are a valuable exercise in accountability. The case study *Agency reporting improvements* illustrates how such improvements are made.

Agency reporting improvements

Section 49 of the Surveillance Devices Act requires the chief officer of an agency to send reports to the Minister (the Attorney-General) in relation to each warrant, emergency authorisation and tracking device authorisation issued or given, as soon as practicable after the warrant or authorisation ceases to be in force. Each report must contain certain information and copies of any instruments related to the warrant or authorisation.

In previous years we have been critical of errors and omissions in the reports provided under s 49 of the Act. Problems included incorrect dates recorded for the use of surveillance devices, failure to identify the people who installed devices, incorrect identification of the devices used, and failure to provide details of the premises in which devices were installed. The most persistent problem was a failure to send the reports at all, or within at least three months of each warrant or authorisation expiring.

With few exceptions, in past years we also found the recordkeeping relating to s 49 reports to be very poor. Complete signed copies of reports, as sent to the Attorney-General, could rarely be found on file, and there was little in the way of dispatch and receipt notes. Although there is no legislative requirement for such records to be kept, it is good administrative practice, and we made a number of recommendations relating to administration, rather than compliance.

It was pleasing to see this year that these administrative practices have largely been adopted by agencies and the recordkeeping relating to s 49 reports has improved significantly. Not surprisingly, a corresponding improvement has been noted in the accuracy and timeliness of the reports, and a significantly improved level of compliance achieved.

Tonga

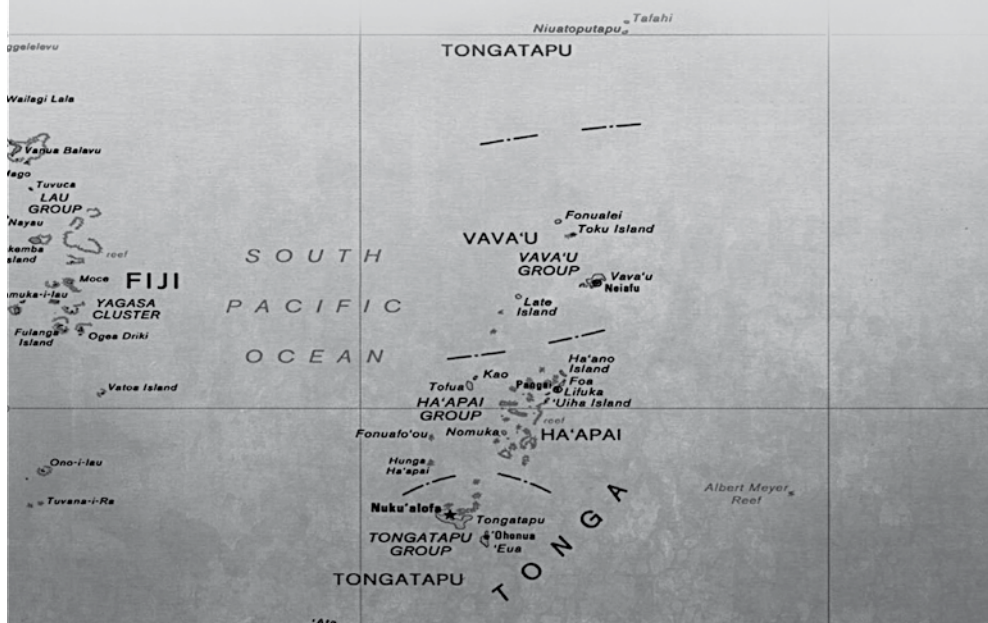
The Commissioner for Public Relations performs Ombudsman functions in the Kingdom of Tonga. The office commenced operation in 2001. The position of Commissioner has been vacant since 2006, and the office is presently managed by Senior Investigator Mr Pilimiso L Tamo'ua.

A review has been conducted on the legislation establishing the office of Commissioner, and legislation may be introduced into the Tongan Parliament later in 2009. It is possible that the office will be re-named the Ombudsman of Tonga. Other changes would improve the capacity of the office to discharge Ombudsman functions, including publishing reports.

As part of a Pacific Ombudsman Alliance activity in March 2009, one of our officers,

John Czesla, spent a week working in Tonga with the Commissioner for Public Relations to help in developing the legislative changes. John and Senior Investigator Tamo'ua held meetings and established linkages with the Solicitor-General's Office. They assured the Solicitor-General of further legislative drafting support, and ensured that there was adequate support to establish a timeframe for passage of the legislative amendments.

John also provided assistance to establish a memorandum of understanding between the Commissioner and the Tongan Police Force, which will help to refine the role of the Commissioner in handling complaints about police conduct.



CHAPTER 7

Helping people, improving government

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CHAPTER 7 HELPING PEOPLE, IMPROVING GOVERNMENT

Ombudsman work focuses on resolving individual complaints and improving public administration. This chapter outlines our work in obtaining remedies for individual complainants, and improving public administration more generally.

The first part of the chapter looks at some of the remedies provided to complainants as a result of Ombudsman investigations. The second part looks at some of the improvements in agency administration that have resulted from Ombudsman investigations, often arising from a single complaint. The chapter concludes with an illustration of cases where we have identified administrative deficiency in agency operations.

REMEDIES

In investigating individual complaints, an important consideration is whether there is a suitable remedy for the complainant. Remedies can include an apology, giving better reasons for a decision, expediting action and a financial remedy.

In November 2008 we released a fact sheet explaining the remedies that Australian Government agencies can provide for poor administration and the principles that should guide the choice of a remedy. Fact sheet 3—*Remedies* is available on our website (www.ombudsman.gov.au).

This section gives some examples of the range of remedies we obtained for individuals through our complaint investigations in 2008–09.



Explanations

Providing a clear explanation of a decision is an important remedy. It can reduce a person's concerns, even if the decision cannot be altered. Giving the reasons for a decision can

also be of practical assistance. For example, it may help the person to decide whether to make a fresh application, or seek review or reconsideration of the decision.

Explanations

Medications seized

Mr O purchased some medications from overseas via the internet. They were intercepted by Customs and seized by the Australian Federal Police (AFP). Mr O complained to Customs and when he did not get a response, complained to us. Customs had misplaced his letter of complaint. Customs explained that the items were initially tested for narcotics and transferred to the AFP for further testing. The AFP then issued the seizure notice to Mr O. In addition, the medications Mr O had purchased could only be imported if he had a licence or permission to import. Customs explained that, if the AFP testing proved negative, the items could be released to him provided he obtained permission from the Therapeutic Goods Administration to import the items for personal use.

Wrong rebate?

Mr P complained that he had had four lesions removed in one period of surgery, but he thought that the Medicare rebate had only covered one removal. He complained to us when he could not get a satisfactory explanation from Medicare Australia. When we contacted Medicare Australia, they went to some lengths to identify the person Mr P had spoken to, but could not. Medicare Australia provided a detailed explanation to Mr P about the complex formula used to calculate a rebate when multiple procedures are carried out in one operation. They had applied the formula correctly in his case.

Food seized

Mr Q complained that, when he brought packages of spices and foodstuffs into Australia from Africa, the Australian Quarantine and Inspection Service (AQIS) had seized some items and allowed other similar items in. He said the seized items had been commercially prepared and packed and labelled correctly. When we investigated, AQIS provided detailed information to Mr Q and met with him to clarify their actions. AQIS explained that it had been a mistake to allow in any of the items. They had seized the items because some were not clearly commercially packaged and labelled, some were contaminated with seeds, and some items contained spices but did not clearly indicate where the spices came from (they may have originated in another country). AQIS also advised Mr Q that travellers should always check for up-to-date information because quarantine requirements can change without notice.

Actions and decisions

We receive many complaints about agency decisions. A frequent complaint is that there is delay by an agency in making a decision. Often, a suitable remedy in this situation will be to expedite action. Another frequent complaint is that an agency has made a wrong decision. We respect the right of agencies to decide the

merits of a claim, but we do examine whether an agency has made a decision based on wrong or incomplete information, ignored relevant information or not applied the principles of natural justice. The appropriate remedy in these circumstances may be for the agency to reconsider or change a decision.

Actions and decisions

Visa refused

We received a complaint on behalf of Mr R, a South African man who had applied with his wife for a tourist visa to visit their son and his family who had resided in Australia for many years. Mrs R had been granted a visa, while Mr R's application was refused on medical grounds. When we investigated, we considered there were problems with the way Mr R's application had been dealt with, and raised our concerns with the Department of Immigration and Citizenship (DIAC). DIAC agreed and sought a new medical assessment. On reviewing the case further, DIAC decided that there had been a jurisdictional (legal) error. It set aside the decision and agreed to process Mr R's application based on the new medical information.

Order not stayed

Mr S had two separate child support cases. In one case he applied to court in 2004 to challenge the child support application on the basis that he was under age at the time it was claimed he had fathered the child. He was successful and the court made an order that permanently stayed the assessment by the Child Support Agency (CSA). As to the other child support case, from early 2008 the CSA collected deductions from Mr S's employer but apportioned the money towards both child support cases. The CSA paid child support to the payee for the second child support case and kept the money deducted for the first child support case because of the stay order. When we investigated the CSA agreed that it had no legal basis to collect funds in relation to the first case. It stopped this collection, paid some of the money it held against the arrears that had accrued for the second case, and reimbursed the remainder to Mr S.

Delay

Mrs U transferred from one Centrelink payment (widow pension) to another (age pension). After receiving a single part payment, she did not get any more payments. She contacted Centrelink a number of times, and was advised that her payments had mistakenly been paid into the wrong bank account. Centrelink told her she would need to wait until the bank refunded the money before it would be paid to her. When we investigated, Centrelink advised us that it had made the payments to the wrong account because of a systems error, and it had not followed up with the bank. It did so at once, and paid nearly \$1,000 into Mrs U's bank account.

Financial remedies

Poor administration can cause financial loss to people. For example, a person 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. There is a range of remedies that can be used to provide financial

relief or compensation to a person. One remedy is that compensation may be payable under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. In other cases, a debt may be waived or reduced. Other financial remedies might include a refund of fees or charges, or payment of a particular benefit.

Financial remedies

CDDA

Mr V complained that Centrelink had rejected his request for a CDDA payment. He had been granted newstart allowance at the end of 2006. He queried his payment rate several times, but Centrelink assured him it was correct. A year later, Centrelink found it had not been paying him the correct rate. However, it refused Mr V's CDDA claim on the basis that he had not sought a review of the decision and was not in a vulnerable group of clients. We raised our concerns about the handling of Mr V's claim with Centrelink. On closer examination, Centrelink agreed to pay Mr V's claim, on the basis that it had made some clerical errors and it had not provided detailed information to Mr V that would reasonably have led him to seek a review. Centrelink also undertook a complete review of Mr V's prior payments, and found that, due to his complex circumstances not being recognised, he had been underpaid Austudy as well. Centrelink made an additional CDDA payment in light of this underpayment.

Debt waiver

Mr W was being held in immigration detention pending removal to another country. DIAC obtained travel documents to assist in his removal, and sent them to the Australian embassy in the overseas country. DIAC expected it would take four to six months to obtain Mr W's passport. After four months DIAC contacted the Australian embassy, only to find that it had not received the documents in the first instance. This meant that Mr W spent an additional four months in detention. DIAC agreed to seek a waiver of his detention debt for that period. It also put in place improved procedures to ensure that it would identify earlier if documentation had gone missing.

Apologies

An apology can be highly effective in addressing a person's complaint about poor administrative practice. 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. Complainants often see an apology as the first step in moving forward.

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CHAPTER 7 HELPING PEOPLE, IMPROVING GOVERNMENT

Apologies

No advice of debt

Mr X complained on behalf of his son, who was living overseas. Mr X's son had received an invoice from a debt collector on behalf of the Department of Defence. His son had discharged from the Army several years earlier, and had no knowledge of the debt. Defence advised us that Mr X's son had not paid any living-in contributions for a period of eight months while he was in the Army. This was due to a computer error, which was discovered more than a year after Mr X's son left the Army. Defence had correctly raised the debt, but then sent notices of the debt to the wrong address. When the debt was not paid, Defence passed the matter to a debt collection agency. Defence wrote to Mr X and his son explaining the circumstances and apologising for the manner in which they were made aware of the debt and the inconvenience and stress it caused them.

No privacy

Staff of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) were investigating some matters related to a person. They visited the person's bank to find out some information about the type of accounts the bank operated. While they were only seeking general information, the staff inadvertently revealed the person's identity to the bank. FaHCSIA apologised to the person for the unintentional breach of privacy.

GOOD ADMINISTRATION

An individual complaint can highlight a recurring problem in agency administration. Following investigation, the Ombudsman's office may recommend broader changes, such as 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 recommendations may be pursued in various ways. For example, we may raise the issues with an agency through regular liaison meetings, propose improvements in the course of the investigation of an individual complaint, or make a formal recommendation.

During 2008–09 the office published 18 formal reports. Some of these reports dealt with an individual complaint investigation, some arose from the investigation of numerous similar complaints, and others were own motion investigations dealing with systemic issues that had been noted during complaint investigations. The reports are:

- ▶ *Department of Immigration and Citizenship: The Safeguards System* (Report No. 7/2008)
- ▶ *Australian Federal Police: Engagement of consultant* (Report No. 8/2008)
- ▶ *Centrelink: Arrangements for the withdrawal of face-to-face contact with customers* (Report No. 9/2008)
- ▶ *Australian Crime Commission: Use of certain powers under Division 2, Part II of the Australian Crime Commission Act 2002* (Report No. 10/2008)
- ▶ *Australian Federal Police: Use of powers under the Intoxicated People (Care and Protection) Act 1994* (Report No. 11/2008)
- ▶ *Child Support Agency, Department of Human Services: Responding to allegations of customer fraud* (Report No. 12/2008)
- ▶ *Centrelink and Department of Agriculture, Fisheries and Forestry: Claim and review processes in administering the Equine Influenza Business Assistance Grant (third payment)* (Report No. 13/2008)
- ▶ *Australia Post: Use of notification cards* (Report No. 14/2008)

- ▶ *Centrelink: Procurement of optional item via a request for tender* (Report No. 15/2008)
- ▶ *Australia Post: Community polling practices: gauging community support for changes to postal delivery services* (Report No. 1/2009)
- ▶ *Assessment of claims for disability support pension from people with acute or terminal illness: An examination of social security law and practice* (Report No. 2/2009)
- ▶ *Use of interpreters: Australian Federal Police; Centrelink; Department of Education, Employment and Workplace Relations; Department of Immigration and Citizenship* (Report No. 3/2009)
- ▶ *Australian Taxation Office: Re-raising written-off tax debts* (Report No. 4/2009)
- ▶ *Australia Post: Complaint about service delivery and complaint handling regarding a registered post article* (Report No. 5/2009)
- ▶ *Department of Immigration and Citizenship: Detention arrangements: the case of Mr W* (Report No. 6/2009)
- ▶ *Australia Post: Administration of the mail redirection service* (Report No. 7/2009)
- ▶ *Child Support Agency: Administration of Departure Prohibition Orders* (Report No. 8/2009)
- ▶ *Delays in preparation of Heritage Strategies by Australian Government agencies: Implementation of section 341ZA of the Environment Protection and Biodiversity Conservation Act 1999* (Report No. 9/2009).

Improving communication and advice to the public

People rely on government agencies for advice and information about the legislation and programs the agencies administer. They expect this advice to be accurate and practical. Any qualification or limitation on the general advice provided by an agency should be explained. If appropriate, a person should be cautioned to seek specific or independent advice relevant to their individual circumstances.

An example of an advice problem we dealt with during the year involved a complaint that checklists provided by DIAC to assist applicants

for a partner visa application were inconsistent. This could lead to confusion and potentially result in inadequate documentation being submitted in support of an application. Our investigation showed that there was, indeed, an inconsistency in the information provided by DIAC in the relevant migration booklet, in checklists and on DIAC's website. DIAC acknowledged the problem and advised that it would make amendments to the checklists and information booklet.

The general advice provided by an agency may need supplementation for specific groups of people. This was highlighted by a complaint we received from a person who lived in New Zealand. He was upset that the CSA's accounts of payments it received that he had made to the New Zealand Inland Revenue Department were always behind, because of the delays in an international money transfer from a New Zealand agency to an Australian agency. He said that his former wife and his daughter believed that he was behind with his payments and that this affected his relationship with his daughter. The CSA provided him with a better explanation of his account and the payment cycle. It also undertook to prepare a suite of country-specific fact sheets to send to CSA customers with international cases to explain the issues that can arise with international enforcement of child support. These fact sheets will be prepared for the five largest 'reciprocating jurisdictions', assisting CSA customers in more than 24,000 cases and covering 59% of all international cases.

The issue of advice and improved communication with the public was a recurring theme in reports we published during 2008–09. For example:

- Our report on the use of interpreters (Report No. 3/2009) looked at communication with people who may have special communication needs because of their language background. The report included eight best practice principles against which agencies can assess their policies and procedures regarding the use of interpreters.
- The report on the Australian Taxation Office's (ATO) re-raising of tax debts it had written off (Report No. 4/2009) recommended that the ATO notify people when it decides to write off a tax debt and explain the implications of this. The ATO should also improve the information it gives taxpayers when it re-raises a debt that has been written off.
- Following our investigation of the CSA's administration of Departure Prohibition Orders, we recommended that the CSA standard notice of an Order should include advice about the person's right to appeal, complain or seek revocation of the Order (Report No. 8/2009).
- We recommended that DIAC improve the transparency of its Safeguards System by publishing details of the purpose and function of the system, and by developing guidelines that specify the information from Safeguards profiles that can be made available to the public in general or specific terms (Report No. 7/2008).

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. Many complaints to the Ombudsman's office arise from poor agency procedures.

This point is illustrated by a complaint we received from a person who had changed employment from the Department of Defence to another department. Defence sent his personal security file to the other department by ordinary post. The file, which contained sensitive personal information, was lost. Following our investigation Defence agreed to use their contracted courier services to move all personal security files between Defence establishments and between Defence offices and outside agencies.

Many of the reports we published during the year contained recommendations aimed at improving agency administrative procedures. For example, we recommended:

- changes to Australia Post's procedures for notifying a customer that a postal item is awaiting collection (Report No. 14/2008), in the way it polls communities to gauge

community support for changes to postal delivery services (Report No. 1/2009), and in its administration of the mail redirection service (Report No. 7/2009)

- ▶ that the CSA develop detailed procedures for staff responding to customer claims that the other parent has provided false or misleading information (Report No. 12/2008)
- ▶ changes to the procedures for AFP officers dealing with intoxicated people (Report No. 11/2008)
- ▶ that DIAC review its procedures to ensure that people in immigration detention who are identified as survivors of torture and trauma are considered for community detention in a timely manner, and that it introduce a requirement for involuntary removals to be reviewed after they have occurred (Report No. 6/2009).

Interpreting and applying legislation and guidelines correctly

The public relies on government agencies to act lawfully and make lawful decisions. An agency should always be aware of the danger that staff are not correctly interpreting legislation or agency guidelines. 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 risk of error increases generally where the legislation is more complex. For example, a person who was the payer in a child support case complained that the CSA had failed to keep proper accounts of the debt he owed. In particular, he said the CSA had failed to take into account certain amounts that he had paid to the payee and which, by law, can be offset against a proportion of the amount he has to pay to the CSA. We found that the CSA's automated accounting system was not programmed to correctly apply the offset rules in every situation. The agency staff who spoke to the person were not aware of this shortcoming, nor that the CSA had internal procedures to manually adjust the debt in such a case where the debtor falls behind with their payments and then catches up. We have asked

the CSA to consider how it can improve its system to avoid similar instances.

We made recommendations about the application of legislation and guidelines in several reports published in 2008–09. For example, we considered that Centrelink was applying the criteria for the Equine Influenza Business Assistance Grant (third payment) wrongly in some cases. The grant was administered by Centrelink, based on policy guidance produced by the Department of Agriculture, Fisheries and Forestry (DAFF) in response to ministerial directions. We recommended Centrelink and DAFF review unsuccessful applications for the payment (Report No. 13/2008). As a result, more than \$2 million was paid to 463 claimants who had previously been unsuccessful.

In another report, we noted that few Australian Government agencies are aware of their obligation to prepare a heritage strategy for managing places they own or control, in accordance with s 341ZA of the *Environment Protection and Biodiversity Conservation Act 1999*. The Ombudsman recommended that the Department of the Environment, Water, Heritage and the Arts write to all departments, alerting them to the obligation under s 341ZA resting on all agencies within their portfolio (Report No. 9/2009).

Good complaint handling

Good complaint handling is a central theme of Ombudsman work. A good complaint–handling process provides a way for problems to be dealt with quickly and effectively. It can also provide an agency with early information about systemic problem areas in agency administration. Poor complaint handling can exacerbate what may have been a simple error or oversight, potentially giving rise to other complaints from the person concerned and to a loss of public confidence in the agency.

Over the years the Ombudsman's office has put considerable effort into helping agencies improve their complaint–handling processes. We have done this in a variety of ways, including liaison and training, reviews of agency complaint–handling systems, and the publication of relevant material.

In April 2009 the Ombudsman released the *Better Practice Guide to Complaint Handling*. The guide defines the essential principles for effective complaint handling. It can be used by agencies when developing a complaint-handling system or when evaluating or monitoring an existing system.

Most complaints investigated by the Ombudsman's office have already been dealt with by an agency. A problem that has not been effectively resolved by the agency may point to a deficiency in the agency's complaint-handling process. Our investigation can point to areas that an agency needs to address when it deals with complaints.

For example, we dealt with a complaint about delays in investigating a complaint made to the Aged Care Complaints Investigation Scheme (part of the Department of Health and Ageing). An officer had started investigating the complaint, but after a change in staff the complaint was not progressed and the department failed to keep the complainant informed about the investigation. When we contacted the department it acknowledged the complaint had been handled poorly. The department put in place a range of new procedures to ensure there would be no recurrence. The changes included reviewing all cases that were taking longer than usual to resolve or where there had been a change in the lead investigation officer; changes to the management of case loads for staff known to be leaving the department or taking extended leave; and reviewing the processes in place where an investigation officer changes during the investigation.

Some of the investigation reports published during 2008–09 contained recommendations related to improving complaint handling. For example:

- in a report on Australia Post's handling of a complaint regarding a registered post article, the Ombudsman recommended some changes to Australia Post's complaint-handling processes, including the introduction of timeliness standards for the escalation of complaints and modification of the complaints management system to allow for prolonged or complex investigations (Report No. 5/2009)

- one of the best practice principles identified for the use of interpreters is to provide an accessible complaint-handling mechanism to allow clients to complain about access to, or the use of, an interpreter, including the quality of interpreting (Report No. 3/2009).

Recordkeeping

Many complaints that the office deals with each year arise because of poor recordkeeping practices in agencies. The problems are often compounded by a delay in making a decision in a person's case or in resolving their complaint about the matter. Poor recordkeeping can also undermine transparency in agency decision making and lead to allegations of deception, bias, incompetence or corruption.

Sometimes seemingly simple errors such as misplacing or losing a file, failing to keep a proper record of an important decision or conversation, or inadvertently confusing people who have similar or identical names, can lead to substantial problems for a person. Poor recordkeeping can also mean that, even if an agency's decision or action was correct, it cannot demonstrate this to an aggrieved person.

In some cases problems with poor recordkeeping are compounded by reliance on automated systems that cannot deal with the specific circumstances properly. For example, we received a complaint from a person that DIAC had not made a decision on an application for citizenship for his son, who lived overseas. When we investigated, we found DIAC had no record of a decision letter being sent. This was due to the inability of DIAC's computer system to generate a decision letter when the application was processed offshore. DIAC put local procedures in place to ensure that all citizenship decision letters are generated manually and copies retained electronically and on file.

The need for improved recordkeeping was a common theme in reports published during the year. For example:

- an investigation into DIAC's use of its Safeguards System led to a recommendation that DIAC should improve

the consistency of recordkeeping by recording fully the steps taken by a decision maker in response to a Safeguards match, and ensuring decision makers record more detailed information about how Safeguards information has been taken into account in deciding a visa application (Report No. 7/2008)

- ▶ the report on the Australian Crime Commission's use of certain of the examination powers available to it made a number of recommendations to improve the Commission's recordkeeping in relation to the use of those powers (Report No. 10/2008)
- ▶ an investigation into a Centrelink procurement decision led to recommendations to improve recordkeeping in relation to communications with contractors and between contractors and third parties (Report No. 15/2008)
- ▶ the Ombudsman recommended that the ATO ensure the reasons for debt write-off and re-raise decisions are more clearly recorded, including the factors that led to the decision (Report No. 4/2009).

Unreasonable or harsh impact of legislation or government policy

A complaint may reveal that a legislative anomaly exists such that the application of the legislation is having a harsh or unreasonable impact on a person, or an unintended consequence. Similarly, a complaint may show that a government or agency policy has a harsh or unreasonable impact on some individuals. Several reports published during 2008–09 addressed these issues.

The Ombudsman's report on the assessment of claims for disability support pension from people with acute or terminal illness (Report No. 2/2009) pointed to gaps in the support for people with an aggressive illness that would either require a lengthy period of treatment or recovery, or require additional investigation to identify a more conclusive prognosis. The Ombudsman recommended that consideration be given to developing a new category of Centrelink payment for people in these

circumstances, and creating a list of conditions that would automatically qualify a customer for the new payment.

In the report on the ATO's re-raising of tax debts it had previously written off (Report No. 4/2009), the Ombudsman recommended that the ATO should consider the reasonableness of seeking to recover debts which had not been pursued for many years, taking into account the period of time for which taxpayers could be expected to retain relevant tax records.

ADMINISTRATIVE DEFICIENCY

Section 15 of the *Ombudsman Act 1976* lists the grounds on which the Ombudsman can formally make a report to an agency, and ultimately to the Prime Minister and Parliament. A small number of such reports are made each year to agencies; reports to the Prime Minister or Parliament are rare. 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 on improving agency complaint-handling processes and public administration generally.

Cases nevertheless arise in which administrative deficiency should be recorded and notified to agencies. 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.

During 2008–09 we recorded 533 cases where there were one or more issues of administrative deficiency. The significant increase from last year (368 cases) generally reflects revised internal procedures and training, aimed at ensuring that we record all cases of administrative deficiency that we identify. Some complaints discussed elsewhere in this report led to a finding of administrative deficiency.

The following additional examples illustrate the administrative deficiencies recorded during the year.

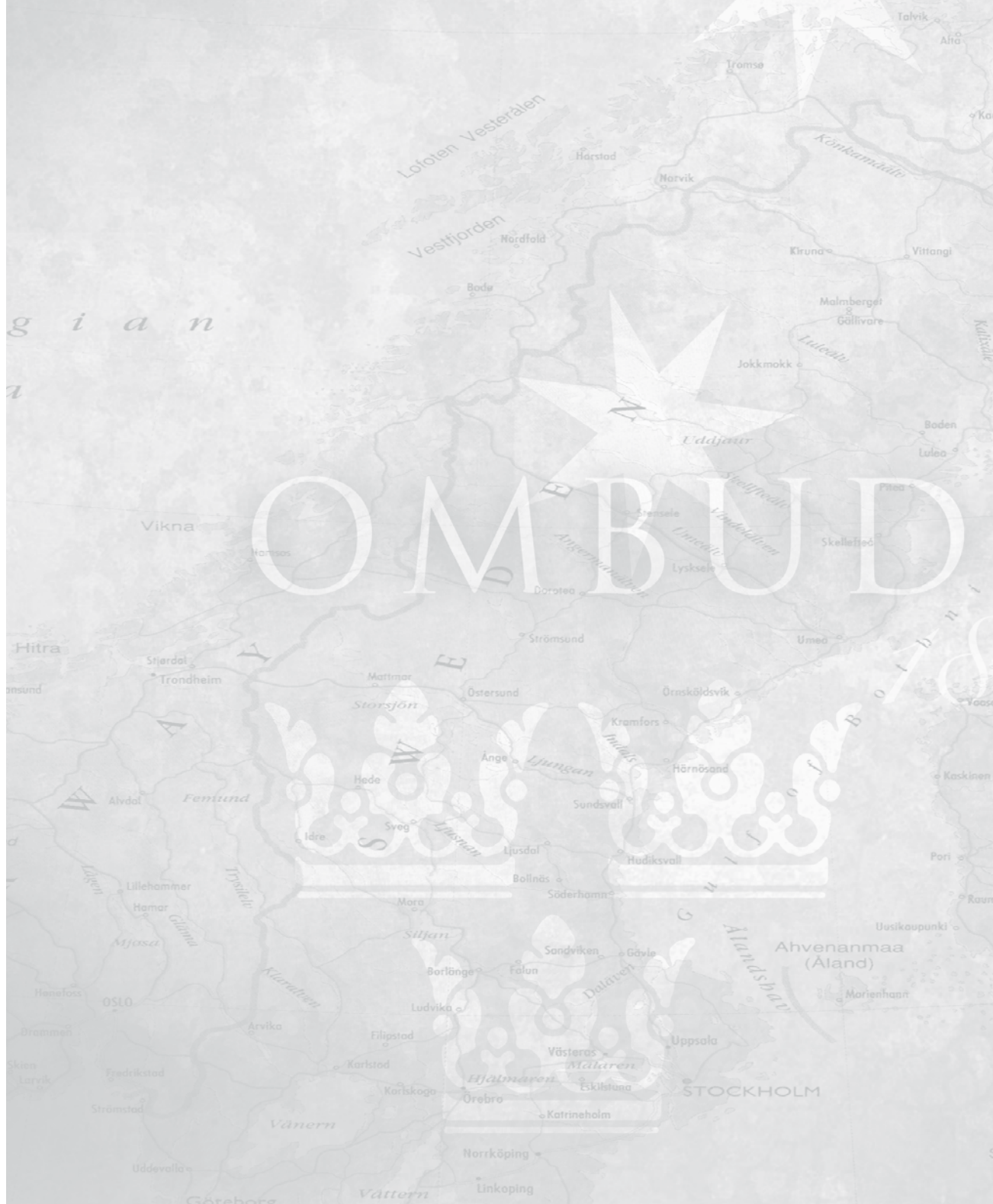
- ▶ *Factual error.* A person applied for a benefit, and the agency officer needed to find out more about the person's circumstances over a particular time period. However, they asked about the wrong time period, during which the person's circumstances had changed, resulting in the person being denied the benefit.
- ▶ *Human error.* An agency raised a debt against a person. She provided evidence to agency staff that showed she was not legally liable for the debt. However, the staff failed to record this information, with the result that the agency continued to pursue her for the debt.
- ▶ *Legal error.* An agency received uncorroborated information from one parent about the care of a child. The agency wrote to the other parent asking for details of the care of the child. That parent did not respond because she had provided that information separately six days earlier. The agency cancelled her payment without having regard to the information she had provided, contrary to the legislation.
- ▶ *Inadequate advice, explanation or reasons.* An agency raised a debt against a person. When she queried the debt, the agency initially told her it was probably due to a known systems problem and the debt would be referred further in the agency for review. The woman contacted the agency several times over the next six weeks but there was no progress on the review. As a result of her last contact, the agency completed the review and found that the debt had been raised correctly. After making several unsuccessful attempts to contact her that day, the agency did not attempt to contact her again. The first the woman heard of the review outcome was when a debt collection agency told her she had three days to pay the debt.
- ▶ *Unreasonable delay.* After a person complained to a relevant agency that she considered her employer was breaching legislation, her employer found out and terminated her employment. The person complained to the agency that she was being victimised, but it took the agency five months to decide whether she was a whistleblower and should be afforded the statutory protections available to her.
- ▶ *Procedural deficiency.* A person sent a request for a review to an agency, using a post office box listed on the agency's pamphlet. The agency had stopped using the post office box, and had put a mail redirection service in place. However, it failed to renew the redirection service, and mail sent to the old post office box was returned to sender. As a result of her request not being received, the person suffered financial detriment.
- ▶ *Flawed administrative process.* An agency charged an organisation for processing a particular application. When the agency first advised the organisation of the likely cost it underestimated the amount, and then failed to advise the organisation as the costs escalated substantially. The agency was also not able to provide an itemised account of the costs incurred.
- ▶ *Unreasonable/harsh/discriminatory action or decision.* A person applied for a benefit. As part of his application he gave details about traumatic events that had occurred about 10 years previously, when he was six years old. The decision maker refused the application on the papers on the basis that the credibility of the person's claims was compromised by lack of sufficient relevant information and some discrepancies. The decision maker did not seek further information. We considered this was unreasonable, given the age of the person at the time of the traumatic events, and the time that had passed since they occurred.
- ▶ *Resource deficiency in agency.* An agency accepted applications for a benefit online. In some cases it needed to contact a third party, but its computer system was unable to generate the required communications. A person complained to us about the problem several years ago, and at that time the agency advised it would fix the problem. However, the agency only resolved part of the problem and it was unable to diagnose the cause of the remaining problems. The

person complained to us again when the problem recurred and processing of another application was delayed.

- ▶ *Inadequate knowledge/training of staff.* An agency raised a debt against a person. He asked for the debt to be withdrawn within the required timeframe. His request was dealt with by a new, inexperienced officer who was not aware of the timeframe and declined his request. The agency then raised additional charges against the person for late payment of the debt. He contacted the agency again and spoke to the same officer, who agreed to waive the additional charges, but did not record this correctly on the agency's computer system. As a result, further late payment penalties were raised against the person.
- ▶ *Deficiency arising from the interaction of Australian Government programs.* An agency intermittently re-started taking deductions from a person's payments made by a second agency, after the legal requirement for the deductions had ended. The problem arose because of a systems error between the two computer systems the agencies used.
- ▶ *Unreasonable or harsh government policy.* A person was initially denied a benefit related to his vehicle because it was registered in a state different to that where he was deemed to reside. In fact the person had no state of residence because he travelled constantly with his work. When the policy was developed, this situation had not been envisaged.
- ▶ *Unprofessional behaviour by an officer.* A person who was living temporarily overseas sent a fax to an agency asking it to review a decision. Most of the fax did not transmit properly, as was clearly evident. Although the person had recently provided the agency with his postal, telephone and email contact details while he was overseas, the agency officer did not attempt to contact him about the fax and made a review decision, affirming the original decision, based on the information at hand.

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Bicentenary

CHAPTER 8

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Pacific Ombudsman Alliance

The Pacific Ombudsman Alliance was launched in October 2008. Many of the Alliance members belong to the Australasian and Pacific Ombudsman Region (APOR) of the International Ombudsman Institute.

The Alliance has a dual focus. It strengthens regional cooperation and coordination between Pacific Island Ombudsman offices in the Cook Islands, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu. The Alliance also works with small island states that do not have an ombudsman office, to develop complaint handling and other good governance mechanisms. Nations that have participated in Alliance activities are the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands and Tuvalu.

The first meeting of the Alliance Board was held in the Cook Islands in March 2009. The meeting was hosted by the Cook Islands Ombudsman, Ms Janet Maki.

The elected members of the Board are the Commonwealth Ombudsman (who is Chair of the Board), the Cook Islands Ombudsman,

the Chief Ombudsman of New Zealand, the Chief Ombudsman of Papua New Guinea and the Secretary to Cabinet in Kiribati (representing the small island states).

The New South Wales Ombudsman participates in the Board as a non-voting ex officio member, as APOR's regional Vice-President. Mr Henry Ivarature, Governance Officer of the Pacific Islands Forum Secretariat, also attended the inaugural meeting of the Board.

Mr Greg Andrews, Assistant New South Wales Ombudsman, and Stephen Ranck from our office provided secretariat support.

The Board agreed on a flexible five-year work program of support to members, with a focus on practical, hands-on initiatives. The Alliance publishes a quarterly newsletter for members and is developing a separate website to be launched in 2009-10.

Funding support for Alliance activities is provided by AusAID. NZAID, New Zealand's International Aid and Development Agency, has expressed interest in financially supporting future Alliance activities.



CHAPTER 8

Ombudsmen— 200 years of service

In 2009 we celebrate the 200th anniversary of the creation of the modern institution of the ombudsman. The idea of an ombudsman-like office—someone to protect citizens against government mistreatment—is not new. Such institutions have been seen in one form or another in the Roman Empire, and in ancient Chinese, Indian and Islamic societies, to name a few. However, the concept of an ombudsman as an independent arbiter of disputes between the citizen and government, enshrined in law and in the context of the nation-state, is a more recent development. This chapter provides a brief overview of the development of modern ombudsman functions around the world.

DEVELOPMENT OF THE OFFICE

The genesis of the modern ombudsman office is tied to the adoption of new national constitutions, commencing in Sweden in the 19th century. Following the loss of Finland to Russia in the Napoleonic Wars, and a coup d'état in 1809 forcing the abdication of King Gustav Adolf IV, Sweden developed a new constitution in 1809. The constitution established a new constitutional monarchy and a separate judiciary. This is the oldest written European constitution and was approved by the Riksdag (parliament) on 6 June 1809.

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CHAPTER 8 OMBUDSMEN—200 YEARS OF SERVICE



European Ombudsman P. Nikiforos Diamandouros addressing the 200th Anniversary Seminar of the Swedish Parliamentary Ombudsman

Photo courtesy of the European Ombudsman

'[A]t this early stage in Swedish history, when the parliamentary assembly was not elected by universal and equal suffrage ... the Ombudsman contributed to the democratic ideal

- by strengthening the role of Parliament vis-à-vis the King*
- by advocating the rule of law*
- and by making it possible to hold those who have been entrusted with the power to exercise public authority responsible for their actions and omissions.'*

Mats Melin, Chief Parliamentary Ombudsman, Sweden. Opening address to the IXth International Ombudsman Institute World Conference and the Swedish Parliamentary Ombudsmen 200 Years Anniversary, Stockholm, June 2009.

The new Swedish constitution was based on ensuring a balance of power between the King and the Parliament, and preventing a return to authoritarian rule. It contained detailed provisions regarding the new institution of the Ombudsman ('*justitieombudsman*'—the Ombudsman of Justice) to ensure laws and statutes were obeyed. The Ombudsman was to be independent of the executive and the parliament. The first Ombudsman, Lars Augustin Mannerheim, was elected in 1810, and had jurisdiction over both civilian and military functions.

SPREADING AROUND THE WORLD

It was more than a century before the next ombudsman institution was created. Finland had been part of Sweden for around seven centuries, until it was ceded to Russia in 1809 following the Napoleonic Wars. In December 1917 the Finnish Parliament declared independence and, following a civil war, a new constitution was adopted in 1919. The constitution provided for the Parliament to elect an ombudsman, who also had jurisdiction over civilian and military authorities. The first Finnish Ombudsman, Mr Erik Elopæus, commenced work in early 1920.

Events surrounding World War II provided the impetus for the much wider adoption of ombudsman functions in countries around the world.

Internationally there was a greater focus on the protection of human rights and freedoms following the depredations of World War II. At the same time the growth of the welfare state

models in many countries meant government activities expanded in the social and economic fields, and reached into citizens' daily lives in new ways. This led to an increased desire to protect citizens from failings and maladministration of the bureaucracy, beyond what was offered through court processes. Finally, the move towards independence and democracy in many countries provided the opportunity to consider alternative forms of government that included systems of protections for citizens.

Denmark became the third country to implement a broad ombudsman system. Immediately after World War II a Constitutional Commission was appointed to draft a new constitution. The commission reported in 1953 and proposed that parliament elect one or two independent people to supervise civilian and military administration. The new constitution took effect that year and the first Ombudsman, Prof. Stephan Hurwitz, was appointed in 1955. Prof. Hurwitz soon began to write and lecture widely in English about his office, and is credited by many for popularising the idea of an ombudsman function outside Scandinavia.

The last of the Scandinavian countries, Norway, created an Ombudsman for military affairs in 1952. An Ombudsman for civil affairs, elected by the Norwegian Parliament, took office in 1963.

New Zealand became the first English-speaking country, and the first outside Scandinavia, to set up an ombudsman office. The ombudsman institution was established in New Zealand in 1962 with the appointment of

Sir Guy Powles. Sir Guy served as Ombudsman until 1975 and then, following legislative changes, as Chief Ombudsman until 1977.

Countries in Africa and Central and South America also started to establish ombudsman offices, often as part of gaining independence from colonial powers.

In Africa, Tanzania established an ombudsman function in 1965, shortly after its creation as a separate, independent nation in 1964. Other African countries to establish ombudsman functions included Benin, Cameroon, Gabon, Ghana, Mauritius, Namibia, Nigeria, Rwanda, Senegal, Sudan, Togo, Uganda, Zaire (now Democratic Republic of Congo), Zambia and Zimbabwe.

In the Americas, Guyana became independent from the United Kingdom in 1966, and established an ombudsman function at the same time. Other countries that followed included Argentina, Barbados, Colombia, Costa Rica, El Salvador, Guatemala, Jamaica, Mexico, Peru, Puerto Rico, and Trinidad and Tobago.

The long-established democracies of Canada and the United States of America (US) did not adopt the model of an ombudsman at the national level (except for some specific functions such as an ombudsman for languages and an ombudsman for correctional facilities in Canada).

The first Ombudsman in Canada was appointed in the province of Alberta in 1967, followed less than two months later by New Brunswick. By 1981 all but one Canadian province had an ombudsman.

Hawaii was the first of the US states to establish an ombudsman office. Legislation was passed in 1967 and the first Ombudsman appointed in 1969. A number of other states have followed this lead.

The concept of an ombudsman has been adopted widely in the countries of the Pacific. The Cook Islands, which had been a protectorate of New Zealand, established an ombudsman institution in 1965 when it became self-governing. Fiji appointed its first

Ombudsman in 1972 following independence in 1970, and Papua New Guinea in 1975 when it became independent. Samoa, Solomon Islands, Tonga and Vanuatu also have Ombudsman offices. Many of the smaller Pacific nations—Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands and Tuvalu—have joined the Pacific Ombudsman Alliance and are exploring options for an ombudsman function.

The first Ombudsman in the United Kingdom, the Parliamentary Commissioner for Administration (now the Parliamentary and Health Services Ombudsman), was appointed in 1967. Many specialist ombudsman offices have since been established, including the Local Government Ombudsman, Energy Ombudsman, Pensions Ombudsman and Prisons and Probation Ombudsman.

Other non-Scandinavian European countries also established ombudsman positions: for example, France in 1973; Spain in 1975 following the end of the Franco dictatorship; Portugal in 1976 following its transition to democracy; Austria in 1977; Ireland in 1980 (although the first Ombudsman did not take office until 1984); and the Netherlands in 1981. In some European countries the ombudsman office was created at the provincial or regional level rather than at a national level, reflecting the nature of government administration. In Italy, for example, the first ombudsman office was created in the region of Tuscany in 1974; in Switzerland, the Canton of Zurich established an ombudsman function in 1977.

A European Ombudsman was established in 1995 to investigate complaints about maladministration in the institutions and bodies of the European Union. The Ombudsman is elected by the European Parliament.

In Asia, the first Indian Ombudsman, at the state level, was appointed in Maharashtra in 1972. National ombudsman offices have been established in countries including Hong Kong, Indonesia, Korea, Macau, Pakistan, the Philippines, Sri Lanka, Taiwan and Thailand.

THE OMBUDSMAN IN AUSTRALIA

Western Australia was the first Australian state to establish an ombudsman function, with legislation passing in 1971 and the first appointee taking office in 1972. Ombudsman offices were established later the same year in South Australia, in Victoria in 1973, Queensland in 1974, New South Wales (NSW) in 1975 and Tasmania in 1978. The Commonwealth Ombudsman took office in 1977. The Northern Territory (NT) Ombudsman commenced in 1978 with the introduction of self-government for the NT and the Australian Capital Territory (ACT) Ombudsman in 1989 when the ACT became self-governing.

A large number of industry ombudsman offices have since been established in Australia, sometimes by the separation of a function from a parliamentary (or public sector) ombudsman office. Two examples are the Telecommunications Industry Ombudsman, established in 1993, building on a function previously discharged by the Commonwealth Ombudsman; and the Energy and Water Ombudsman of NSW, established in 1998, building on the former role of the NSW Ombudsman.

OMBUDSMAN MODEL

By 2009, 200 years after the first modern ombudsman function was established, there were more than 140 statutory ombudsman offices at the national/sub-national level with oversight of public authorities.

The International Ombudsman Institute (IOI), a worldwide organisation of parliamentary ombudsman offices, sets the following criteria for a public institution to be eligible to be an institutional member of the organisation:

- ▶ it is created by enactment of a legislative body whether or not it is also provided for in a constitution
- ▶ its role is to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority
- ▶ it does not receive any direction from any public authority which would compromise its independence and performs its functions independently of any public authority over which jurisdiction is held
- ▶ it has the necessary powers to investigate complaints by any person or body of persons who considers that an act done or

Some names for ombudsman offices

Control Yuan—Taiwan

Defensor del Pueblo—a number of Spanish-speaking countries

Investigator-General—Zambia

Lok Ayukta—India

Médiateur de la République—France

Parliamentary Commissioner for Administrative Investigations—Western Australia

Public Complaints Commission—Nigeria

Public Protector—South Africa

Volksanwaltschaft—Austria

Wafaqi Mohtasib—Pakistan

omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in maladministration, illegality, corruption or injustice

- ▶ it has the power to make recommendations in order to remedy or to prevent such conduct and, where appropriate, to propose administrative or legislative reforms for better governance
- ▶ it is held accountable by reporting publicly to the Legislature or other appropriate authority
- ▶ its jurisdiction is national, regional or local
- ▶ its jurisdiction applies to public authorities generally or is limited to one or several public authorities, or to one or several public sectors
- ▶ the Ombudsman (or similar officer) is appointed or elected, according to the relevant legislative enactment, for a defined period and can only be dismissed, for cause, by the legitimate and competent authorities.²

There is wide variety in the functions, roles and responsibilities of public sector ombudsman offices.

In some countries the ombudsman office plays a strong role in the protection of human rights, while in other countries, such as Australia, a separate body (the Australian Human Rights Commission) performs that role.

There is also wide variation in the jurisdiction of ombudsmen. Some of the main areas of difference are whether the ombudsman has jurisdiction over the courts, the police or the military. In addition, some ombudsman offices have special functions, such as the investigation of corruption. In Papua New Guinea, for example, the Ombudsman Commission is responsible for supervising the enforcement of the Leadership Code. This code applies to senior elected and public officials, and prohibits conflict of interest, use of a public office for private gain, and other similar behaviour.

CONCLUSION

Since it was first established 200 years ago in Sweden, the modern concept of an ombudsman office has become a worldwide phenomenon. It has been adopted by newly independent countries, countries as they move to democracy, and countries that have had a long tradition of stable government. The focus, role, responsibilities and effectiveness of the ombudsman offices vary, in line with the form of government and the specific characteristics of the country. Nevertheless, the growth in ombudsman offices, and the adoption of the concept in other areas of human endeavour such as the private sector, show that it has stood the test of time.

2 From IOI website at <http://prejury.law.ualberta.ca/centres/loi/Membership/Member-By-Laws.php>

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APPENDIX 1

Freedom of information statement

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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 2009.

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 to not 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 4860 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* (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 must 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 processes, policy or legislation
- ▶ the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

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. 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.

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (24 in 2008–09, compared to 33 in 2007–08), 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 an investigation, we may provide an agency response to a complainant so that they 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, Deputy Ombudsmen and other staff made more than 80 presentations during the year on administrative law, complaint handling and the role of the Ombudsman. Some of the presentations were conducted as part of the office outreach program; other meetings and seminars were hosted by the Australian Public Service Commission, individual agencies, university faculties and other bodies. The following presentations were made to other conferences and public meetings and forums.

Airo–Farulla, G. 2008, *The Ombudsman as public law leader*, presentation to the 13th Public Law Weekend: *Public Law, Public Leadership*

Masri, G. 2008, *Investigative challenges: The Northern Territory Emergency Response*, presentation to the National Investigations Symposium

McMillan, J. 2008, *The role of the Ombudsman in dealing with constituent inquiries*, presentation to Orientation Seminar for new Senators

- ▶ 2008, *Administrative values and cultural change*, presentation to Australian Institute of Administrative Law (AIAL) (NSW Chapter)
- ▶ 2008, *Ten challenges for administrative justice*, paper to the AIAL 2008 National Administrative Law Forum
- ▶ 2008, *Commonwealth Ombudsman experience in complaint handling and investigation: lessons learned*, Private Health Insurance Ombudsman conference
- ▶ 2008, *Freedom of information reform*, presentation to AIAL (ACT Chapter)
- ▶ 2008, *Research misconduct—the role of external review bodies*, Workshop on Managing Serious Research Misconduct
- ▶ 2008, *Risk areas for faulty decision making*, presentation to the Australian Government Leadership Network (SA) and (Vic)

- ▶ 2008, *The new integrity agenda: FOI and whistleblower reform*, presentation to AIAL (SA Chapter)
- ▶ 2008, *Opening address*, 17th National Conference of the Australian Institute of Professional Intelligence Officers
- ▶ 2008, *Rethinking the separation of powers*, presentation to AIAL (WA Chapter)
- ▶ 2008, *25 Years of the Defence Force Ombudsman*, conference on 'Defence Watchdogs—The Administrative Oversight of Military Justice'
- ▶ 2009, Launch of *Promoting Integrity*, Public Policy Network Conference
- ▶ 2009, *Over 30 years of complaint handling—lessons from the Commonwealth Ombudsman*, presentation to Energy and Water Ombudsman Victoria conference
- ▶ 2009, *Off the record communications*, presentation to the Joint Initiatives Group (NSW)
- ▶ 2009, *Should Australia adopt a federal charter of human rights?*, participation in panel discussion, University of Canberra Isaacs Law Society
- ▶ 2009, *Administrative law challenges—an Ombudsman perspective*, presentation to AIAL (Qld Chapter)
- ▶ 2009, *Principles for good governance—learning from mistakes*, presentation to 3rd Annual Ethical Leadership and Governance in the Public Sector Conference
- ▶ 2009, *Occasional address*, Inaugural Prize Giving Ceremony, University of Notre Dame, School of Law (Sydney)
- ▶ 2009, *Opening address*, to the Records Management Association ACT Branch, conference 'Leveraging Records and Information Management in your Organisation for Better Business Outcomes'.

APPENDIX 3

Statistics

EXPLANATIONS OF TERMS USED IN APPENDIX 3

Approaches/complaints finalised—approaches/complaints finalised in 2008–09, including some complaints carried over from previous years

Approaches/complaints received—approaches/complaints received in 2008–09

Category 1—resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority

Category 2—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—investigation conducted and agency contacted

Category 4—further investigation conducted, as the complaint was not able to be resolved in category 3

Category 5—further investigation conducted, as the complaint was not able to be resolved in category 4; involves formal reporting processes

Issues—approaches/complaints may contain a number of issues, each requiring a separate decision as to whether to investigate; each issue may result in a separate outcome

Remedies—complaints may contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

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APPENDIX 3 STATISTICS

TABLE A1 APPROACHES AND COMPLAINTS ABOUT AUSTRALIAN GOVERNMENT AGENCIES, RECEIVED AND FINALISED, AND REMEDIES, 2008–09

Agency	Received	Finalised					Total	Remedies							Total	
		Not investigated		Investigated				Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy		Remedy provided by agency without Ombudsman intervention
		Category 1	Category 2	Category 3	Category 4	Category 5										
Agriculture, Fisheries and Forestry																
Department of Agriculture, Fisheries and Forestry	44	4	6	6	5	5	26	-	-	2	9	-	5	1	17	
Australian Fisheries Management Authority	13	1	10	3	-	-	14	3	-	-	2	-	-	-	5	
Australian Pesticides and Veterinary Medicines Authority	4	2	2	-	-	-	4	-	-	-	-	-	-	-	-	
Australian Quarantine and Inspection Service	44	12	19	27	7	-	65	2	1	2	38	1	3	-	48	
Attorney-General's																
Attorney-General's Department	27	8	15	6	2	-	31	1	-	-	4	-	-	-	5	
Administrative Appeals Tribunal	26	7	14	4	1	-	26	-	-	1	2	-	-	-	3	
Australian Commission for Law Enforcement Integrity	2	-	1	1	-	-	2	-	-	-	1	-	-	-	1	
Australian Crime Commission	4	1	3	1	-	-	5	1	-	-	-	-	-	-	1	
Australian Customs and Border Protection Service	94	37	43	8	3	-	91	-	1	-	15	-	-	-	16	
Australian Human Rights Commission	3	-	3	-	-	-	3	-	-	-	-	-	-	-	-	
Australian Transaction Reports and Analysis Centre	3	-	2	-	1	-	3	-	-	-	1	-	-	-	1	
CrimTrac	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Family Court of Australia	52	19	27	3	-	-	49	-	-	-	3	-	-	-	3	
Federal Court of Australia	6	2	4	-	-	-	6	-	-	-	-	-	-	-	-	
Federal Magistrates Court of Australia	7	3	4	-	-	-	7	-	-	-	-	-	-	-	-	
High Court of Australia	5	1	3	1	-	-	5	-	1	-	-	-	-	-	1	
Insolvency and Trustee Service Australia	71	23	38	5	-	-	66	1	-	-	7	-	-	1	9	
National Capital Authority	-	-	-	-	-	-	1	1	2	-	-	2	-	-	4	
National Native Title Tribunal	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Office of the Commonwealth Director of Public Prosecutions	9	-	7	2	-	-	9	-	-	-	2	-	-	-	2	
Broadband, Communications and the Digital Economy																
Department of Broadband, Communications and the Digital Economy	11	4	4	2	-	-	10	-	-	-	2	-	-	-	2	
Australia Post	2,219	653	809	783	37	1	2,283	120	112	95	491	204	12	170	1,220	
Australian Broadcasting Corporation	7	3	4	-	-	-	7	-	-	-	-	-	-	-	-	
Australian Communications and Media Authority	59	20	31	4	2	-	57	1	1	-	6	-	1	-	9	
Special Broadcasting Service Corporation	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Commonwealth Parliamentary Services																
Department of Parliamentary Services	1	-	1	1	-	-	2	-	-	-	-	-	-	-	-	
Senate	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Defence																
Department of Defence	157	48	65	28	8	1	150	8	4	2	19	1	1	1	36	
Australian Air Force Cadets	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	

TABLE A1 APPROACHES AND COMPLAINTS ABOUT AUSTRALIAN GOVERNMENT AGENCIES, RECEIVED AND FINALISED, AND REMEDIES, 2008–09 *continued*

Agency	Received	Finalised					Remedies						Total			
		Not investigated		Investigated			Action expedited	Apology	Decision reconsidered or	Explanation	Financial remedy	Law, policy or practice changed		Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	
				Category 1	Category 2	Category 3										Category 4
Defence																
Australian Army	141	40	59	42	1	-	142	6	5	3	26	-	1	-	41	
Australian Army Cadets	5	1	2	-	-	-	3	-	-	-	-	-	-	-	-	
Australian Navy Cadets	1	-	-	2	-	-	2	-	-	-	2	-	-	-	2	
Defence Force Retirement and Death Benefits Authority	4	1	2	-	-	-	3	-	-	-	-	-	-	-	-	
Defence Housing Australia	43	12	13	16	-	-	41	1	-	-	8	1	2	-	12	
Department of Veterans' Affairs	160	29	65	51	6	-	151	12	8	9	27	13	2	1	72	
Royal Australian Air Force	45	13	16	15	-	-	44	3	-	2	15	-	-	-	20	
Royal Australian Navy	49	14	19	21	2	-	56	3	-	2	13	-	1	1	20	
Veterans' Review Board	3	1	1	1	-	-	3	1	-	-	-	-	-	-	1	
Education, Employment and Workplace Relations																
Department of Education, Employment and Workplace Relations	571	208	179	171	15	1	574	14	4	17	90	11	4	14	155	
Australian Industrial Registry	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	
Australian National University	18	2	7	7	-	-	16	-	-	3	2	1	-	1	7	
Concare	94	27	37	20	3	-	87	11	3	2	9	2	1	-	29	
Office of Workplace Ombudsman	65	20	29	16	3	-	68	5	-	2	6	-	4	-	17	
Seafarers Safety, Rehabilitation and Compensation Authority	2	-	-	2	-	-	2	-	-	1	1	-	-	-	2	
Workplace Authority	45	4	20	6	2	-	32	6	-	-	3	-	-	-	9	
Environment, Water, Heritage and the Arts																
Department of the Environment, Water, Heritage and the Arts	46	14	18	10	2	-	44	7	-	1	5	2	-	-	15	
Australia Council for the Arts	1	-	-	1	-	-	1	-	-	-	1	-	-	-	1	
Australian Film Commission	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	
Australian Film, Television and Radio School	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	
Bureau of Meteorology	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	
Department of Climate Change	6	1	4	1	-	-	6	1	-	-	-	-	-	-	1	
Great Barrier Reef Marine Park Authority	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Murray Darling Basin Commission	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
National Gallery of Australia	1	-	-	1	-	-	1	-	-	-	-	-	-	-	-	
National Library of Australia	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
National Museum of Australia	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Office of the Renewable Energy Regulator	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	
Sydney Harbour Federation Trust	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-	
Families, Housing, Community Services and Indigenous Affairs																
Department of Families, Housing, Community Services and Indigenous Affairs	200	23	53	72	16	-	164	14	2	7	29	2	-	-	54	
Aboriginal Hostels Limited	5	4	1	2	-	-	7	-	-	-	-	-	-	-	-	

TABLE A1 APPROACHES AND COMPLAINTS ABOUT AUSTRALIAN GOVERNMENT AGENCIES, RECEIVED AND FINALISED, AND REMEDIES, 2008–09 *continued*

Agency	Received	Finalised					Remedies										
		Not investigated		Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total	
		Category 1	Category 2	Category 3	Category 4	Category 5											
Finance and Deregulation	Total	4	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-
	Central Land Council	12	2	2	6	-	10	-	-	-	3	-	-	-	-	-	3
	Indigenous Business Australia	4	-	2	-	-	2	-	-	-	-	-	-	-	-	-	-
	Indigenous Land Corporation	1	-	-	2	-	2	-	-	-	-	-	-	-	-	-	-
	Northern Land Council	5	1	2	-	-	3	-	-	-	-	-	-	-	-	-	-
	Office of the Registrar of Indigenous Corporations	96	28	50	15	1	94	1	1	-	5	-	-	2	-	-	9
	Social Security Appeals Tribunal	1	-	-	1	-	1	-	-	-	-	-	-	-	-	-	-
	Tiwi Land Council	1	-	-	1	-	1	-	-	-	-	-	-	-	-	-	1
	Torres Strait Regional Authority																
	Finance and Deregulation																
Foreign Affairs and Trade	Department of Finance and Deregulation	22	2	14	6	1	-	23	-	1	1	7	-	1	-	-	10
	Australian Electoral Commission	15	4	9	5	1	-	19	-	-	-	2	-	-	-	-	2
	Commissioner for Superannuation (ComSuper)	37	9	12	18	2	-	41	5	3	1	12	2	1	3	-	27
	Remuneration Tribunal	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-
	Foreign Affairs and Trade																
Health and Ageing	Department of Foreign Affairs and Trade	179	82	67	26	5	-	180	6	9	3	17	-	-	2	-	37
	Australian Agency for International Development (AusAID)	6	1	4	-	-	-	5	-	-	-	-	-	-	-	-	-
	Australian Trade Commission	9	-	7	1	-	-	8	-	-	-	1	-	-	-	-	1
	Health and Ageing																
	Department of Health and Ageing	140	24	66	36	4	-	130	4	2	3	22	1	2	1	-	35
Human Services	Aged Care Standards and Accreditation Agency Ltd (The)	1	-	-	1	-	-	1	-	-	-	1	-	-	-	-	1
	Australian Radiation Protection and Nuclear Safety Agency	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-
	Australian Sports Commission	1	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-
	Australian Sports Anti-Doping Authority	1	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-
	Food Standards Australia New Zealand	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	National Health and Medical Research Council	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-
	Office of Hearing Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Office of the Aged Care Commissioner	12	2	2	4	-	-	8	-	-	3	1	-	-	-	-	4
	Human Services																
	Department of Human Services	3	2	-	-	-	-	2	-	-	-	-	-	-	-	-	-
Health Services Australia	Australian Hearing	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-
	Centrelink	7,226	4,533	1,423	1,347	106	6	7,415	290	75	207	909	244	10	90	5	1,830
	Child Support Agency	2,471	979	800	609	98	5	2,491	142	94	102	551	86	15	74	3	1,067
	Commonwealth Rehabilitation Service	16	7	6	3	1	-	17	-	1	1	1	-	-	1	-	4
	Health Services Australia	1	-	1	1	-	-	2	-	-	-	1	-	-	-	-	1
	Health Services Australia																

TABLE A1 APPROACHES AND COMPLAINTS ABOUT AUSTRALIAN GOVERNMENT AGENCIES, RECEIVED AND FINALISED, AND REMEDIES, 2008–09 *continued*

Agency	Received	Finalised					Remedies										
		Not Investigated		Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total	
				Category 1	Category 2	Category 3											Category 4
	Total	67	64	23	2	-	156	1	2	3	17	4	1	1	-	29	
Medicare Australia	161	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Professional Services Review	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	-	
Immigration and Citizenship																	
Department of Immigration and Citizenship	1,459	305	588	561	107	1	1,562	97	61	61	392	44	34	64	6	759	
Migration Agents Registration Authority	9	2	7	1	2	-	12	-	-	1	1	-	-	-	-	2	
Migration Review Tribunal and Refugee Review Tribunal	28	2	22	7	1	-	32	3	1	1	2	1	-	-	-	8	
Infrastructure, Transport, Regional Development and Local Government																	
Department of Infrastructure, Transport, Regional Development and Local Government	22	7	10	4	1	-	22	-	-	1	5	1	-	-	-	7	
Airservices Australia	8	-	4	-	-	-	4	-	-	-	-	-	-	-	-	-	
Australian Maritime Safety Authority	10	1	7	1	-	-	9	-	-	-	1	-	-	-	-	1	
Australian Rail Track Corporation	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-	
Civil Aviation Safety Authority	10	-	7	5	1	-	13	-	-	-	4	1	1	-	-	6	
Innovation, Industry, Science and Research																	
Department of Innovation, Industry, Science and Research	130	38	80	13	2	-	133	2	-	3	5	3	1	-	-	14	
AusIndustry	3	-	2	-	-	-	2	-	-	-	-	-	-	-	-	-	
Australian Nuclear Science and Technology Organisation	3	1	1	1	-	-	3	-	-	-	1	-	-	-	-	1	
Australian Research Council	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	-	
Commonwealth Scientific and Industrial Research Organisation	2	-	-	-	2	-	2	-	-	-	2	-	1	1	-	4	
IP Australia	9	1	3	6	-	-	10	2	-	1	2	-	-	1	-	6	
Prime Minister and Cabinet																	
Department of the Prime Minister and Cabinet	10	2	4	4	-	-	10	1	-	-	1	-	-	1	-	3	
Australian Public Service Commission	3	1	1	-	-	-	2	-	-	-	-	-	-	-	-	-	
Governor-General and Commander-in-Chief	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	
National Archives of Australia	5	1	2	2	-	-	5	-	-	-	1	-	-	-	-	1	
Office of the Privacy Commissioner	85	17	42	18	-	-	77	-	-	1	3	-	-	-	-	4	
Resources, Energy and Tourism																	
Department of Resources, Energy and Tourism	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-	
Snowy Mountains Hydro-electric Authority	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Treasury																	
The Treasury	23	16	5	1	-	-	22	-	-	-	-	-	-	1	-	1	
Australian Bureau of Statistics	13	10	2	1	-	-	13	-	1	-	-	-	-	-	-	1	
Australian Competition and Consumer Commission	17	2	10	2	2	-	16	1	1	-	3	-	-	-	-	5	

TABLE A1 APPROACHES AND COMPLAINTS ABOUT AUSTRALIAN GOVERNMENT AGENCIES, RECEIVED AND FINALISED, AND REMEDIES, 2008–09 *continued*

Agency	Received	Finalised					Remedies										
		Not investigated		Investigated			Total	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total	
		Category 1	Category 2	Category 3	Category 4	Category 5											
Australian Prudential Regulation Authority	221	79	73	62	2	-	216	16	-	3	29	3	1	7	-	59	
Australian Securities and Investments Commission	144	20	79	42	11	-	152	5	4	-	33	6	2	6	1	57	
Australian Taxation Office	1,422	559	520	225	96	-	1,400	30	23	12	93	31	6	15	6	216	
Australian Valuation Office	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	
Productivity Commission	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-	
Royal Australian Mint	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-	
Superannuation Complaints Tribunal	33	8	14	2	-	-	24	-	-	-	1	-	-	-	-	1	
Tax Agents Boards	6	-	5	3	2	-	10	-	-	-	-	-	-	-	-	-	
Subtotal	18,502	8,083	5,683	4,411	566	21	18,764	827	423	559	2,969	665	100	474	41	6,058	
Australian Federal Police	351	148	188	65	5	-	406	-	3	3	3	-	2	1	-	12	
Private Postal Operators	13	-	9	3	-	-	12	1	2	-	-	1	-	-	-	4	
ACT Government Agencies	546	154	221	150	11	1	537	14	11	6	76	16	6	3	-	132	
Approaches about out-of-jurisdiction agencies/requests for information	26,307	23,857	2,503	-	-	-	26,360										
TOTAL	45,719	32,242	8,604	4,629	582	22	46,079	842	439	568	3,048	682	108	478	41	6,206	

APPENDIX 4

Additional reporting on Postal Industry Ombudsman

This appendix provides additional reporting on the Postal Industry Ombudsman (PIO) function as required under s 19X of the *Ombudsman Act 1976* (the Act).

Details of the circumstances and number of occasions where the Postal Industry Ombudsman has made a requirement of a person under section 9 (as that section applies because of sections 19R and 19S).

The PIO made a requirement under s 9 of the Act on one occasion during 2008–09, in connection with an investigation into a complaint about service delivery and complaint handling regarding a registered post article. Ombudsman staff wished to interview a delivery centre manager who, having consulted with his managers, declined to attend a voluntary interview. As the Ombudsman was of the view that the delivery centre manager might be able to provide information relevant to the investigation, a notice was issued requiring him to attend an interview. This investigation was published as abridged Report No. 5/2009.

Details of the circumstances and number of occasions where the holder of the office of Postal Industry Ombudsman has decided under subsection 19N(3) to deal with, or to continue to deal with, a complaint or part of a complaint in his or her capacity as the holder of the office of Commonwealth Ombudsman.

The PIO transferred one complaint about Australia Post to the Commonwealth Ombudsman for investigation. In this case Australia Post advised the PIO that its role in the delivery of an item had been as a contractor for a registered private postal operator, not as the initial service provider. Accordingly Australia Post was of the view that the Ombudsman's investigation should be directed to the private postal operator.

Because the complaint was that the item had been lost while in Australia Post's possession and the complainant claimed that Australia Post was not acknowledging this to the initial service provider, the complaint was pursued by the Commonwealth Ombudsman as an investigation into Australia Post's administrative processes.

Details of recommendations made in reports during the year under section 19V; and statistical information about actions taken during that year as a result of such recommendations.

Australia Post: Use of notification cards (Report No. 14/2008)

The Ombudsman recommended that Australia Post review its policies and procedures in relation to the use of notification cards, and prepare a report that addresses the issues set out below.

- ▶ Measures to reduce the incidence of failure to follow carding procedures by Australia Post's delivery people.
- ▶ Guidance to delivery people about the circumstances in which they should go to the door of premises, or use any available intercom system, to attempt delivery, including:
 - ▷ whether the guidance should differ for [Postal Delivery Officers] and mail contractors, and between urban and rural and regional areas
 - ▷ mail delivery areas in which no attempt will be made to deliver to the door, and how customers in any such area will be notified there is no parcel delivery to the door
 - ▷ whether the decision to deliver an item to the door will be affected by factors such as the length of a driveway.

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APPENDIX 4 ADDITIONAL REPORTING ON POSTAL INDUSTRY OMBUDSMAN

- ▶ Steps that can or should be taken to redeliver to the door, when requested by a customer.
- ▶ Whether the practice adopted by some post offices of recording all items held for collection should be made a universal requirement, and if not, the minimum practice that should be followed by post offices.
- ▶ Whether the identity of the sender should be recorded in some fashion on the notification card, and the best way of doing this.
- ▶ Whether Australia Post should introduce notification cards with peel-off bar codes for affixing to undeliverable items, and if not, other steps that can be taken to establish a link between a notification card and the item to which it relates.
- ▶ The form of identification to be produced by a person picking up a carded mail item, including:
 - ▷ whether identification should be required in all cases, and if so, how that identification should be recorded
 - ▷ if restrictions are imposed on the form of identification that will be accepted, how those restrictions should be advised on the notification card
 - ▷ whether all items must be signed for on collection
 - ▷ whether 'known to staff' will be accepted as a means of identification, and if so how the risk associated with that practice can best be managed.

Australia Post: Community polling practices: gauging community support for changes to postal delivery services (Report No. 1/2009)

The Ombudsman made the following recommendations.

Recommendation 1—Australia Post should review the way in which it carries out polls of communities to gauge their support for changes to mail delivery services. In particular, the review should address the feasibility of alternatives to the present system, such as asking residents whether they support (or strongly support) change, and taking steps

such as face-to-face interviews, follow-up visits, and reminder letters, to ensure maximum community participation in the poll. Expert advice should be obtained as part of the review process.

Recommendation 2—If the review concludes that change to the present polling methodology is not practicable, Australia Post should conduct a program of follow-up surveys in areas that it has recently polled. These surveys should aim to establish whether all households received the polling form, and whether they were aware that by not responding to the survey their vote was being counted as a 'no' vote.

Recommendation 3—Australia Post should identify a method for taking account of the results of those surveys in future polls, to eliminate from the denominator used to calculate the poll result those households that did not receive polling papers.

Alternatively, Australia Post should conduct a follow-up survey in all polls before the result is calculated, to allow those households that did not receive polling papers to be discounted.

Recommendation 4—Australia Post should give consideration to retaining independent companies to carry out polls, at least in cases where larger numbers of households are involved.

Australia Post: Complaint about service delivery and complaint handling regarding a registered post article (Report No. 5/2009)

The Ombudsman's report recommended that Australia Post should:

- ▶ Implement a policy and procedure which includes timeliness standards for the escalation of complaints, including to the Corporate Security Group, and ensure that all staff are aware of the policy and procedure.
- ▶ Clarify the criteria used by State Offices to determine when to involve the Corporate Security Group in the investigation of lost or missing postal items.
- ▶ Modify the Australia Post Complaints Management System to allow for prolonged

or complex investigations—such as by use of a ‘pending’ function.

- Examine whether there is a need to revise its procedures so as to ensure that all Customer Relations Centre officers (particularly new or inexperienced staff) are made aware of the need to:
 - ▷ meet the obligations outlined in the Australia Post Customer Service Charter of resolving most complaints about domestic products and services in no more than ten working days
 - ▷ ensure personal information about a complainant is not released to unauthorised third parties.
- Reinforce to staff the importance of keeping and maintaining records of its actions and activities. This is particularly the case where those records are a part of the delivery requirements of a postal service, such as registered post.

Australia Post: Administration of the mail redirection service (Report No. 7/2009)

This report was released at the end of 2008–09. The Ombudsman made the following recommendations.

Recommendation 1—Australia Post should consider ways in which it could transfer the data input function for mail redirections to the point of sale. This should include the customer being able to verify the data being input before it is saved into the system.

Recommendation 2—Australia Post should review whether to allow redirections to continue indefinitely without good reason, for example, by setting a maximum term for redirections where the applicant no longer lives at or has any ownership interest in the address the redirection is from.

Recommendation 3—Australia Post should review the way in which redirection stickers are fixed to mail items that are to be redirected. In particular Australia Post should consider:

- physically marking mail slots that correspond to addresses from which mail is being redirected, by way of a card or other marker

- having staff members in delivery facilities whose job it is to process and apply stickers to redirected mail once it has been sorted, so that this responsibility no longer falls on delivery staff.

Recommendation 4—Australia Post should make facilities available wherever redirection stickers are in use for those stickers to be reprinted on site.

Recommendation 5—Australia Post should permit the renewal of a redirection for a reasonable period after it has ended without requiring a new application to be lodged. The ‘reasonable period’ should be long enough to catch cases where the customer did not renew because they did not receive a renewal notice, and should be longer for overseas than for domestic customers.

Recommendation 6—Australia Post [Customer Relations Centre] staff should be reminded that international customers can appoint an agent to apply for redirection services on their behalf. Where the agent needs to have a particular document, such as an original receipt, CRC staff should specifically advise the customer of this.

Recommendation 7—Australia Post should review the written instructions it provides to staff about parcel redirections with a view to ensuring that those instructions are practicable and are in accord with what happens in practice. Steps should then be taken to assess compliance by staff with the instructions they have been given.

Recommendation 8—Australia Post should provide specific training to staff to ensure that complaints about redirection failure receive a high priority. Complaint handling processes should be structured in the manner outlined in Part 4 of [the] report.

TABLE A2 STATISTICAL INFORMATION ON IMPLEMENTATION OF PIO RECOMMENDATIONS, 2008–09

Report	Recommendations				Total
	Fully implemented	In progress	Yet to begin	Not agreed	
Australia Post: Use of notification cards ¹		4	1	2	7
Australia Post: Community polling practices		1 ²	3		4
Australia Post: Complaint about service delivery and complaint handling regarding a registered post article	3	1	1		5
Australia Post: Administration of mail redirection service		3	1	4	8

- 1 The report made one recommendation that Australia Post review and report on seven aspects of its carding service, with suggestions being made as to how each of those seven aspects might be addressed.
- 2 Australia Post agreed to the Ombudsman's recommendation of a full review of its polling practices. The Ombudsman's report made four recommendations, all of which are being considered as part of the review.

APPENDIX 5

Consultancy services, advertising and market research

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APPENDIX 5 CONSULTANCY SERVICES, ADVERTISING AND MARKET RESEARCH

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 tender or direct sourcing.

Table A3 provides details of consultancy services let by the office during 2008–09 with a contract value (GST inclusive) of \$10,000 or more.

TABLE A3 CONSULTANCY SERVICES, 2008–09

Consultant name	Description	Contract price	Selection process (1)	Justification (2)
Tony Blunn	Services relating to a complaint made to the Ombudsman	\$30,000	Direct sourcing	C
Objective Corporation Ltd	IT consultancy services	\$347,497	Open tender	B
Orima Research Pty Ltd	Staff survey 2009	\$27,574	Direct sourcing	B
Total		\$405,071		

Definitions

- (1) Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (December 2008):

Open tender—a 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 generally sought from the Australian Government AusTender internet site.

Select tender—a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. This procurement process may only be used under certain defined circumstances.

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.

Panel—an arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes 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 supply of goods and services may be provided 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.

ADVERTISING AND MARKET RESEARCH

Advertising is used to publicise the office's services. No advertising contracts were let in 2008–09. The office's advertising strategies were designed and conceived in-house. Payment of \$44,578 including GST was made to hma Blaze and Adcorp. The vast bulk of this expenditure was on recruitment notices. Payment of \$13,266 including GST was made to Avant Card to publish and distribute a range of 'postcards' to target audiences, promoting the office's services.

Orima Research conducted a staff satisfaction survey for the office in 2008–09. The purpose of the survey was to provide employees with an opportunity to constructively share their views about workplace issues and overall performance of the office. The cost of the market research was \$27,574 including GST.

APPENDIX 6

Agency resource statement and resources for outcomes

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APPENDIX 6 AGENCY RESOURCE STATEMENT AND RESOURCES FOR OUTCOMES

TABLE A4 OMBUDSMAN OFFICE RESOURCE STATEMENT, 2008–09

	Actual available appropriations for 2008–09 \$'000 (a)	Payments made 2008–09 \$'000 (b)	Balance remaining \$'000 (a–b)
Ordinary annual services¹			
Departmental appropriation			
Prior year departmental appropriation	4,893	4,893	–
Departmental appropriation	17,998	12,939	5,059
s 31 relevant agency receipts ³	2,038	2,038	–
Total	24,929	19,870	5,059
Total ordinary annual services	24,929	19,870	
Other services²			
Departmental non–operating			
Equity injections	17	17	–
Previous years' outputs	1,366	–	1,366
Total	1,383	17	1,366
Total other services	1,383	17	
Total resourcing and payments	26,312	19,887	

1 Appropriation Bill (No.1) 2008–09 and Appropriation Bill (No.3) 2008–09

2 Appropriation Bill (No.2) 2008–09 and Appropriation Bill (No.2) 2009–10

3 Own source income

TABLE A5 RESOURCES FOR OUTCOMES, 2008–09

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

	Budget * 2008–09 \$'000 (a)	Actual expenses 2008–09 \$'000 (b)	Variation \$'000 (a)–(b)
Output 1—review of administrative action			
Subtotal for output group 1	18,827	18,939	(112)
Output 2—review of statutory compliance in specified areas			
Subtotal for output 2	950	955	(5)
Total for Outcome 1 Departmental	19,777	19,894	(117)
Average staffing level (number)		152	

* Full–year budget, including any subsequent adjustment made to the 2008–09 Budget

APPENDIX 7

Financial statements

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APPENDIX 7 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 2009, 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. I have conducted my audit 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

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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

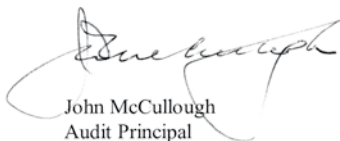
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

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 2009 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
1 September 2009

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  Signed 

Professor John McMillan
Commonwealth Ombudsman

Jill Jenson
Chief Finance Officer

1 September 2009

/ September 2009

A7**APPENDIX 7** FINANCIAL STATEMENTS

INCOME STATEMENT for the Office of the Commonwealth Ombudsman for the period ended 30 June 2009

	Notes	2009 \$	2008 \$
INCOME			
Revenue			
Revenue from Government	3A	19,364,000	17,881,000
Sale of goods and rendering of services	3B	1,391,538	1,513,253
Total revenue		20,755,538	19,394,253
Gains			
Sale of assets	3C	919	-
Other gains	3D	66,810	21,000
Total gains		67,729	21,000
Total Income		20,823,267	19,415,253
EXPENSES			
Employee benefits	4A	14,499,340	14,146,030
Suppliers	4B	4,484,606	5,103,123
Depreciation and amortisation	4C	783,224	783,203
Write-down and impairment of assets	4D	-	11,857
Losses from asset sales	4E	91,983	27,915
Other expenses	4F	34,765	-
Total Expenses		19,893,918	20,072,128
Surplus (Deficit)		929,349	(656,875)

The above statement should be read in conjunction with the accompanying notes.

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APPENDIX 7 FINANCIAL STATEMENTS

BALANCE SHEET for the Office of the Commonwealth Ombudsman as at 30 June 2009

	Notes	2009 \$	2008 \$
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	128,080	159,590
Trade and other receivables	5B	6,618,520	5,144,485
Total financial assets		6,746,600	5,304,075
Non-Financial Assets			
Infrastructure, plant and equipment	6A, B	1,364,126	1,411,558
Intangibles	6C, D	438,009	311,337
Other non-financial assets	6E	323,148	149,858
Total non-financial assets		2,125,283	1,872,753
Total Assets		8,871,883	7,176,828
LIABILITIES			
Payables			
Suppliers	7A	756,476	623,352
Other payables	7B	1,068,693	586,158
Total payables		1,825,169	1,209,510
Provisions			
Employee provisions	8A	3,371,894	3,116,739
Other provisions	8B	468,201	366,877
Total provisions		3,840,095	3,483,616
Total Liabilities		5,665,264	4,693,126
Net Assets		3,206,619	2,483,702
EQUITY			
Contributed equity		2,013,000	2,145,000
Reserves		60,735	135,167
Retained surplus (accumulated deficit)		1,132,884	203,535
Total Equity		3,206,619	2,483,702
Current Assets		7,069,748	5,453,933
Non-Current Assets		1,802,135	1,722,895
Current Liabilities		4,500,374	3,882,343
Non-Current Liabilities		1,164,890	810,783

The above statement should be read in conjunction with the accompanying notes.

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APPENDIX 7 FINANCIAL STATEMENTS

STATEMENT OF CHANGES IN EQUITY for the Office of the Commonwealth Ombudsman
as at 30 June 2009

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2009	2008	2009	2008	2009	2008	2009	2008
	\$	\$	\$	\$	\$	\$	\$	\$
Opening balance	203,535	860,410	135,167	215,252	2,145,000	1,996,000	2,483,702	3,071,662
Income and expenses								
Revaluation adjustment	-	-	(74,432)	(80,085)	-	-	(74,432)	(80,085)
Sub-total income and expenses recognised directly in equity	203,535	860,410	60,735	135,167	2,145,000	1,996,000	2,409,270	2,991,577
Surplus (Deficit) for the period	929,349	(656,875)	-	-	-	-	929,349	(656,875)
Total income and expenses	1,132,884	203,535	60,735	135,167	2,145,000	1,996,000	3,338,619	2,334,702
Transactions with owners								
<i>Contributions by Owners</i>								
Appropriation (equity injection)	-	-	-	-	(132,000)	149,000	(132,000)	149,000
Sub-total transactions with owners	-	-	-	-	(132,000)	149,000	(132,000)	149,000
Transfers between equity components	-	-	-	-	-	-	-	-
Closing balance as at 30 June	1,132,884	203,535	60,735	135,167	2,013,000	2,145,000	3,206,619	2,483,702

The above statement should be read in conjunction with the accompanying notes.

*This disclosure is not required if an entity does not have minority interests

CASH FLOW STATEMENT for the Office of the Commonwealth Ombudsman for the period ended 30 June 2009

	Notes	2009 \$	2008 \$
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,339,153	2,549,997
Appropriations		17,767,445	17,829,290
Interest		-	-
Dividends		-	-
Net GST received		297,192	335,076
Other cash received		-	-
Total cash received		20,403,790	20,714,363
Cash used			
Employees		(14,358,450)	(14,742,760)
Suppliers		(5,159,257)	(5,644,006)
Borrowing costs		-	-
Income taxes paid		-	-
Net GST paid		-	-
Other cash used		-	-
Total cash used		(19,517,707)	(20,386,766)
Net cash from (used by) operating activities	9	886,082	327,597
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		1,200	-
Proceeds from sales of financial instruments		-	-
Investments		-	-
Other cash received		-	-
Total cash received		1,200	-
Cash used			
Purchase of property, plant and equipment		(572,874)	(146,034)
Purchase of intangibles		(345,918)	(139,607)
Investments		-	-
Total cash used		(918,792)	(285,641)
Net cash from (used by) investing activities		(917,592)	(285,641)
FINANCING ACTIVITIES			
Cash received			
Contributed equity		-	59,000
Proceeds from issuing financial instruments		-	-
Other cash received		-	-
Total cash received		-	59,000
Cash used			
Repayment of borrowings		-	-
Dividends paid		-	-
Other cash used		-	-
Total cash used		-	-
Net cash from (used by) financing activities		-	59,000
Net increase (decrease) in cash held		(31,510)	100,956
Cash and cash equivalents at the beginning of the reporting period		159,590	58,634
Cash and cash equivalents at the end of the reporting period	5A	128,080	159,590

The above statement should be read in conjunction with the accompanying notes.

SCHEDULE OF COMMITMENTS for the Office of the Commonwealth Ombudsman as at 30 June 2009

	2009	2008
	\$	\$
BY TYPE		
Commitments receivable		
Sale of goods and services	1,006,055	1,014,075
Grant income	-	753,605
Net GST recoverable on commitments	186,781	196,303
Total commitments receivable	1,192,836	1,963,983
Capital commitments		
Other commitments		
Operating leases ¹	3,060,647	3,927,010
Net commitments by type	1,867,811	1,963,027
BY MATURITY		
Commitments receivable		
Sale of goods and services		
One year or less	1,006,055	1,014,075
Total sale of goods and services	1,006,055	1,014,075
Grant income		
One year or less	-	366,791
From one to five years	-	386,814
Total grant income	-	753,605
Net GST recoverable		
One year or less	16,271	(14,945)
From one to five years	170,510	211,248
Total net GST recoverable	186,781	196,303
Commitments payable		
Operating leases		
One year or less	1,185,040	1,216,466
From one to five years	1,875,607	2,710,544
Total capital commitments	3,060,647	3,927,010
Net commitments by maturity	1,867,811	1,963,027

NB: Commitments were GST inclusive where relevant.

1. Operating leases included are effectively non-cancellable and comprise leases for office accommodation and motor vehicles for senior executive officers.

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 1: Summary of Significant Accounting Policies

1.1 Ombudsman Objectives

The Office of the Commonwealth Ombudsman is an Australian Government controlled entity. The objective of 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 the 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 Agency is structured to meet one outcome:

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

The office's activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the office in its own right. The office has no administered activities.

Departmental activities are identified under two Outputs for Outcome 1. Output 1 is Review of administrative action and Output 2 is Review of statutory compliance in specified areas.

The continued existence of the Ombudsman's office in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the office's administration and programs.

1.2 Basis of Preparation of the Financial Report

The financial statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars.

Unless an alternative treatment is specifically required by an accounting standard or the FMO, 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 and the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the income statement when and only when the flow, 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 2009 or in the comparative financial year.

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OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

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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 Changes in Australian Accounting Standards

Adoption of New Australian Accounting Standard Requirements

No accounting standard has been adopted earlier than the application date as stated in the respective standard.

Future Australian Accounting Standard Requirements

New standards, reissued standards, amendments to standards or interpretations ("the new requirements") applicable to future reporting periods have been issued by the Australian Accounting Standards Board during the year. It is anticipated that the new requirements will have no material financial impact on future reporting periods.

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental output appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the office gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of 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 1.6).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

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 associated 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 impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

1.6 Gains

Other 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.

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 Administrative 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 2008-09, by agreement with the Department of Finance and Deregulation, the Ombudsman returned \$132,000 to the Official Public Account.

1.8 Employee Benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) 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 at 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 at the estimated salary rates that applied at the time the leave is taken, including the Ombudsman's office 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 to all employees as at 30 June 2009. 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 made for separation and redundancy benefit payments. The Ombudsman's office recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

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Superannuation

Staff of the Ombudsman's office are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

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 current cost to the Government of the superannuation entitlements of the Ombudsman's offices employees. The office's accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2009 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 rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. 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 is 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.

1.11 Cash

Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of 3 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 classifies its financial assets in the following categories:

- financial assets 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 that are recognised at fair value through profit or loss.

Financial Assets at Fair Value Through Profit or Loss

OFFICE OF THE COMMONWEALTH OMBUDSMAN

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Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are 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
- are derivatives that are not designated and effective as a hedging instrument.

Assets in this category are classified as current assets.

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 in 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 Investments

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.

- *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 the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

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APPENDIX 7 FINANCIAL STATEMENTS

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 initially 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.

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 reported 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 *Financial Instruments: Recognition and Measurement*. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

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 income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

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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' recognised.

Revaluations

Fair values for each class of asset are determined as shown below:

<i>Asset Class</i>	<i>Fair value measured at:</i>
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 subsequent 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 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 all cases, the straight-line method of depreciation.

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:

	<u>2009</u>	<u>2008</u>
Leasehold improvements	Lease term	Lease term
Plant and Equipment	3 to 9 years	3 to 9 years

Impairment

All assets are assessed for impairment at 30 June 2009. 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 was deprived of the asset, its value in use is taken to be its depreciated replacement cost.

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1.18 Intangibles

The Ombudsman's office intangibles comprise externally and internally developed 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 lives of office's software are 1 to 8 years (2007-08: 1 to 8 years).

All software assets are assessed for indications of impairment as at 30 June 2009.

1.19 Taxation

The Agency 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.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 2: Events After the Balance Sheet Date

No significant events occurred after balance date that would materially affect the financial statements

Note 3: Income

	2009	2008
	\$	\$

Revenue

Note 3A: Revenue from Government

Appropriations:

Departmental outputs	19,364,000	17,881,000
Total revenue from Government	19,364,000	17,881,000

Note 3B: Sale of Goods and Rendering of Services

Rendering of services - related entities	384,610	506,666
Rendering of services - external parties	1,006,928	1,006,587
Total sale of goods and rendering of services	1,391,538	1,513,253

Gains

Note 3C: Sale of Assets

Infrastructure, plant and equipment:

Proceeds from sale	1,200	-
Carrying value of assets sold	(281)	-
Net gain from sale of assets	919	-

Note 3D: Other Gains

Resources received free of charge	23,000	21,000
Reversal of makegood provision	43,810	-
Total other gains	66,810	21,000

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 4: Expenses

	2009	2008
	\$	\$
Note 4A: Employee Benefits		
Wages and salaries	10,687,183	10,694,718
Superannuation:		
Defined contribution plans	496,356	424,557
Defined benefit plans	1,522,145	1,499,569
Leave and other entitlements	1,793,656	1,527,186
Total employee benefits	14,499,340	14,146,030
Note 4B: Suppliers		
Provision of goods – related entities	-	-
Provision of goods – external parties	321,269	325,833
Rendering of services – related entities	214,738	600,825
Rendering of services – external parties	2,582,134	2,826,280
Operating lease rentals - external parties	1,294,052	1,224,260
Workers compensation premiums	72,413	125,925
Total supplier expenses	4,484,606	5,103,123
Note 4C: Depreciation and Amortisation		
Depreciation:		
Infrastructure, plant and equipment	564,803	548,921
Amortisation:		
Intangibles - Computer Software	218,422	234,282
Total depreciation and amortisation	783,224	783,203
Note 4D: Write-Down and Impairment of Assets		
Impairment on financial instruments	-	11,857
Total write-down and impairment of assets	-	11,857
Note 4E: Losses from Assets Sales		
Infrastructure, plant and equipment:		
Proceeds from sale	(350)	-
Carrying value of assets sold	91,509	27,915
Intangibles:		
Carrying value of assets sold	824	-
Total losses from assets sales	91,983	27,915
Note 4F: Other Expenses		
Change in the value of restoration	34,765	-
Total other expenses	34,765	-

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 5: Financial Assets

	2009	2008
	\$	\$

Note 5A: Cash and Cash Equivalents

Cash on hand or on deposit	128,080	159,590
Total cash and cash equivalents	128,080	159,590

Note 5B: Trade and Other Receivables

Goods and services - related entities	205,883	-
Goods and services - external parties	23,295	273,483
Total receivables for goods and services	229,178	273,483

Appropriations receivable for existing outputs	6,297,000	4,832,445
GST receivable from the Australian Taxation Office	92,342	50,414
Total trade and other receivables (gross)	6,618,520	5,156,342

Less impairment allowance account:

Goods and services	-	11,857
Total trade and other receivables (net)	6,618,520	5,144,485

All receivables are current assets. Credit terms are net 30 days.

Receivables are aged as follows:

Not overdue	6,440,028	5,091,479
Overdue by:		
Less than 30 days	102,317	64,863
30 to 60 days	66,157	-
61 to 90 days	-	-
More than 90 days	10,018	-
Total receivables (gross)	6,618,520	5,156,342

The impairment allowance account is aged as follows:

Not overdue	-	11,857
Total impairment allowance account	-	11,857

Reconciliation of the impairment allowance account:

	Goods and services 2009	Goods and services 2008
	\$	\$
Opening balance	11,857	-
Amounts written off	(11,857)	-
Amounts recovered and reversed	-	-
Increase/decrease recognised in net surplus	-	11,857
Closing balance	-	11,857

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 6: Non-Financial Assets

	2009 \$	2008 \$
Note 6A: Infrastructure, Plant and Equipment		
Leasehold improvements:		
Gross carrying value (at fair value)	1,591,584	1,468,624
Accumulated depreciation	(828,972)	(716,712)
Total leasehold improvements	762,612	751,912
Plant and equipment		
Fair value	1,666,459	1,481,867
Accumulated depreciation	(1,064,945)	(822,221)
Total plant and equipment	601,514	659,646
Total infrastructure, plant and equipment (non-current)	1,364,126	1,411,558

Formal valuations are generally undertaken where management considers there is a material or 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.

Note 6B: Analysis of Property, Plant and Equipment

TABLE A – Reconciliation of the opening and closing balances of property, plant and equipment (2008-09)

	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2008			
Gross book value	1,468,624	1,481,867	2,950,491
Accumulated depreciation	(716,712)	(822,221)	(1,538,933)
Net book value 1 July 2008	751,912	659,646	1,411,558
Additions:			
By purchase	363,219	238,518	601,737
By finance lease	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-
Revaluations and impairments through equity	-	-	-
Revaluations recognised in the operating result	-	-	-
Impairments recognised in the operating result	-	-	-
Reversal of impairments recognised in the operating result	-	-	-
Reclassification	-	-	-
Assets held for sale or in a disposal group held for sale	-	-	-
Depreciation expense	(274,656)	(290,147)	(564,803)
Other movements (give details below)	-	-	-
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals	(77,863)	(6,503)	(84,366)
Net book value 30 June 2009	762,612	601,514	1,364,126
Net book value as of 30 June 2009 represented by:			
Gross book value	1,591,584	1,666,459	3,258,043
Accumulated depreciation	(828,972)	(1,064,945)	(1,893,917)
	762,612	601,514	1,364,126

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

TABLE B – Reconciliation of the opening and closing balances of property, 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)
Net book value 1 July 2007	971,252	871,108	1,842,360
Additions:			
By purchase	38,336	107,698	146,034
By finance lease	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-
Revaluations and impairments through equity	-	-	-
Revaluations recognised in the operating result	-	-	-
Impairments recognised in the operating result	-	-	-
Reversal of impairments recognised in the operating result	-	-	-
Reclassification	-	-	-
Assets held for sale or in a disposal group held for sale	-	-	-
Depreciation expense	(257,676)	(291,245)	(548,921)
Other movements (give details below)	-	-	-
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals	-	(27,915)	(27,915)
Net book value 30 June 2008	751,912	659,646	1,411,558
Net book value as of 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

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 6: Non-Financial Assets

	2009	2008
	\$	\$
Note 6C: Intangibles		
Computer software:		
Purchased - at cost	1,357,739	1,061,520
Accumulated amortisation	(919,730)	(750,183)
Accumulated impairment losses	-	-
Total intangibles (non-current)	438,009	311,337

No indicators of impairment were found for intangible assets.

Note 6D: Analysis of Intangibles

TABLE C: Reconciliation of the opening and closing balances of intangibles (2008-09)

Item	Computer software purchased \$
As at 1 July 2008	
Gross book value	1,061,520
Accumulated amortisation	(750,183)
Net book value 1 July 2008	311,337
Additions:	
By purchase or internally developed	345,918
Amortisation	(218,422)
Disposals:	
Other disposals	(824)
Net book value 30 June 2009	438,010

Net book value as of 30 June 2009 represented by:

Gross book value	1,357,739
Accumulated amortisation	(919,730)
Net book value 30 June 2009	438,010

TABLE D: Reconciliation of the opening and closing balances of intangibles (2007-08)

Item	Computer software purchased \$
As at 1 July 2007	
Gross book value	1,128,915
Accumulated amortisation	(722,903)
Net book value 1 July 2007	406,012
Additions:	
By purchase or internally developed	139,607
Amortisation	(234,282)
Net book value 30 June 2008	311,337

Net book value as of 30 June 2008 represented by:

Gross book value	1,061,520
Accumulated amortisation	(750,183)
Net book value 30 June 2008	311,337

	2009	2008
	\$	\$
Note 6E: Other Non-Financial Assets		
Prepayments	323,148	149,858
Total other non-financial assets	323,148	149,858

All other non-financial assets were current assets.

No indicators of impairment were found for other non-financial assets.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 7: Payables

	2009	2008
	\$	\$
Note 7A: Suppliers		
Trade creditors	756,476	623,352
Total supplier payables	756,476	623,352
Supplier payables - related entities are represented by:		
Current	118,074	
Non-current	-	-
Supplier payables - external parties are represented by:		
Current	638,402	623,352
Non-current	-	-
Total supplier payables	756,476	623,352

All supplier payables are current liabilities. Settlement is usually made net 30 days.

Note 7B: Other Payables

Salaries and wages	197,956	146,822
Superannuation	31,024	23,365
Unearned income	532,378	329,839
Lease incentives	299,610	86,132
Fixed lease increase	7,725	-
Total Other Payables	1,068,693	586,158

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 8: Provisions

	2009	2008
	\$	\$
Note 8A: Employee Provisions		
Leave	3,371,894	3,116,739
Total employee provisions	3,371,894	3,116,739
Employee provisions are represented by:		
Current	2,910,778	2,669,393
Non-current	461,116	447,346
Total employee provisions	3,371,894	3,116,739

The classification of current employee provisions includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date were \$1,125,809 (2008: \$947,091), and in excess of one year \$2,069,089 (2008: \$2,028,648).

Note 8B: Other Provisions

Restoration obligations	468,201	366,877
Other provisions are represented by:		
Current		63,610
Non-current	468,201	303,267
Total other provisions	468,201	366,877

Carrying amount at beginning of year	366,877	286,792
Additional provisions made	164,934	80,085
Amounts used	(63,610)	
Closing balance at end of year	468,201	366,877

The Agency currently has six agreements for the leasing of premises which have provisions requiring the Agency to restore the premises to their original condition at the conclusion of the lease. The Agency has made a provision to reflect the present value of this obligation.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 9: Cash Flow Reconciliation

	2009	2008
	\$	\$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash flow statement	128,080	159,590
Balance sheet	128,080	159,590
<i>Difference</i>	-	-
 Reconciliation of operating result to net cash from operating activities:		
Operating result	929,349	(656,875)
Depreciation /amortisation	783,224	783,203
Other expenses	34,765	-
Net write down of non-financial assets	(43,810)	27,915
(Gain) / Loss on disposal of assets	91,064	-
Deterioration of financial condition of guarantee during period	-	-
(Increase) / decrease in net receivables	(1,606,035)	37,852
(Increase) / decrease in inventories	-	-
(Increase) / decrease in prepayments	(173,290)	61,543
Increase / (decrease) in employee provisions	255,155	208,072
Increase / (decrease) in supplier payables	133,124	(33,712)
Increase / (decrease) in prepayments received	-	-
Increase / (decrease) in GST payable	-	-
Increase / (decrease) in accrued expenses	-	-
Increase / (decrease) in appropriation deferred	-	-
Increase / (decrease) in other provisions	482,535	(100,401)
Increase / (decrease) in tax liabilities	-	-
Increase / (decrease) in competitive neutrality payments payable	-	-
<i>Net cash from / (used by) operating activities</i>	886,082	327,597

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 10: Contingent Liabilities and Assets

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.

Note 11: Senior Executive Remuneration

	2009	2008
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$130 000 to \$144 999	-	1
\$145 000 to \$159 999	-	1
\$175 000 to \$189 999	2	-
\$190 000 to \$204 999	2	1
\$205 000 to \$219 999	2	-
\$235 000 to \$249 999	-	1
\$250 000 to \$264 999	-	1
\$265 000 to \$279 999	2	-
\$340 000 to \$354 999	1	1
Total	9	6

	2009	2008
	\$	\$
The aggregate amount of total remuneration of senior executives shown above.	2,071,919	1,342,125

Note 12: Remuneration of Auditors

	2009	2008
	\$	\$
Financial statement audit services were provided free of charge to the Agency.		
The fair value of the services provided was:	23,000	21,000
	23,000	21,000

No other services were provided by the Auditor-General.

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 13: Financial Instruments

	2009 \$	2008 \$
Note 13A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables:		
Trade and other receivables	229,178	261,626
Cash and cash equivalents	128,080	159,590
Carrying amount of financial assets	357,258	421,216
Financial Liabilities		
At amortised cost:		
Trade and other payables	756,476	623,352
Unearned income	532,378	329,839
	1,288,853	953,191
Carrying amount of financial liabilities	1,288,853	953,191

Note 13B: Net Income and Expense from Financial Assets

Loans and receivables		
Impairment	-	(11,857)
Net gain/(loss) loans and receivables	-	(11,857)
Net gain/(loss) from financial assets	-	(11,857)

The net income/expense from financial assets not at fair value from profit and loss is nil (2008: -\$11,857).

Note 13C: Net Income and Expense from Financial Liabilities

The net income/expense from financial liabilities not at fair value from profit and loss is nil.

Note 13D: Fair Value of Financial Instruments

	Carrying amount 2009 \$	Fair value 2009 \$	Carrying amount 2008 \$	Fair value 2008 \$
Financial Assets				
Trade and other receivables	229,178	229,178	261,626	261,626
Cash and cash equivalents	128,080	128,080	159,590	159,590
Total	357,258	357,258	421,216	421,216
Financial Liabilities				
Trade and other payables	756,476	756,476	623,352	623,352
Unearned income	532,378	532,378	329,839	329,839
Total	1,288,853	1,288,853	953,191	953,191

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 13E: 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.

	2009 \$	2008 \$
Financial assets		
Trade and other receivables	229,178	261,626
Cash and cash equivalents	128,080	159,590
Total	357,258	421,216

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 2009 \$	Not past due nor impaired 2008 \$	Past due or impaired 2009 \$	Past due or impaired 2008 \$
Trade and other receivables	50,686	196,763	178,492	76,720
Total	50,686	196,763	178,492	76,720

Ageing of financial assets that were past due but not impaired for 2009

	0 to 30 days \$	31 to 60 days \$	61 to 90 days \$	90+ days \$	Total \$
Trade and other receivables	102,317	66,157	-	10,018	178,492
Total	102,317	66,157	-	10,018	178,492

Ageing of financial assets that were 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
Total	64,863	-	-	-	64,863

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 13F: Liquidity Risk

Liquidity risk is defined as the risk that the office 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.

Maturities for financial liabilities 2009

	On demand 2009 \$	within 1 year 2009 \$	1 to 2 years 2009 \$	2 to 5 years 2009 \$	> 5 years 2009 \$	Total 2009 \$
Trade and other payables	756,476	-	-	-	-	756,476
Unearned income	532,378	-	-	-	-	532,378
Total	1,288,853	-	-	-	-	1,288,853

Maturities for financial liabilities 2008

	On demand 2008 \$	within 1 year 2008 \$	1 to 2 years 2008 \$	2 to 5 years 2008 \$	> 5 years 2008 \$	Total 2008 \$
Trade and other payables	623,352	-	-	-	-	623,352
Unearned income	329,839	-	-	-	-	329,839
Total	953,191	-	-	-	-	953,191

Note 13G: Market Risk

The office has no significant exposure to market risk in terms of currency or interest rate risks.

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 14: Appropriations

Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2009	2008
	\$	\$
Balance brought forward from previous period (<i>Appropriation Acts</i>)	4,893,449	4,782,970
<i>Appropriation Act:</i>		
<i>Appropriation Act (No. 1) 2008-2009</i> as passed	17,737,000	17,763,000
<i>Appropriation Act (No. 3) 2008-2009</i> as passed	261,000	-
<i>Other Appropriation Act:</i>	-	-
<i>NTER Appropriation Act (No. 1) 2008-2009</i>	-	200,000
Comcover receipts (<i>Appropriation Act</i> section 12)	-	71,962
Departmental appropriations reduced (<i>Appropriation Act</i> section 10)	-	(82,000)
<i>FMA Act:</i>		
Repayments to the Commonwealth (<i>FMA Act</i> section 30)	123,640	170,426
Appropriations to take account of recoverable GST (<i>FMA Act</i> section 30A)	502,269	292,889
Relevant agency receipts (<i>FMA Act</i> s 31)	2,038,267	2,307,609
Adjustment of appropriations on change of agency function (<i>FMA Act</i> s 32)	-	-
Total appropriation available for payments	25,555,625	25,506,856
Cash payments made during the year (GST inclusive)	20,419,499	20,613,407
Balance of authority to draw cash from the Consolidated Revenue Fund for ordinary annual services appropriations and as represented by:	5,136,126	4,893,449
Cash at bank and on hand	128,080	159,590
Departmental appropriations receivable	4,931,000	4,683,445
GST Receivable from the ATO	77,046	50,414
Total as at 30 June	5,136,126	4,893,449

Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

Particulars	Non – operating				Total	
	<i>Equity</i>		<i>Previous Years' Outputs</i>		2009	2008
	2009	2008	2009	2008		
	\$	\$	\$	\$	\$	\$
Balance brought forward from previous period (<i>Appropriation Acts</i>)	149,000	59,000	-	-	149,000	59,000
<i>Appropriation Act:</i>						
<i>Appropriation Act (No. 2) 2008-09</i> as passed	-	-	566,000	-	566,000	-
<i>Appropriation Act (No. 4) 2008-09</i> as passed	-	-	-	-	-	-
<i>Other Appropriation Act:</i>						
<i>NTER Appropriation Act (No. 2) 2008-2009</i>		149,000				149,000
Appropriation reduction (<i>NTER Appropriation Act (No. 2) 2008-09 s11(1)</i>)	(132,000)		-	-	(132,000)	-
<i>Appropriation Act (No.2) 2009-10</i> as passed	-	-	800,000	-	800,000	-
Total appropriations available for payments	17,000	208,000	1,366,000	-	1,383,000	208,000
Cash payments made during the year (GST inclusive)	17,000	59,000	-	-	17,000	59,000
Appropriations credited to special accounts (GST exclusive)	-	-	-	-	-	-
Balance of authority to draw cash from the consolidated revenue fund for other than ordinary annual services appropriations and as represented by:	-	149,000	1,366,000	-	1,366,000	149,000
Departmental appropriation receivable	-	149,000	1,366,000	-	1,366,000	149,000
Total as at 30 June	-	149,000	1,366,000	-	1,366,000	149,000

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE
2009

Note 15: Compensation and Debt Relief

No Act of Grace payments were made during the reporting period (2008: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (2008: nil).

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APPENDIX 7 FINANCIAL STATEMENTS

OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 16: Reporting of Outcomes

Note 16A: Net Cost of Outcome Delivery

	Outcome 1	
	2009	2008
	\$	\$
Expenses		
Administered	-	-
Departmental	19,893,918	20,072,128
Total expenses	19,893,918	20,072,128
Costs recovered from provision of goods and services to the non government sector		
Administered	-	-
Departmental	1,006,928	1,006,587
Total costs recovered	1,006,928	1,006,587
Other external income		
Administered	-	-
Departmental	384,610	506,666
Total other external income	384,610	506,666
Net cost/(contribution) of outcome	18,502,380	18,558,875

Note 16B: Major Classes of Departmental Income and Expenses by Output Groups and Outputs

Outcome 1	Output 1		Output 2		Outcome 1 Total	
	2009	2008	2009	2008	2009	2008
	\$	\$	\$	\$	\$	\$
Departmental expenses						
Employees	13,803,372	13,410,436	695,968	735,594	14,499,340	14,146,030
Suppliers	4,269,345	4,837,761	215,261	265,362	4,484,606	5,103,123
Depreciation and amortisation	745,630	742,476	37,595	40,727	783,224	783,203
Other	120,664	37,704	6,083	2,068	126,747	39,772
Total departmental expenses	18,939,011	19,028,377	954,907	1,043,751	19,893,918	20,072,128
Funded by:						
Departmental income						
Revenue from government	18,363,976	16,872,512	1,000,024	1,008,488	19,364,000	17,881,000
Sale of goods and services	1,391,538	1,513,253	-	-	1,391,538	1,513,253
Total departmental income	19,755,514	18,385,765	1,000,024	1,008,488	20,755,538	19,394,253

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OFFICE OF THE COMMONWEALTH OMBUDSMAN

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2009

Note 16C: Major Classes of Departmental Assets and Liabilities by Outcomes

	Outcome 1	
	2009	2008
	\$	\$
Departmental assets		
Cash and cash equivalents	128,080	159,590
Trade and other receivables	6,618,520	5,144,485
Total Financial assets	6,746,600	5,304,075
Infrastructure, plant and equipment	1,364,126	1,411,558
Intangibles	438,009	311,337
Other non-financial assets	323,148	149,858
Total Non financial assets	2,125,283	1,872,753
Total departmental assets	8,871,883	7,176,828
Departmental liabilities		
Suppliers	756,476	623,352
Other payables	1,068,693	586,158
Total payables	1,825,169	1,209,510
Employee provisions	3,371,894	3,116,739
Other provisions	468,201	366,877
Total Provisions	3,840,095	3,483,616
Total departmental liabilities	5,665,264	4,693,126

The Office of the Commonwealth Ombudsman uses a cost allocation methodology based on staff numbers to determine the attribution of its shared items. The basis of attribution in the above table is consistent with the basis used for the Budget.

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Abbreviations and acronyms

ABBREVIATIONS AND ACRONYMS

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
ACMLJ	Australian Centre for Military Law and Justice
ACT	Australian Capital Territory
ADF	Australian Defence Force
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979 (Cth)</i>
AIAL	Australian Institute of Administrative Law
ANAO	Australian National Audit Office
ANZOA	Australian and New Zealand Ombudsman Association
ANU	Australian National University
AO	Officer of the Order of Australia
APOR	Australasian and Pacific Ombudsman Region
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
APSC	Australian Public Service Commission
AQIS	Australian Quarantine and Inspection Service
ARO	authorised review officer
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AusAID	Australian Agency for International Development
CDDA	Compensation for Detriment caused by Defective Administration
CDF	Chief of the Defence Force
CIS	Complaints Investigation Scheme
CIU	Compliance and Investigation Unit
CLERP 7	Corporations Legislation Economic Reform Program
COAG	Council of Australian Governments
Complaints Act	<i>Complaints (Australian Federal Police) Act 1981 (Cth)</i>
Crimes Act	<i>Crimes Act 1914 (Cth)</i>
CSA	Child Support Agency
CSC	Customer Service Centre
Cth	Commonwealth
DAFF	Department of Agriculture, Fisheries and Forestry

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REFERENCES ABBREVIATIONS AND ACRONYMS

DEEWR	Department of Education, Employment and Workplace Relations
DFO	Defence Force Ombudsman
DHA	Defence Housing Australia
DHOAS	Defence Home Ownership Assistance Scheme
DHS	Department of Human Services
DIAC	Department of Immigration and Citizenship
DPO	Departure Prohibition Order
DSP	disability support pension
DVA	Department of Veterans' Affairs
ed.	editor
EIBAG	Equine Influenza Business Assistance Grant
EL	Executive Level
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
ESSP	Economic Security Strategy payment
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
GEERS	General Employee Entitlements and Redundancy Scheme
G4S	G4S Australia Pty Ltd
GFU	Global Feedback Unit
GIC	General Interest Charge
GST	goods and services tax
Hon.	Honourable
IAOLAS	Indonesian Australian Ombudsman Linkages and Strengthening
IDC	Immigration Detention Centre
IGADF	Inspector-General of the Australian Defence Force
IOI	International Ombudsman Institute
ISU	Intake Screening Unit
IT	information technology
JCA	job capacity assessment
JNM	Job Network Member
JOIN	Joint Outreach Initiative Network
MAP	Migration Assessment Policy
Migration Act	<i>Migration Act 1958</i> (Cth)
MP	Member of Parliament
NAIDOC	National Aboriginal and Islander Day Observance Committee
NSA	newstart allowance
NSW	New South Wales
NT	Northern Territory
NTER	Northern Territory Emergency Response
OCPNG	Ombudsman Commission of Papua New Guinea

ODM	original decision maker
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)
ORI	Ombudsman of the Republic of Indonesia
PAYG	pay as you go
PCT	Public Contact Team
PIO	Postal Industry Ombudsman
PNG	Papua New Guinea
PPO	private postal operator
Privacy Act	<i>Privacy Act 1988</i> (Cth)
Prof.	Professor
PRS	Professional Standards
Public Service Act	<i>Public Service Act 1999</i> (Cth)
Qld	Queensland
RAAF	Royal Australian Air Force
RCS	residential classification scales
ROG	redress of grievance
RSA	refugee status assessment
rtd	retired
s	section
SA	South Australia
SD Act	<i>Surveillance Devices Act 2004</i> (Cth)
SES	Senior Executive Service
SGC	superannuation guarantee charge
SNP	School Nutrition Program
SSAT	Social Security Appeals Tribunal
TAS	Tasmania
TFN	tax file number
TGA	Therapeutic Goods Administration
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)
TRA	Trades Recognition Australia
UK	United Kingdom
US	United States of America
VIC	Victoria
VIDC	Villawood Immigration Detention Centre
WA	Western Australia

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REFERENCES COMPLIANCE INDEX

This is a guide to the report's compliance with the Requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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Correction of material errors in previous annual report

No material errors have been identified in the *Commonwealth Ombudsman Annual Report 2007–2008*.

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