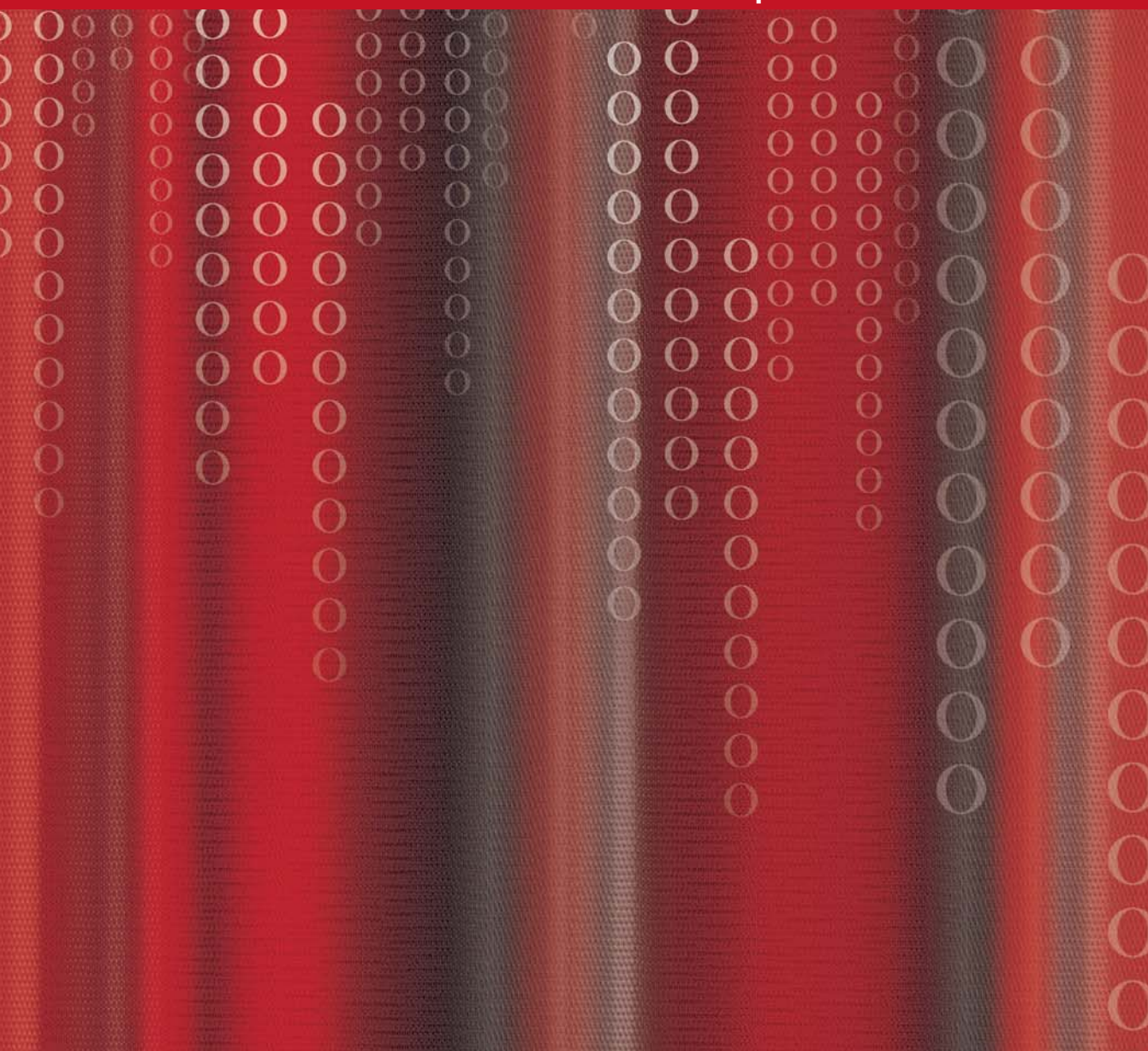
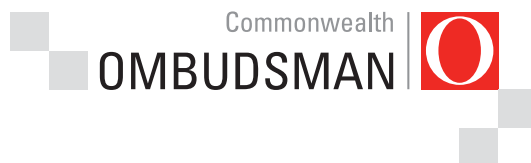




annual report 2005–2006





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10 October 2006

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

Dear Prime Minister

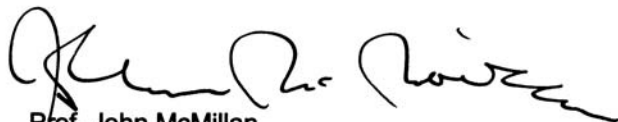
I have pleasure in submitting the twenty-ninth Commonwealth Ombudsman Annual Report for the year ended 30 June 2006, as required by s 19(1) of the *Ombudsman Act 1976*.

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

As required by s 38 of the *Complaints (Australian Federal Police) Act 1981*, the report also deals with complaints made under that Act during the year ended 30 June 2006.

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

Yours sincerely



Prof. John McMillan
Commonwealth Ombudsman

GUIDE TO THE REPORT

When developing the content of our annual report, we set out to meet not only the parliamentary reporting requirements but also 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 who deal with government agencies.

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

Oversight of Australian Government agencies

Focuses on particular issues that arose in investigating complaints about individual agencies, provides examples of the diversity of complaint issues about government, how the Ombudsman's office helped people to resolve their complaint issues, and general administrative problems across government agencies.

Appendixes

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

We have also included a list of tables and figures (contained in the body of the report), a glossary of terms, and a list of addresses for our offices in each state and territory capital city.

CONTACTING THE COMMONWEALTH OMBUDSMAN

Enquiries about this report, or any other information contained within, should be directed to the Director of Public Affairs.

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 (local call charge)

Fax: 02 6249 7829

Email: ombudsman@ombudsman.gov.au

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman Annual Report 2005–2006 is available on our website under publications.

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foreword

A foundation task of the new Commonwealth Ombudsman office in 1977 was to make itself known and understood by Australians. One amusing way of doing this was with billboards that invited people to contact the Ombudsman if they were being 'trampled underfoot by officialdom', 'strangled by bureaucratic red tape', or were having their problems 'swept under the carpet'.

Those stereotypes of government are still with us, but the situation of the Ombudsman's office has changed markedly. This annual report contains many examples of the constant growth, adaptation and maturation of the office.

An outward change is in the structure and appearance of the office, which now wears the hats of seven Ombudsman roles—Commonwealth Ombudsman, ACT Ombudsman, Defence Force Ombudsman, Taxation Ombudsman, Immigration Ombudsman, Postal Industry Ombudsman, and Law Enforcement Ombudsman. That change in structure was explained in the foreword to last year's annual report. Government and the public now expect an oversight agency to have both a generalist role that covers most functions and problems in government, as well as a specialist understanding and distinctive profile in some areas being monitored.

The cascade of 'Os' on the cover to this year's annual report depicts this change in the office and its diversity of functions.

An area of important change is immigration oversight. This is a traditional function of the office, but now with specialist functions and activity in the combined role of Commonwealth and Immigration Ombudsman. One new function is to prepare a report on each person held in immigration detention for more than two years. During 2005–06, my office finalised 66 reports that were tabled in the Parliament, with many more in preparation. This reporting role is a new type of function for an Ombudsman's office, and has required us to develop

a format for examining and reporting on each case after consultation with the department and the person in detention. The function has also provided an opportunity for the office to demonstrate that the underlying Ombudsman values—independence, impartiality, integrity, accessibility, professionalism and team work—can suitably be adapted to a range of different oversight tasks.

The more active role of the office in immigration oversight has occurred in other ways. Among them are the investigation of 248 individual cases referred to the office by government; participation in the department's newly-established committees to provide advice on training, detention health, and values and standards; and the instigation of new own motion projects on matters such as complaint handling, notification of review rights, and compliance operations.

The new role of Postal Industry Ombudsman (PIO) poses a challenge of a different kind. The PIO jurisdiction extends to private postal operators that are registered with the PIO scheme, as well as Australia Post. It is a new step for the office to develop an Ombudsman scheme covering both public and private sector bodies. The core principles of good complaint handling and administrative



Commonwealth Ombudsman, Prof. John McMillan.

investigation apply equally to both, but there are differences. The criteria for administrative deficiency are not identical, reflecting the fact that private sector functions are commercial and not statutory in nature. There is also a different method for classifying the investigation of complaints, since the cost of investigations is charged to the participants in the scheme.

Private sector activity also comes under the scrutiny of the Commonwealth Ombudsman through a recent amendment to the *Ombudsman Act 1976* that confers jurisdiction over Commonwealth service providers. My office can now investigate complaints about government contractors providing goods and services to the public under a contract with a government agency. This extended jurisdiction confirms the role the office has long played in dealing with complaints that arise within immigration centres and the Job Network. The jurisdiction is also important to oversight of the Welfare to Work program, which incorporates a large role for private sector bodies in activities such as job referral, job capacity assessment, and financial case management.

The other new Ombudsman role to be developed during 2006–07 is that of Law Enforcement Ombudsman. This again is a traditional function of the office, to be modified under a new statutory framework for dealing with complaints and conduct issues in policing. The Ombudsman retains a complaint investigation function (notably for serious conduct issues), but will otherwise play a more active role in overseeing and auditing the way policing agencies handle complaints and conduct issues. This monitoring and auditing role adds to the office's existing (and growing) function of inspecting the records of law enforcement agencies to examine their compliance with statutory controls applying to telecommunications interception and access, electronic surveillance and controlled operations.

These and other changes in the work of the office have fed into a general review of methods and operations that commenced in the last reporting year and was completed in 2006. Innovations that are described in this report include the establishment of the Public Contact Team as the first point of contact with the office; the introduction of a new complaints management and

recording system; the conduct of an active outreach program, especially in rural and regional Australia; and more active engagement with other public sector and industry ombudsman offices to share experience and initiate research projects.

Individual complaint handling across all areas of government remains the core function of the office. In 2005–06, we handled over 17,000 individual approaches and complaints that were within jurisdiction. Those figures alone demonstrate the need for a vibrant Ombudsman's office to which people can turn with unresolved problems and grievances about government agencies.

Another side to those complaints is that they shed light on newly emerging problems within government; some problems transcend the responsibility of individual agencies but nevertheless arise within government. This and previous annual reports have drawn attention to those issues in the chapters on 'Problem areas in government decision making', 'Challenges in complaint handling' and 'How the Ombudsman helped people'. The complexity of legislation and government programs, and the complications that poses for members of the public, is one such theme taken up in this report. Another is the importance of internal complaint handling in agencies and the Ombudsman's role in externally scrutinising that activity.

This period of change and growth in the Ombudsman's office (staff numbers have risen from 82 in 2003 to 146 this year) has been possible and seamless only through the professionalism and commitment of the staff. They have continued efficiently to resolve tens of thousands of individual approaches and complaints, while developing new roles, activities and work practice methods. The total staff commitment has been displayed in many ways, ranging from the 100% staff voting approval of a new certified agreement to the voluntary effort of many staff to befriend and play host to many visitors from Asian and Pacific ombudsman offices. Together with my two Deputy Ombudsmen, Ron Brent and Vivienne Thom, I would like to acknowledge the key role this staff effort has played in the work of the office over the past year.

John McMillan
Commonwealth Ombudsman

overview

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ombudsman's review

1

This has been a year of change for the Commonwealth Ombudsman's office. New work practices, a new complaints management system and the formation of the Public Contact Team have been key activities during the year.

The core activity of the office is to handle complaints and enquiries from members of the public about government administrative action. This objective is captured in the office's outcome — administrative action by Australian Government agencies that is fair and accountable. We delivered on this objective by helping people to resolve complaints about government agencies, by fostering improved government administration and by focusing on integrity and legislative compliance in agency administration.

We investigated complaints made about 104 Australian Government departments and agencies. The complaints ranged across the spectrum of government activity. Remedies and assistance were provided to thousands of people around the country. We also made submissions to parliamentary and government inquiries, to contribute to the improvement of Australian Government administration.

'The complaints ranged across the spectrum of government activity.'

Other major activities included the investigation on the Ombudsman's initiative, or 'own motion', of the administrative actions of Australian Government agencies; and inspection of the records of agencies such as the Australian Federal Police (AFP) and the Australian Crime Commission (ACC), to gauge their compliance with legislative requirements applying to selected law enforcement and regulatory activities.

In its 29 years of operation, the Ombudsman's office has been able to stimulate improvements in

government administration, through the experience and insights gained from handling complaints. Improvements have occurred in, for example, the quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, sensitivity to individual needs, and government accountability generally.

COMPLAINT AND INSPECTIONS WORKLOAD

In 2005–06, we received a total of 28,227 approaches and complaints (29,323 in 2004–05). The pattern of complaints was similar to the previous year, with the majority (75%) of complaints received about five agencies—Australia Post, the Australian Taxation Office (ATO), Centrelink, the Child Support Agency, and the Department of Immigration and Multicultural Affairs (DIMA).

The number of total complaints to the Ombudsman in the past three years has been fairly stable. There has, however, been a steady increase in the number of more complex matters brought to the office and in complaints that alleged systemic problems in public administration (see agency-specific sections in Chapter 7). There was a decrease of 10% in the number of approaches to the office relating to out of jurisdiction matters and requests for information, but the overall number of approaches is similar to the number received in previous years.

'We received a total of 28,227 approaches and complaints ...'

This year, we investigated 35% (6,176 issues) of all complaint issues finalised (33% in 2004–05) and identified agency error or deficiency in 1% (14% in 2004–05), and no error or deficiency in 11% (43% in 2004–05). In the remaining 88% of issues, the complaints were resolved without the need to

determine whether there was agency deficiency or error. See Chapter 3—Performance report for an explanation of why fewer findings of administrative deficiency were recorded.

The Ombudsman is responsible for monitoring the integrity of the records of telecommunications interceptions, use of surveillance devices and controlled operations conducted by the AFP and the ACC and some state law enforcement agencies. We inspected the records of the AFP on eight occasions and the ACC on six occasions for statutory compliance, adequacy and comprehensiveness.

Until 2006, the Ombudsman also had responsibility for auditing the use of compliance powers in the *Workplace Relations Act 1996* (Cth) by members of the Building Industry Taskforce. That framework has been replaced by the *Building and Construction Industry Improvement Act 2005* (Cth). We inspected the taskforce's records for the 12 months ending 12 January 2006.

FINANCIAL PERFORMANCE

In 2005–06, the office's operating revenues were \$18.384 million and operating expenses were \$17.318 million, resulting in a net surplus of \$1.021 million. The surplus is due primarily to the delays involved in implementing several large projects. The office received an unqualified audit opinion on its 2005–06 financial statements. We will continue to examine our priorities and processes to ensure that we provide the best outcome to the Australian community.

PUBLIC ADMINISTRATION

Through our complaint handling and investigative work, we come into contact with most aspects of Australian Government. We see it as a distinct role of the Ombudsman—as stated in our strategic plan—to 'contribute to public discussion on administrative law and public administration' and to 'foster good public administration that is accountable, lawful, fair, transparent and responsive'. We mainly do this by making suggestions and recommendations to agencies, conducting own motion investigations to help foster improvements in systemic issues, and making submissions to government and parliamentary inquiries.

In 2005–06, we published reports on seven own motion and major investigations. Four of the investigations related to DIMA; one to each of the Australian Defence Force and the ATO; and the other investigation to the quality of freedom of information processing by Australian Government agencies. To the extent possible, we publish our reports on own motion investigations in full or in an abridged version on our website at www.ombudsman.gov.au.

We also commenced several own motion investigations, which we expect to complete early in 2006–07.

'We published reports on seven own motion and major investigations.'

The Ombudsman made submissions to parliamentary inquiries and commented on a range of administrative practice matters and legislative proposals during the year. Examples include submissions to the Senate Legal and Constitutional References Committee regarding the administration and operation of the *Migration Act 1958*, and to the Senate Legal and Constitutional Legislation Committee's inquiry into the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential and Transitional Provisions) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006. The Ombudsman also appeared before the Senate Committee on Mental Health and the Parliamentary Joint Committee on the Australian Crime Commission.

By fostering improved government administration, we can strengthen the community's confidence in the integrity and professionalism of government and we can support fairer and more accountable government.

'Through our complaint handling and investigative work, we come into contact with most aspects of Australian Government.'

Jack Richardson prize

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



Jack Richardson Prize winner John Altin with Deputy Ombudsman, Dr Vivienne Thom.

DEVELOPING ROLE OF THE OMBUDSMAN

The Ombudsman's office, though well established, is part of a system of government that is undergoing constant change. Several such changes in 2005–06 affect the work of the Ombudsman.

Review of Commonwealth Ombudsman legislation

Work continued on the review, initiated in 2003–04, of the *Ombudsman Act 1976*. The review is looking at ways to improve and modernise the legislative framework for the office, with a view to putting proposals to government for the enactment of a new Ombudsman Act.

Changes made to the Ombudsman Act in 2005 relate to jurisdiction over Commonwealth contractors, disclosure of documents to the Ombudsman, and oversight of law enforcement and the postal industry. Those changes picked up some of the issues that had earlier been identified in the review of the Ombudsman Act. The Ombudsman's report to the Prime Minister in January 2006 made further recommendations for improving and simplifying the framework for administrative investigation in the Act, and addressing some of the difficult interpretation and jurisdictional issues that can hinder efficient investigation. We expect to receive a response to our report following the government's consultations in early 2006–07.

Immigration Ombudsman

In June 2005, Parliament enacted amendments to the *Migration Act 1958* that give the Ombudsman a new statutory role of reviewing the cases of persons held in immigration detention for more than two years (cumulative); a follow-up review is

conducted every six months if a person remains in detention. This statutory reporting role enhances the capacity of the office to oversight the administration of important and sensitive legislation that can have a major impact on people's lives.

In July 2005, a report from an independent inquiry conducted by Mr Mick Palmer into the immigration detention of Ms Cornelia Rau was followed by an intense public and political focus on immigration issues. Arising from this report, the government enhanced the role of the Commonwealth Ombudsman in immigration matters. The government amended the Ombudsman Act to confer the title of Immigration Ombudsman; provided the office with supplementary funding; and gave the Ombudsman the added responsibility of investigating over 200 cases referred by the Minister for Immigration and Multicultural Affairs of Australian citizens or other people lawfully in Australia who had been in immigration detention or may have been removed from Australia. See the 'Looking at the agencies—Immigration' section of Chapter 7 for information on immigration-related matters.

Postal Industry Ombudsman

Parliament passed legislation to establish the office of Postal Industry Ombudsman (PIO) in April 2006. The legislation confers the title of Postal Industry Ombudsman on the Commonwealth Ombudsman. The jurisdiction of the PIO extends to private sector

postal operators who register to participate in the scheme. The PIO has the normal powers of an ombudsman to require information or documents and to publish findings. The PIO is required by the Ombudsman Act to observe procedural fairness in investigations.

During the year, we set up the framework for handling PIO complaints. The PIO scheme will begin by 6 October 2006, when regulations setting out how to calculate investigation fees have been finalised.

Law Enforcement Ombudsman

In June 2006, the Australian Parliament enacted major reforms to the AFP complaint-handling system, which also reforms the Ombudsman's current role in overseeing complaints about the alleged conduct of AFP members. These reforms are contained in the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*, which is awaiting proclamation.

The proposals contained in the Act are based on the findings of a review of AFP professional standards conducted by Justice William Fisher AO, QC, in 2003 (the Fisher review). The Fisher review recommended that the AFP adopt a managerial model, or administrative approach, in dealing with professional standards issues, with a greater emphasis on managing performance and changing poor behaviour.

The Act designates the Commonwealth Ombudsman as the Law Enforcement Ombudsman. In that role the office will oversee complaint handling and conduct issues in the AFP as well as investigating more serious conduct issues. During the year, we made changes to our complaints management system and adapted work practices to meet the changing role of the Ombudsman in handling complaints about the AFP.

INTERNATIONAL COOPERATION

The Ombudsman's international program continued to expand during the year. Funding from Australian Agency for International Development (AusAID) programs supported our international activities to facilitate the exchange of specialist advice, training, technical assistance and support to the



Commonwealth Ombudsman, John McMillan (second from left) with the Samoan Ombudsman, Maiava Toma, the Chief Ombudsman of Papua New Guinea, Ila Geno, and the Fijian Ombudsman, Walter Rigamoto, in Canberra, August 2005.

National Ombudsman Commission of Indonesia, the Thailand Ombudsman, and the ombudsmen in the Cook Islands, Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

During the year, ombudsmen from Fiji, Papua New Guinea and Samoa visited our Canberra office, providing a valuable opportunity to exchange knowledge and ideas.

The Commonwealth Ombudsman's office is well placed to continue to play a key supporting role in developing and enhancing ombudsman offices throughout the Asia-Pacific region.

KEY STRATEGIC ACHIEVEMENTS

Achievements for 2005–06 include the following.

- We received 28,227 approaches and complaints, finalised 17,508 complaint issues, and handled 10,843 approaches related to out of jurisdiction matters and requests for information.
- We completed seven own motion and major investigations, which contained a total of 51 individual agency recommendations—agencies accepted 49 of the 51 recommendations.
- We rolled out a new complaints management system, supported by new work practices on the conduct of investigations, a comprehensive online work practice manual, and training for staff.

- We established the Public Contact Team to receive and assess all telephone approaches to the office, to enhance overall performance and ensure consistency at a national level.
- We developed and implemented policies and procedures for our enhanced role and responsibilities in immigration oversight.
- We established improved oversight of the use of surveillance devices.
- We conducted a five-day Advanced Investigation Course, with Ombudsman staff, representatives from other government agencies, and AusAID-sponsored participants from the Thailand Ombudsman's office attending the course.
- In conjunction with the Merit Protection Commissioner, we surveyed 140 Australian Government agencies on their practices and procedures in relation to whistleblowers, and commenced a survey of approximately 6,000 employees in 30 selected agencies.
- We conducted 104 outreach activities, which together covered all states and territories.
- We commissioned a market research company to conduct a public awareness benchmark survey, which showed that 74% of rural and regional Australians recognise the Commonwealth Ombudsman as a complaint resolution agency.
- We launched a new internet site with a web content management system framework and an

enhanced search facility. We improved content and added features, including an improved online complaint form.

- We hosted several senior-level delegations from other countries, including from Bangladesh, Canada, China, India, Indonesia, Korea, Laos, Malaysia, Taiwan and Vietnam in addition to major international cooperation activities.
- We successfully negotiated a new three-year certified agreement that was endorsed by all of the 91% of staff who voted.
- The Ombudsman and staff delivered over 45 papers and made presentations at conferences and seminars held around Australia.

CHALLENGES

The office also faced major challenges, some of a continuing nature, including:

- maintaining an effective national office structure that integrates the work of all staff in a consistent manner
- maintaining the traditions and stability of the office, while responding to increases in the size and functions of the office
- balancing the urgent and immediate pressures of resolving individual complaints with the broader gains achievable by careful targeting of major and systemic issues in own motion and major investigations.



Participants in the Ombudsman's Advanced Investigation Course, August 2005.

THE YEAR AHEAD

In the coming year, the Ombudsman's office aims to:

- consolidate the office's work practice changes introduced in 2005–06
- increase the emphasis on timeliness, quality assurance and consistency in complaint handling
- exploit the efficiencies of our new complaints management system and work practices to target review of selected categories of administrative decisions in key agencies
- establish an inspections and monitoring function to oversee DIMA's compliance activities, including its use of search and entry powers and removal operations
- pursue the review of the *Ombudsman Act 1976* to establish a modernised framework for administrative investigation
- commence operation of the Postal Industry Ombudsman scheme
- implement changes to manage AFP complaints in line with the reforms contained in the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*
- implement strategies to deal more effectively with persistent complainants to the office
- implement a redeveloped intranet site for the office
- continue to build the profile of the office and to develop the office's outreach program to rural and regional Australia.

public contact—consistency in approach

We established the Public Contact Team (PCT) in February 2006 to provide a responsive service to telephone complaints to the office. The PCT is located in our Canberra office and handles the majority of telephone contacts the office receives from across Australia.

Close to one third of the calls to the office are outside the Commonwealth Ombudsman's jurisdiction; PCT members advise callers on where to take up those complaints. PCT members advise many other callers on how to make a complaint in the first instance to the agency they are complaining about, and make a preliminary assessment of other calls to gauge if an Ombudsman investigation is warranted. When complaints require more expert analysis or sustained investigation, they refer them to the most appropriate investigation officer in a specialist team or in one of our state or territory offices.

Since its establishment, PCT members have dealt with over 24,000 telephone calls. Many benefits have flowed from centralising the management of approaches to the office through the PCT. Less complex enquiries are handled more efficiently; there is more consistency in responding to calls and in entering data into the office's complaints management system; emerging problem areas in government administration are easier to detect; and investigation officers have more time for specialised investigation.

Recently the PCT began dealing with email enquiries and complaints submitted using our on-line complaint form. Over the coming year, the team will take over the initial handling of all written approaches to the office.

HISTORY AND ESTABLISHMENT

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

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

- complaints about the Australian Federal Police—1981
- complaints about freedom of information—1982
- Defence Force Ombudsman role—1983
- compliance auditing of AFP and National Crime Authority (now Australian Crime Commission) telecommunications intercept records—1988, with added responsibilities of monitoring controlled operations in 2001 and auditing surveillance device records in 2004
- Australian Capital Territory Ombudsman—1989
- Special Tax Adviser function—1995
- assessing and reporting on the detention of long-term (two years or more) immigration detainees—2005
- Immigration Ombudsman role—2005
- Commonwealth service providers—2005
- Postal Industry Ombudsman role—2006
- Law Enforcement Ombudsman role—2006.

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

'The Commonwealth Ombudsman exists to ... ensure that administrative action by Australian Government agencies is fair and accountable.'

The complaint and own motion investigation roles of the Ombudsman are the more traditional ombudsman roles that constitute the bulk of the work of the office. The guiding principle in an ombudsman investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient, or

otherwise wrong. At the conclusion of the investigation, the Ombudsman can recommend that an agency take corrective action. This occurs either specifically in an individual case or generally by a change to relevant legislation, administrative policies or procedures.

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

The role of the Commonwealth Ombudsman is principally performed under the *Ombudsman Act 1976* (Cth) (Ombudsman Act), the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act) and the *Ombudsman Act 1989* (ACT).

The Commonwealth Ombudsman can consider complaints about almost all Australian Government departments and agencies and most contractors delivering government services to the community.

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

- **Defence Force Ombudsman**—handling grievances lodged by serving and former members of the Australian Defence Force
- **Immigration Ombudsman**—handling complaints about the Department of Immigration and Multicultural Affairs
- **Postal Industry Ombudsman**—handling complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme
- **Taxation Ombudsman**—handling complaints about the Australian Taxation Office.

Other specialist roles relate to:

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

Reforms to the AFP complaint-handling system, which change the Ombudsman's current role, are contained in the *Law Enforcement (AFP Professional Standards and Related Measures)*

Act 2006, which is awaiting proclamation. The Act designates the Commonwealth Ombudsman as the Law Enforcement Ombudsman.

- **ACT Ombudsman**—the Commonwealth Ombudsman is also the ACT Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). The role of ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT), and is funded in accordance with a memorandum of understanding 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



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

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

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

The office comprises a range of functional elements:

- central office functions and responsibilities (including human resources, information technology, financial services, records management and public affairs) and the principal specialist teams are based in the national office in Canberra
- offices throughout Australia handle complaints and undertake some specialist work. A Senior Assistant Ombudsman supervises the state and territory offices, and complaint handling relating to the ACT Ombudsman function.

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

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

OUTCOME AND OUTPUT STRUCTURE

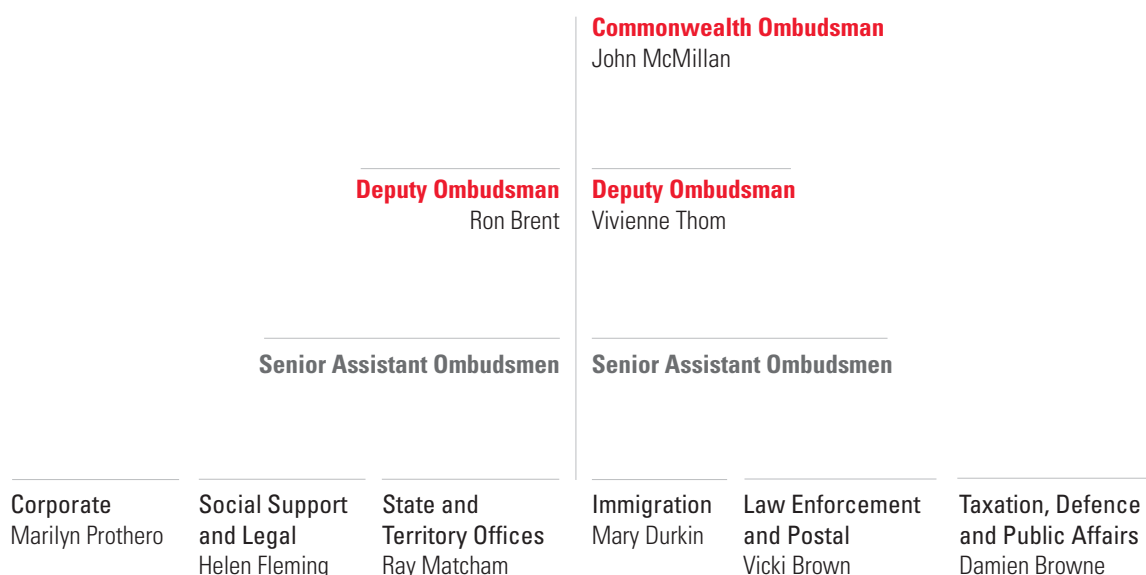
Our strategic plan provides broad direction for our work and the Portfolio Budget Statements define one central outcome for the office, supported by two outputs.

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

- review of administrative action
- review of statutory compliance in specified areas.

Details of the Commonwealth Ombudsman's achievement of the outcome and outputs are in Chapter 3—Performance Report.

FIGURE 2.1 COMMONWEALTH OMBUDSMAN ORGANISATIONAL STRUCTURE AT 30 JUNE 2006



ANZOA—cooperation among Australian and New Zealand Ombudsmen

The Australian and New Zealand Ombudsman Association (ANZOA) provides a forum for ombudsmen from both countries to consult about issues of common interest and to develop joint research projects.

Industry-based ombudsmen in Australia and New Zealand, in the banking, finance, insurance, telecommunications and energy sectors, formed ANZOA. Membership later expanded to include the Commonwealth and some State Ombudsmen. The Commonwealth Ombudsman is a member of the Executive Committee of ANZOA.

During 2005–06, ANZOA members collaborated on a number of projects, including identifying and addressing systemic issues; external review of ombudsman schemes; internal review of complaint handling by ombudsmen; benchmarking of workloads and efficiency measures; statistical significance of scheme data; public awareness campaigns; and the use of the term ‘ombudsman’.

Our office participated in a joint ANZOA campaign by eleven ombudsman offices to provide targeted information to young people about ombudsman services. A postcard promoting the fact that everyone has a right to complain was distributed in education venues, galleries and museums, and cafes and restaurants across Australia.

Planning is underway for an ANZOA conference on complaint handling and investigation in late 2007.

ANZOA released a website in 2005, providing information on the association’s activities, alternative dispute resolution, and links to members’ websites—see www.anzoa.com.au.

performance review

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This chapter details the performance of the office based on the outcome and outputs structure set out in the Portfolio Budget Statements and Portfolio Additional Estimates Statements 2005–06.

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

Outcome: Administrative action by Australian government agencies is fair and accountable

Output 1: Review of administrative action

Output 2: Review of statutory compliance in specified areas.

Our original price of outputs of \$12.495 million was increased at Portfolio Additional Estimates. An additional \$5.592 million was allocated to allow our office to perform specific reviews relating to immigration detention decisions.

This chapter outlines our achievements against the outputs and broadly explains the ways in which we continue to work towards the outcome.

PERFORMANCE AT A GLANCE

TABLE 3.1 SUMMARY OF OUTCOME AND OUTPUTS PRICE

Budgeted price of outputs	\$18.087 m
Actual price of outputs	\$18.384 m
Budgeted departmental appropriations	\$17.035 m
Actual departmental appropriations	\$17.035 m
Budgeted revenue from other sources	\$1.052 m
Actual revenue from other sources	\$1.349 m

A financial overview is provided in Chapter 4—Management and accountability. Full details of the total price of agency outputs of the Ombudsman's office are provided in Note 16 of the Financial Statements in this report.

TABLE 3.2 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE

OUTPUT 1 REVIEW OF ADMINISTRATIVE ACTION

QUALITY AND QUANTITY MEASURES	PERFORMANCE
Quality Inquiries, approaches and investigated complaints meet service standards	Achievement 80% of all approaches and complaints finalised within one month and 93% finalised within three months. 54% of investigated approaches and complaints finalised within one month and 81% within three months.
Quality An assessment of feedback received from the public	Achievement Finalised 129 internal reviews at request of complainants; the original decision affirmed in 85% of those reviews. Implemented initiatives to improve the quality and timeliness of the service provided to both complainants and agencies, including new work practices, a new complaints management system and the formation of the Public Contact Team.

TABLE 3.2 SUMMARY OF OUTCOME AND OUTPUTS PERFORMANCE (cont'd)**OUTPUT 1** REVIEW OF ADMINISTRATIVE ACTION (cont'd)

QUALITY AND QUANTITY MEASURES	PERFORMANCE
Quality Response to advice, submissions, services, findings and recommendations by government agencies and other organisations Agency satisfaction with the quality of services/acceptance of findings and recommendations	Achievement The Minister for Immigration and Multicultural Affairs tabled in Parliament 66 reports on the Ombudsman's reviews into the circumstances of people who had been in detention for two years or more. Seven own motion and major investigations conducted and reports publicly released. The reports contained 51 individual agency recommendations; all except two recommendations accepted by agencies.
Quantity Number and complexity of complaints/issues received and investigated	Achievement 17,384 approaches within our jurisdiction (17,310 in 2004–05); 17,508 approach issues finalised, and 6,176 issues investigated and finalised (18,939 and 6,198, respectively, in 2004–05).
Quantity Number of inquiries and approaches received	Achievement Of the total 28,227 inquiries and approaches received, 10,843 inquiries and approaches largely consisted of matters outside of our jurisdiction or requests for information (12,013 in 2004–05).
Quantity Number of outreach activities	Achievement 104 outreach activities conducted, involving each state and territory (65 in 2004–05). We continued work on our international program with ombudsmen offices in the Asia–Pacific region.
Quantity Number of submissions to government	Achievement Eleven submissions on issues relevant to the Commonwealth Ombudsman's office.

OUTPUT 2 REVIEW OF STATUTORY COMPLIANCE IN SPECIFIED AREAS

QUALITY AND QUANTITY MEASURES	PERFORMANCE
Quality Timely completion of the inspecting/reporting schedule	Achievement All inspections completed according to the statutory inspection schedule.
Quality Government and agency acceptance of and satisfaction with the quality and relevance of inspection findings and recommendations	Achievement Law enforcement agencies accepted all of our recommendations arising out of our inspection role.
Quantity Number of inspections completed by category	Achievement We inspected the records of the Australian Federal Police on eight occasions, the Australian Crime Commission on six occasions and the Building Industry Taskforce on one occasion.

OUTPUT 1—REVIEW OF ADMINISTRATIVE ACTION

1.1—Inquiries, approaches and investigated complaints meet service standards

In the past two years, we have reviewed our internal complaint-handling processes and implemented a new complaints management system that adds rigour and increases national consistency in our work practices. Our new procedures include a five-tiered structure for categorising and responding to complaints, based on the type of approach, the degree of effort required to resolve a complaint, and any potential sensitivities. The procedures also require that approaches and complaints in particular categories be reviewed for quality assurance purposes.

This more structured approach will provide additional assurance to government and the public that we handle approaches and complaints efficiently and consistently, and that we have appropriate levels of quality assurance. The structure also delineates a clear review path for complainants dissatisfied with decisions made by our staff.

Timeliness

In 2005–06, we finalised 80% of all approaches and complaints within one month of receipt (in line with previous years), and finalised 54% of investigated approaches and complaints within one month (65% in 2004–05).

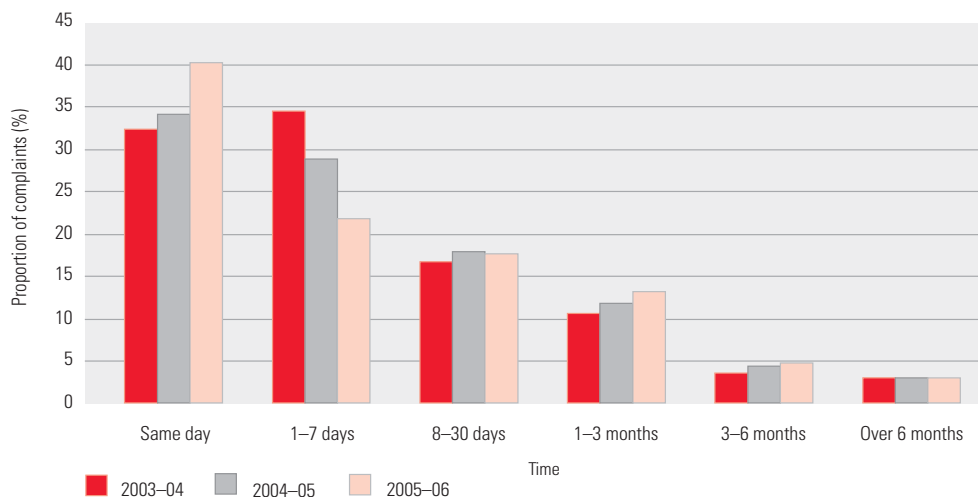
Data from our complaints management system is used to monitor response times by the office and to identify delays in complaint investigation. With many of the complaints we investigate we need to factor in the time that it takes an agency to provide us with information.

The *Complaints (Australian Federal Police) Act 1981* establishes different complaint-handling procedures for complaints about the Australian Federal Police (AFP). The majority of investigations and conciliations of complaints are first conducted by AFP Professional Standards, followed with a review by our office. This is necessarily a longer process than for the handling of general complaints, with 87% of all complaints finalised within six months of receipt (83% last year). We expect to reduce the time taken to resolve complaints about the AFP as a result of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*, which is awaiting proclamation. See the 'Looking at the agencies—Law enforcement' section of Chapter 7 for further information.

The Ombudsman has reported in detail about timeliness in the handling of complaints about ACT Government agencies and community policing in a separate report as ACT Ombudsman. This report is available at www.ombudsman.act.gov.au.

Figure 3.1 shows the time taken to finalise approaches and complaints for the past three financial years.

FIGURE 3.1 TIME TAKEN TO FINALISE ALL APPROACHES AND COMPLAINTS, 2003–04 TO 2005–06



Remedies

As in previous years, the most common remedy for complaints was the provision of a detailed explanation by an agency of its decision or action. This was particularly the case in complaints about police, and reflected the ongoing commitment of the AFP to conciliation of less serious matters.

A remedy was provided in 19% of complaint issues investigated and finalised (22% in 2004–05). A breakdown of remedies is provided in Appendix 4—Statistics.

1.2—Assessment of feedback received from the public

In 2005–06, we implemented several initiatives to improve the quality and timeliness of the service we provide to both complainants and agencies. The initiatives include:

- creating the Public Contact Team, to provide a responsive service to callers who need to be referred to an agency in the first instance, and to ensure that matters needing investigation are appropriately referred to an investigation officer
- putting in place new work practices, supported by a comprehensive work practice manual and the Professional Standards Team, to ensure that we continue to provide timely and effective service



Members of the Public Contact Team at work.

- setting up a new complaints management system that enables us to identify complaint trends and workload shifts more quickly and to provide support for our new five-tiered complaint management structure.

We took many of these steps because of survey feedback from the public and unsolicited feedback from both agencies and individuals. Being responsive to public comment about our service, we created mechanisms to mandate and communicate best practice throughout our national office structure. The tiered structure for complaint management ensures that the office deals appropriately with any feedback about our service.

'... creating the Public Contact Team ... putting in place new work practices ... setting up a new complaints management system ...'

We apply the same principle to our own operations that we promote to other Australian Government agencies: specifically, if a person is not satisfied with the way in which an investigation has been handled they can follow a clear procedure to seek an internal review of the matter.

Our Client Service Charter sets out the internal review process we offer to complainants. A more senior officer who was not directly involved in handling the original complaint carries out each internal review.

We received 96 requests for internal review, a 26% decrease on the number of requests received in 2004–05. We finalised 129 reviews during the year, including 33 that had been carried over from 2004–05 (Table 3.3). The original outcome was affirmed in 110 finalised reviews (85%). The office agreed to conduct additional investigation in 14 reviews and agreed to change its decision on the original complaint in five reviews.

Of the 129 reviews conducted, 92% related to decisions or actions of an officer in the course of complaint investigations. Complainants sought reviews mainly because they believed the decision we made or the advice we offered was wrong or that we failed to address or misunderstood the complaint issue.

TABLE 3.3 INTERNAL REVIEW OF OMBUDSMAN ACTION, REQUESTS AND DECISIONS, 2005–06

Complainant's reason for seeking review		Outcome affirmed	Outcome varied	Further investigation	Total
Decision/action	Bias	1			1
	Failed to address issue	21	1	6	28
	Misunderstood issue	9		2	11
	Other	5			5
	Wrong	66	3	5	74
Advice	Failed to provide		1		1
	Other	1			1
Behaviour	Harassment	1			1
Practice and procedures	Inadequate	2		1	3
Timeliness	Delay	1			1
Other		3			3
Total		110	5	14	129

1.3—Response to advice, submissions, services, findings and recommendations by government agencies and other organisations.

1.4—Agency satisfaction with the quality of services/acceptance of findings and recommendations.

This year, the Ombudsman released public reports on seven own motion and major investigations. The reports contained a total of 51 individual agency recommendations—agencies accepted 49 of the 51 recommendations.

- September 2005—*Department of Immigration and Multicultural Affairs: inquiry into the circumstances of the Vivian Alvarez matter.*
- October 2005—*Australian Defence Force: management of service personnel under the age of 18 years.* The ADF did not support the recommendation that it undertake an analysis of the costs and benefits of accepting minors for enlistment in the ADF with a view to determining whether the enlistment age should be raised to 18 years.

- February 2006—*Department of Immigration and Multicultural Affairs: administration of s 501 of the Migration Act 1958 as it applies to long-term permanent residents.* DIMA did not support one of the recommendations, as it was considered to be a matter for the Australian Government.
- March 2006—*Administration of the Freedom of Information Act 1982 in Australian Government agencies.*
- March 2006—*Australian Taxation Office: administration of the superannuation co-contribution scheme.*
- March 2006—*Department of Immigration and Multicultural Affairs: report on referred immigration cases: Mr T.*
- April 2006—*Department of Immigration and Multicultural Affairs: management of a frail, aged visitor to Australia.*

Two indications of a high degree of satisfaction with our capacity to conduct thorough, rigorous and fair investigations are that agencies accepted the overwhelming majority of the Ombudsman's recommendations and that several of these investigations were conducted at the request of the Australian Government or the relevant department.

Several current own motion investigations that will be completed in 2006–07 include investigations into:

- issues relating to the implementation of the marriage-like relationship policy
- the administration of the pension bonus scheme
- complaint-handling procedures available in airports
- the management of complaints about unacceptable behaviour in the ADF
- the complaint-handling process of the Migration Agents Registration Authority
- the quality of the notification of reasons by DIMA for decisions and review rights for refused visa applicants.

In June 2005, the Australian Parliament amended the *Migration Act 1958* to confer on the Ombudsman a new role of reviewing the cases of people who had been in immigration detention for two years or more. At the end of June 2006, we had received 235 reports from DIMA concerning 262 people who had been in detention for two years or more. We had interviewed 167 people and provided reports on 70 cases. The minister had tabled responses to 66 of those reports in parliament.

Of the 106 recommendations contained in these 66 reports, the minister agreed to 51% of the recommendations, disagreed with 25% and delayed making a decision on a further 24%. Of the reports where the minister disagreed with the Ombudsman's recommendations, 46% concerned the grant of a bridging visa and 42% concerned the Ombudsman's recommendation that the minister make a decision before tabling the report in parliament. The remaining 12% involved consideration of an alternative to detention, the issue of a permanent visa or the revocation of a decision to cancel a visa.

See the 'Looking at the agencies—Immigration' section in Chapter 7 for further information on immigration-related matters.

1.5—Number and complexity of complaints/issues received and investigated and number of enquiries and approaches received.

Approaches and complaints received

In 2005–06, we received 28,227 approaches and complaints, 17,384 of which were within the Ombudsman's jurisdiction (17,310 in 2004–05).

Approaches to the office ranged from simple contacts that could be resolved quickly, through to more complex cases that required 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:

- need to gain access to agency records by a formal statutory notice
- complexity or seriousness of the issue under investigation
- nature of the allegations made by a complainant
- time taken by an agency to respond to our requests for information
- likely effect on other people of the issues raised by the complainant.

In addition to the 17,384 approaches about particular agencies within our jurisdiction, we also dealt with approaches about matters outside our jurisdiction or requests for information. We received 10,843 of these approaches (12,013 in 2004–05). While it is difficult to attribute this decrease to a specific reason, two possible factors are greater public awareness of the complaint mechanisms available within agencies, and increased public awareness of the role of the Ombudsman because of outreach activities undertaken by the office.

This year, 2,046 approaches and complaints were lodged electronically, an increase of 43% from 2004–05. We have helped people lodge complaints electronically by improving our online complaint form on our website. The new form provides information at each step of the process to help complainants to complete the form and to determine whether their complaint is within our jurisdiction.

There was a decrease of 15% in the number of approaches and complaints lodged in person and an increase of 3% in the number of written approaches. Table 3.4 details approaches by method received.

TABLE 3.4 APPROACHES AND COMPLAINTS, BY METHOD RECEIVED, 2003–04 TO 2005–06

Year	Telephone	Written	In person	Electronic	AFP ¹	Total
2005–06	22,897	2,383	528	2,046	373	28,227
2004–05	24,561	2,323	623	1,429	387	29,323
2003–04	21,681	2,638	460	1,343	410	26,532

¹ The AFP's Professional Standards team notifies the Ombudsman about complaints it receives for Ombudsman staff to oversee the AFP's complaint-handling process.

In February 2006, we created the Public Contact Team to manage all initial approaches to the office. This team of 12 people provides a national contact point for all telephone approaches and responds to all electronically lodged complaints. The members of the team enter the details of the complaint on the complaints management system and assign the complaint to the most appropriate investigation officer. Where necessary, they explain the limits of the Ombudsman's jurisdiction and refer the person to a more appropriate agency. Between February 2006 and 30 June 2006, the team handled 24,235 telephone calls.

Approaches and complaints by agency

Of the 17,384 approaches and complaints received within the Ombudsman's jurisdiction, 12,990 (75%) were about Australia Post, the Australian Taxation Office, Centrelink, the Child Support Agency, and the Department of Immigration and Multicultural Affairs.

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

Approaches and complaints finalised and investigated

We finalised 16,507 approaches and complaints within our jurisdiction (17,441 in 2004–05).

Approaches and complaints made to the Ombudsman often include several issues. For example, a complainant may allege not only that a decision was substantively wrong, but also that the agency failed to provide accurate advice, was unreasonably slow, or that the staff of the agency displayed an inappropriate attitude. Similarly, different issues within the same complaint may result in different actions by the Ombudsman's

office. In this example, the office may suggest that the complainant pursue internal review mechanisms with respect to the agency's substantive decision, but may investigate the issues around delay and service delivery. It is for this reason that we also report on complaint issues finalised by the office.

In 2005–06, 17,508 issues were finalised. Of the issues finalised, we investigated 35% (33% in 2004–05). The remaining complaint issues were usually finalised by referring the complainant to the internal complaint processes of the agency, or deciding that investigation of the issue was not warranted.

Of the issues investigated and finalised, some agency error or deficiency was identified in 1% of complaints (14% last year). No error or deficiency was identified in 11% of instances (43% last year). In the remaining 88% of issues investigated, we resolved complaints without the need to determine whether the cause of the problem related to administrative deficiency, and made no determination about the agency's performance.

This reflects our office's new emphasis on working to resolve a complaint efficiently by identifying a practical solution or remedy that assists the complainant. Often we can do this without determining that an agency acted correctly or that there was an administrative deficiency in its conduct. The new approach also acknowledges that most complaints are resolved through the cooperation and responsiveness of agencies, without the need for any formal expression of critical views.

As a result of this shift, we recorded administrative deficiency as an outcome of an investigation only after a rigorous internal process, involving sign-off at the Senior Assistant Ombudsman level or above,

and some contact with the agency. We found administrative deficiency in 228 matters this year.

We will review our policy on administrative deficiency during 2006–07 and consider whether a shift away from recording cases of administrative deficiency would deny agencies and the public some formal feedback on complaint trends and outcomes.

Causes of complaint

Following an established trend, the majority (58%) of the complaint issues finalised by the Ombudsman's office under the *Ombudsman Act 1976* this year related to the correctness or propriety of a decision or action of an agency. The remainder of the complaint issues finalised were about procedural matters, such as the accuracy or completeness of advice given by agencies (10%), the timeliness of agency action (8%), the application of a policy to the complainant's circumstances (6%), or the conduct of officers in agencies (5%).

Of the complaint issues finalised about the AFP under the *Complaints (Australian Federal Police) Act 1981*, 36% related to the alleged conduct of AFP members, including complaints about harassment, attitude, incivility and bias. A further 29% arose from police decisions or actions.

Decisions not to investigate

The Ombudsman has a range of discretionary powers not to investigate matters in particular circumstances. The most common reason we decide not to investigate is because the complainant has not raised their complaint with the agency. Both the complainant and the agency can benefit from this approach.

Many agencies have given attention in recent years to the effectiveness of their internal complaint-handling mechanisms, and have appropriate procedures in place to respond to dissatisfied clients. The Ombudsman is more likely to accept a complaint without the matter first being handled by the agency in the following circumstances: the relationship between the person and the agency is difficult; the person is unable effectively to manage their own complaint, whether because of agency resistance or the person's inability to articulate their

problem; or it is doubtful that the complaint will be handled adequately by the agency, whether because of the nature of the complaint or the effectiveness of the agency complaint mechanism.

Complaints carried forward

The total number of complaints carried forward (past 30 June 2006) was 1,298, compared to 1,137 at 30 June 2005, a 14% increase. This backlog occurred because the complaints are complex and take longer to investigate.

1.6—Number of outreach activities

The two components of our outreach program this year were to raise public awareness of our role and to contribute to developing the role of ombudsmen in the Asia-Pacific region.



Raising public awareness

In March 2006, we commissioned a market research company to conduct a public awareness benchmark survey. The survey explored the level of knowledge of the role of the Ombudsman's office among rural and regional Australians, as well as the depth of understanding of our role held by rural and regional community leaders. The general community was contacted by telephone and asked a series of questions testing the person's

awareness and understanding of our role. A small number of in-depth interviews were held with community leaders.

Community leaders demonstrated both an awareness and understanding of the role of the Commonwealth Ombudsman. Although only a few community leaders had contacted our office, the group stated that they believed the office was accessible and responsive. The survey also showed that nearly three-quarters of rural and regional Australians recognised the Commonwealth Ombudsman as a complaint-resolution agency when prompted, although that number was much smaller when unprompted.

The market research report was finalised in June 2006, and we are considering strategies to respond to the findings and suggestions in the report.

We conducted 104 outreach activities during the year, which together covered all states and territories. Members of staff attended presentation skills training in order to better represent the office at outreach activities.

In November 2005, we established an Indigenous Working Group to consider the best way of communicating with, and providing service to, Indigenous Australians. We also focused on establishing closer ties with multicultural organisations, in our expanded role as Immigration Ombudsman. We held the first of a planned series of seminars for federal members of parliament and electorate staff in June 2006.

We reviewed and improved our website to increase our accessibility to the public, and refined our online complaints form to make it easier for people to contact us to make a complaint.

Role of the Ombudsman in the region

This year we have been involved in strengthening mutual support among ombudsmen in our region. Key geographic areas for our international program have been two South-East Asian neighbours, Indonesia and Thailand, and countries in the South Pacific, including Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu and the Cook Islands. The Australian Agency for International Development provided funding for these activities.

Further details about our international program are in Chapter 6—Promoting good administration.

1.7—Number of submissions to government

During the year we made 11 submissions to government on a range of issues including:

- Australia's extradition regime (Attorney-General's Department review)
- 'Certain Taxation Matters' within Australia (Joint Committee of Public Accounts and Audit Inquiry)
- administration and operation of the *Migration Act 1958* (Senate Legal and Constitutional References Committee)
- Anti-Terrorism (No 2) Bill 2005 (a joint submission by the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security to the Senate Legal and Constitutional Legislation Committee)
- provisions of the Telecommunications (Interception) Amendment Bill 2006 (Senate Legal and Constitutional Legislation Committee)
- provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential and Transitional Provisions) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 (Senate Legal and Constitutional Legislation Committee)
- mental health (an oral submission to the Senate Select Committee on Mental Health)
- Australian Crime Commission (an oral submission to the Parliamentary Joint Committee on the Australian Crime Commission)
- reforms to Australia's military justice system (Senate Foreign Affairs, Defence and Trade Legislation Committee)
- Draft Performance Audit Work Program for 2006–07 (Australian National Audit Office)
- Work Program for Reviews for 2006 (Inspector-General of Taxation).

OUTPUT 2—REVIEW OF STATUTORY COMPLIANCE IN SPECIFIED AREAS

2.1—Timely completion of the inspecting and reporting schedule

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

2.3—Number of inspections completed by category

The Ombudsman is required by three Acts to inspect the records of the AFP and the ACC: the *Telecommunications (Interception and Access) Act 1979* (TI Act), the *Surveillance Devices Act 2004*, and the *Crimes Act 1914*. It is our practice to make a report to each agency on the outcome of each inspection. These reports make recommendations to improve compliance where appropriate. We encourage agencies to comment on draft reports and recommendations before they are finalised.

All of the Ombudsman's recommendations in reports following finalisation of inspections in 2005–06 were accepted by the AFP and the ACC.

We inspected the records of the AFP on eight occasions, the ACC on six occasions, and the Building Industry Taskforce on one occasion.

Telecommunications interception records

Under the TI Act, the Ombudsman has to inspect the records of the AFP and the ACC to ensure they conduct telecommunications interception activities in accordance with the Act.

The AFP and ACC regularly liaise with Ombudsman staff on current and emerging issues that have been noted in the inspections. We also discuss how we expect AFP and ACC staff to administer telecommunication interception warrants.

In 2005–06, we carried out two inspections of the AFP and two inspections of the ACC. These

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

The TI Act also requires the Ombudsman to report to the minister 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, we provided reports to the minister on each agency within the nominated timeframe.

Surveillance device records

We carried out two inspections of the records of the AFP and the ACC during the year. As the *Surveillance Devices Act 2004* commenced only in December 2004, we also informally inspected the AFP's records to give feedback on their compliance with the legislation before the first formal inspection.

Controlled operations records

In 2005–06, we inspected the controlled operations records of the AFP and the ACC on two occasions. In addition, we conducted a separate inspection of the records relating to the AFP's annual report.

In November 2005, a report on the outcome of inspections for 2004–05 was provided to the Speaker of the House of Representatives and the President of the Senate as required by Part IAB of the *Crimes Act 1914*.

Building industry taskforce records

Section 88AI of the *Workplace Relations Act 1996* expanded the Ombudsman's role to include a review of the use of some coercive powers by the Secretary of the Department of Employment and Workplace Relations and his delegate, the Director of the Building Industry Taskforce.

During the year, we developed an inspection methodology and Ombudsman staff inspected the relevant taskforce records for the 12 months ending 12 January 2006. A report will be tabled in parliament when the review is finalised in 2006–07.

international program—Indonesia and Thailand regional cooperation

Ombudsman offices are now established in over 100 countries, having crossed political, cultural and language barriers. There is close international cooperation between those offices to promote good governance principles. In that spirit, the Commonwealth Ombudsman worked closely with the Ombudsmen of Indonesia and Thailand on several activities and visited both offices in 2005–06.

One activity was a 10-day information technology (IT) workshop in Canberra for Indonesian and Thai officers. Our IT staff provided specialist sessions, and a facilitator helped participants to convert the information into a format adapted to the language, culture, enabling legislation and operating systems of their individual offices.

With the NSW Ombudsman's office, we conducted a 10-day 'Train the Trainer' course for Thai Ombudsman staff. By the end of the course, Thai staff had produced documents in the Thai language that were culturally appropriate and consistent with the Thai Ombudsman legislation for their own in-house investigation training.

Thai Ombudsman staff also completed the Commonwealth Ombudsman Advanced Investigation Course, and participated in a number of outreach activities to familiarise themselves with different outreach approaches for community and business groups and politicians.

Activities conducted with the National Ombudsman Commission of Indonesia focused on decentralising complaint services in Indonesia to promote community awareness of the ombudsman role. During 2005–06, in collaboration with the Western Australian and New South Wales State Ombudsmen, we planned a multi-year program to further support decentralised ombudsman services and to strengthen core ombudsman functions in Jakarta.

CORPORATE GOVERNANCE

Senior executive and responsibilities

The Governor-General appointed Prof. John McMillan as Commonwealth Ombudsman in May 2003 and Mr Ron Brent as Deputy Ombudsman in June 2003. During 2005–06, a second Deputy Ombudsman position was created. Dr Vivienne Thom was appointed to the position in March 2006 for a five-year period. 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 organisational structure was further modified in June 2006, when a new Senior Assistant Ombudsman was appointed to manage the office's human resources, financial management, records management, information technology and professional standards teams.

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 2006, the office's senior management team and their areas of responsibility are:

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

- Corporate—Ms Marilyn Prothero, Senior Assistant Ombudsman and Chief Finance Officer
 - corporate services comprising finance, human resources and records management
 - information technology and communications infrastructure
 - professional standards and special projects.



Executive and Senior Management Team (standing from left) Marilyn Prothero, Damien Browne, Mary Durkin, Ray Matcham; and (sitting from left) Vicki Brown, Ron Brent (Deputy Ombudsman), John McMillan (Commonwealth Ombudsman), Vivienne Thom (Deputy Ombudsman), Helen Fleming.

- Social Support and Legal—Ms Helen Fleming, Senior Assistant Ombudsman
 - specialised advice and complaint handling relating to the Department of Human Services (including Centrelink and the Child Support Agency) and relevant policy departments.
 - in-house legal advice and policy service to support staff in performing their functions.
- State and Territory Offices—Mr Ray Matcham, Senior Assistant Ombudsman
 - management and oversight of state and territory offices (Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney), which handle complaints and undertake some specialist work
 - complaint handling relating to the ACT Ombudsman function
 - Public Contact Team, which provides a national point of contact for all approaches to the office made by telephone, email or online form.

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

- Immigration—Ms Mary Durkin, Senior Assistant Ombudsman
 - specialised advice and complaint handling relating to the Department of Immigration and Multicultural Affairs
 - reviewing the cases of detainees who have been held in immigration detention for two years or more
 - investigating immigration detention cases referred by the Minister for Immigration and Multicultural Affairs, concerning Australian citizens or other people lawfully in Australia who were held in immigration detention or may have been removed from Australia.
- Law Enforcement and Postal—Ms Vicki Brown, Senior Assistant Ombudsman
 - complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies
 - inspecting the records of law enforcement agencies for statutory compliance, adequacy and comprehensiveness

- specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme.
- Taxation, Defence and Public Affairs—Mr Damien Browne, Senior Assistant Ombudsman and Special Tax Adviser
 - specialised advice and complaint handling relating to the Australian Taxation Office
 - specialised advice and complaint handling relating to the Australian Defence Force, the Defence Housing Authority and the Department of Veterans' Affairs
 - public affairs and outreach, including management of the office's websites and international program.

Corporate planning and review

During the year, we reviewed our strategic plan to build on achievements over the past three years and to reflect priorities for 2006–09. Strategic priorities identified for 2006–07 are to:

- consolidate the office's work practice changes introduced in 2005–06
- identify systemic issues for investigation
- continue to build the profile of the office
- increase the emphasis on timeliness, quality assurance and consistency in complaint handling
- exploit the efficiencies of our new complaints management system and work practices to target review of administrative decisions in key agencies.

The office's strategic plan informs its internal business plans. There are clear links between the objectives and the key measures of success of the strategic plan and the goals and directions set in the business plan for all teams and for staff members in their individual performance agreements. As a result, performance agreements are closely linked to business plans.

Management committees

Management committees assist the Executive with decision making in key areas.

Internal Audit Committee

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

At 30 June 2006, the committee comprised Mr Ron Brent, Deputy Ombudsman (Chair), Ms Helen Fleming, Senior Assistant Ombudsman, Mr Ray Matcham, Senior Assistant Ombudsman, and Mr Joe D'Angelo, Chief Finance Officer, Department of the Senate.

Representatives of the Australian National Audit Office (ANAO) and the office's internal auditor, Walter Turnbull, are invited to advise the committee on specific issues, as appropriate.

Information Technology Steering Committee

A Deputy Ombudsman chairs the Information Technology (IT) Steering Committee, which met four times during the year. The committee:

- oversees the development and maintenance of IT strategy and governance
- determines priorities and directions for infrastructure, application development and maintenance, and project development
- makes recommendations to the Ombudsman about major IT infrastructure decisions and major expenditure proposals.

Occupational Health and Safety Committee

The office's Occupational Health and Safety Committee is made up of elected representatives from each state office and is chaired by the Human Resources Manager, who represents management. The committee provides its recommendations and gives advice to the Workplace Relations Committee. The committee met twice during the year. Appendix 1 gives more information on occupational health and safety.

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.

Work Practice Steering Committee

The Work Practice Steering Committee was established in May 2006, with the first meeting held in June. A Deputy Ombudsman chairs the committee, which includes representatives from a number of specialist teams and state offices. The committee's role is to consider and make decisions on work practice-related issues and to provide recommendations and/or advice to the Executive, where appropriate.

Corporate governance practices

Risk management

The Internal Audit Committee oversees the office's risk management activities, which have been incorporated into the Ombudsman's planning and operations and the management of contractors. The office's risk management policy and procedures specify how to:

- create, maintain and continuously improve risk management standards
- establish, maintain and continuously improve a risk register
- help to prioritise and schedule risk control improvements in each of the office's cost centres
- report to the Internal Audit Committee and Executive on risk improvement and compliance
- raise awareness among staff about risk management.

The office participated in the annual Comcover Risk Management Benchmarking Survey, and feedback was provided to the Internal Audit Committee.

Business continuity planning

Changes to the office's information technology infrastructure delayed finalisation of the business continuity plan. The draft business continuity plan identifies and assesses risks that could disrupt services and functions and presents plans to avoid or minimise the impact of hazardous incidents.

The plan will be finalised in 2006–07 and tested as part of its implementation.

Fraud prevention and control

The Ombudsman's office complies with the Commonwealth Fraud Control Guidelines through:

- undertaking a fraud risk assessment
- preparing a fraud control plan
- ensuring the appropriate fraud prevention, detection, investigation and reporting procedures are in place
- collecting and reporting annual fraud control data to the Attorney-General's Department.

The office reviewed its fraud risks and controls in 2004–05. The risk of fraud remains low.

The Commonwealth Ombudsman Certified Agreement 2005–2008 includes the Australian Public Service Values, as specified in s 10 of the *Public Service Act 1999*, and the values adopted by the Commonwealth Ombudsman's office in its Strategic Plan 2006–2009. The importance of the values is reinforced in induction documentation and training for staff and in internal documents, including the Workplace Diversity Plan and the Workplace Harassment Policy.

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

Commonwealth Disability Strategy

The office is committed to the Commonwealth Disability Strategy to ensure equality of access to the services of the Commonwealth Ombudsman for people with disabilities, and to eliminate discriminatory practices by staff. We endeavour to meet our obligations under the *Disability Discrimination Act 1992* through implementation of the Commonwealth Disability Strategy and the Ombudsman's Disability Action Plan 2005–2008 and Workplace Diversity Plan 2002–2006.

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

Regulator

The Ombudsman does not directly enforce the disability discrimination legislation, but provides a

complaint-resolution service under statute for the Australian Government. This can include recommendations on enforcement of legislative obligations that apply to Australian Government agencies. 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 regularly liaise with community organisations to promote awareness of the Ombudsman's services.

Provider

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

An important element in redeveloping the Ombudsman's website in 2005–06 was to ensure that the site was accessible to as large a proportion of the community as possible. To achieve this we used the priority 1 and 2 checkpoints of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 1.0 as our benchmark. Activities included testing colour contrast for people with vision impairments, 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.



Homepage of new Commonwealth Ombudsman internet site (www.ombudsman.gov.au)

Employer

The Ombudsman's Workplace Diversity Plan aims to ensure that in working to achieve the goals of the office, the diverse background, skills, talents and views of staff are recognised, encouraged and valued, and that all staff are aware of the value of creating a culture of workplace diversity. The plan provides for the following measures to assist staff who have particular needs.

- All employment policies and procedures comply with the requirements of the *Disability Discrimination Act 1992* and are communicated in a manner that is responsive to the needs of employees.
- Employment policies and procedures are made available in a format suitable to the needs of prospective employees. Appropriate material is provided in hard copy to prospective employees when they seek details of employment opportunities, as well as on the office's website in accessible formats.
- Managers and recruiters apply 'reasonable adjustment' principles.
- A flexible approach is applied to managing employees with special needs as provided in the workplace diversity plan.
- Training and development programs consider and respond to the needs of people with disabilities and include information on disability issues where they relate to the content of the program.
- Complaint and grievance mechanisms, including access to external mechanisms, are in place to address issues and concerns raised by staff and the public.

Environmental matters

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires the Ombudsman to report on the office's environmental performance and its contribution to ecologically sustainable development.

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently and in an ecologically responsible manner. Policy guidance is provided on conservation of energy in

use of lighting and computer equipment. Material sent for recycling includes toner/printer cartridges, paper and paper products, and classified waste.

Service charter

We are committed to providing the best service possible to the community. The Commonwealth Ombudsman Service Charter is available on our website. It outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met.

Where a complainant disagrees with our conclusions and decision about a complaint, they may ask for the matter to be reconsidered, and if they are still not satisfied, for a review of how the investigation was conducted. A more senior officer not previously involved in the matter will conduct the review to determine whether the conclusion reached was reasonable, justified and adequately explained to the complainant. Only in exceptional circumstances will more than one review be undertaken. We report on reviews in Chapter 3—Performance report.

In last year's report we stated that we would review the office's service charter and the mechanisms for monitoring, responding to and recording complaints about our service. This review was held over until 2006–07 following the bedding down of the office's revised work practices and new complaints management system.

We report against timeliness in complaint handling in Chapter 3—Performance report.

EXTERNAL SCRUTINY

Privacy legislation

The Ombudsman's office is subject to the *Privacy Act 1988*. We continually assess our compliance with the Information Privacy Principles, which determine the way the office deals with personal information.

The Ombudsman provided information to the Privacy Commissioner for inclusion in the Personal Information Digest. The Commissioner did not issue

any reports about the actions or practices of the office under s 30 of the Privacy Act in 2005–06.

During 2005–06, the Privacy Commissioner commenced an investigation into an alleged breach of privacy by the Ombudsman's office. A member of staff of the Ombudsman had made enquiries of a government agency about a matter that had been raised with our office, but at a point when the complainant did not consider he had complained. The alleged breach had occurred two years before a complaint was made to the Privacy Commissioner. The Commissioner decided that the Ombudsman's office had already taken action, through the establishment of the Public Contact Team, that would prevent any problem arising in future from uncertainty about the stage reached in the complaint process. The Ombudsman considered that the actions of his office were reasonable in the circumstances.

In last year's annual report, the Ombudsman reported on an Administrative Appeals Tribunal (AAT) decision in relation to compensation for a person whose personal information had been found by the Privacy Commissioner to have been wrongfully disclosed to the Ombudsman's office by an ACT Government agency: *Rummery and Federal Privacy Commissioner and Anor* [2004] AATA 1221. The Ombudsman was concerned that the AAT's decision would lead to reluctance by agencies to disclose information to the Ombudsman in the absence of a formal statutory notice.

In late 2005, Parliament passed the *Migration and Ombudsman Legislation Amendment Act 2005*. A provision of the Act provides that a disclosure of personal information to the Ombudsman will be taken to be authorised by law (and not a breach of privacy) if made with the authority of the agency and requested by the Ombudsman or believed to be relevant to an investigation. The Act also makes it possible for agencies to disclose, without compulsion or fear of the consequences, information that might be protected by secrecy provisions or that might otherwise compromise a claim for legal professional privilege.

Litigation and legal issues

In 2005–06, the Ombudsman's office was the respondent in five matters brought to the AAT by

former complainants who had made requests under the *Freedom of Information Act 1982* (FOI Act).

In one set of three matters (*Bienstein and Commonwealth Ombudsman* [2005] AATA 1227), the AAT affirmed exemptions claimed by the office and not previously conceded, and accepted the office's decision not to press its position on charges. In another matter (*Bartucciottto and Commonwealth Ombudsman* [2005] AATA 1109), the AAT confirmed exemptions claimed by the office, except for one part document conceded during the hearing. Another application to the AAT was made late in the reporting year. In Appendix 3—Freedom of Information Statement, this report notes a query raised by the Ombudsman in the context of a current review of the Ombudsman Act, as to whether the Ombudsman's office should be subject to the FOI Act.

In our 2004–05 annual report, we referred to an application before the Federal Magistrates Court for an extension of time in which to seek review of a decision made by the Ombudsman's office. On 18 August 2005, the court refused the application and awarded costs against the applicant.

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

PEOPLE MANAGEMENT

During 2005–06, the Ombudsman's office managed its employees in accordance with the conditions of our Certified Agreement and a number of Australian Workplace Agreements (AWAs) as well as within our obligations under the *Public Service Act 1999*.

Workplace relations

On 15 December 2005, the Australian Industrial Relations Commission certified a new agreement. The Certified Agreement remains in force until 30 September 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. Conditions are provided for Senior Executive Service (SES) staff under AWAs. A total of 143 employees were covered under the office's Certified Agreement. As statutory officers, the Ombudsman and two Deputy Ombudsmen are not included.

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

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 a consultative, advisory and information-sharing mechanism for management and employees on matters affecting employment conditions in the office.

Staffing profile

As at 30 June 2006, the actual number of employees was 153, which included the Ombudsman and two Deputy Ombudsmen, who are statutory appointments. This total figure includes seven employees on long-term leave without pay. The number of full-time employees was 133 and the number of part-time employees was 13. The full-time equivalent number of employees for the year was 140.

During the year, 38 employees were engaged on an ongoing basis and 17 ongoing employees left the office, equating to a turnover rate of 12% (16% in the previous year). Given the nature of the office's work and the fact that we run eight offices throughout Australia, the turnover is not disproportionate.

The numbers of ongoing and non-ongoing employees, by gender and APS classification and salary range, are shown in Table 4.1. The seven employees on long-term leave without pay under the *Prime Minister's Directions 1999* are not included in the table. Table 4.2 provides the office's staffing profile by location.

TABLE 4.1 STAFFING PROFILE, BY LEVEL AND GENDER, AT 30 JUNE 2006

Classification	Salary range \$	Men		Women		Total	
		Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1	32,933–36,400	-	-	-	-	-	-
APS2	37,271–41,331	-	1	-	-	-	1
APS3	42,454–45,821	-	-	3	1	3	1
APS4	47,315–51,373	9	1	13	3	22	4
APS5	52,774–55,961	2	-	10	-	12	-
APS6	57,000–65,476	7	4	21	3	28	7
EL1	73,071–78,905	15	1	20	1	35	2
EL2	84,278–95,548	9	2	8	3	17	5
SES	above 98,741	2	-	3	1	5	1
Statutory officers		2	-	1	-	3	-
TOTAL		46	9	79	12	125	21

TABLE 4.2 STAFFING PROFILE, BY LOCATION AND GENDER, AT 30 JUNE 2006

Location	Men	Women	Total
Australian Capital Territory	39	64	103
New South Wales	4	10	14
Northern Territory	-	1	1
Queensland	2	6	8
South Australia	1	4	5
Tasmania	1	-	1
Victoria	5	5	10
Western Australia	3	1	4
TOTAL	55	91	146

Career development and training

Career development and training focused on continuous improvement of organisational performance through analysis of needs. In 2004–05, we employed a consultant to review the office’s training and development program. In 2005–06, we continued to implement the review’s recommendations.

A focus for training sessions this year was to improve consistency in approach by all staff across our eight offices when dealing with complaints, and to better equip staff to move into supervisory and management roles within the office.

Training and development sessions were conducted in:

- investigations and on-the-job training
- alternative dispute resolution
- management essentials
- presentation skills
- performance management
- leading and working in small teams
- general information.

Training sessions were also conducted for all staff on the office’s new work practice changes and new complaints management system. See also Chapter 5—Challenges in complaint handling.

The office also provided study assistance for staff taking courses at educational institutions and supported staff attendance at courses, seminars and conferences.

FINANCIAL MANAGEMENT

Financial performance

Revenue received from ordinary activities was \$18.384 million in 2005–06.

The office received \$17.035 million in appropriation revenue, \$5.6 million more than in 2004–05. Since the 2005–06 Budget, the office has received additional funding of \$19.083 million over four years to implement:

- the Palmer Implementation Plan—an expanded role in handling and investigating immigration complaints and broader immigration detention issues
- migration legislation amendments—a specific role of reviewing the cases of long-term detainees.

Total expenses for the office were \$17.318 million, leading to a surplus in 2005–06 of \$1.021 million, primarily due to delays in implementing the above initiatives.

Financial position

The office’s total equity—that is, sum of the office’s assets less its liabilities—has increased by \$2.110 million, due mainly to a surplus in the 2005–06 year and equity injection of \$1.089 million in relation to the Palmer Implementation Plan and migration legislation amendments.

Assets fall into four main categories:

- cash
- infrastructure, plant and equipment
- intangibles (non-physical assets such as software)
- receivables (amounts due to be paid to the office).

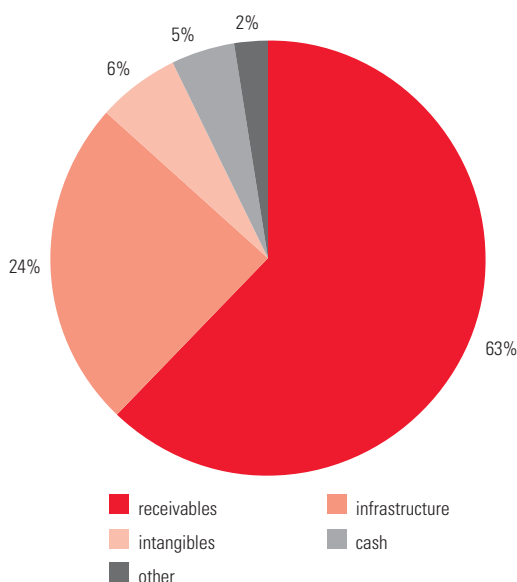
'Other non-financial assets' relate to prepayments.

The office's total assets increased to \$6.920 million in 2005–06 from \$4.081 million in 2004–05. The increases arose primarily out of an increase in undrawn appropriations, due to the delays in implementing the two major initiatives noted above. The proportion of each type of asset held during 2005–06 is set out in Figure 4.1.

Financial assets

The Statement of Financial Position shows cash holdings of \$0.333 million. This compares with the \$2.157 million held in 2004–05. The decrease in cash holding is offset by the increase in undrawn appropriations. It reflects the government's policy to draw cash down from appropriation on a 'just-in-time' basis.

FIGURE 4.1 OFFICE ASSETS BY CATEGORY AT 30 JUNE 2006



Non-financial assets

The office's non-financial assets increased to \$2.274 million in 2005–06 from \$1.668 million in 2004–05, primarily due to purchases of information technology assets.

Liabilities

Total liabilities increased by \$0.731 million to \$4.112 million in 2005–06, compared to \$3.381 million in 2004–05. The increase was primarily due to increases in employee accruals and creditors.

Purchasing

The Ombudsman's office is committed to achieving the best value for money in its procurement practices. Purchasing practices and procedures are consistent with the *Commonwealth Procurement Guidelines* and are set out in the Ombudsman's Chief Executive Instructions.

Consulting services

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

During 2005–06, six new consultancy contracts, with a value of \$10,000 or more, were entered into, involving total actual expenditure of \$380,893. In addition, two ongoing consultancy contracts were active during the 2005–06 year, involving total actual expenditure of \$58,107. See Appendix 5—Consultancy services for details of new consultancy contracts. Details are also available at www.ombudsman.gov.au.

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

TABLE 4.3 EXPENDITURE ON CONSULTANCY CONTRACTS, 2003–04 TO 2005–06.

Year	Number of consultancy contracts	Total actual expenditure
2003–04	9	\$278,565
2004–05	5	\$122,999
2005–06	6	\$439,000

Competitive tendering and contracting

In 2005–06, we continued to outsource activities relating to the provision of financial services and payroll and recruitment services as set out below:

■ DuesburysNexia

Financial services to the value of \$524,610 were contracted for the period 1 July 2005 to 30 June 2008, including a two-year option. This arrangement followed market testing in 2004 and evaluation of the qualitative benefits of access to accounting expertise. We have found that maintaining sufficient depth of accounting expertise in a small agency is difficult.

■ United Group Human Resources Services Pty Ltd

A new provider for payroll services through the Department of Prime Minister and Cabinet (PM&C) to the value of \$210,100 was contracted for the period 24 February 2006 to 23 February 2009. Rel Corp Management Services Pty Ltd provided the office's payroll and recruitment services through PM&C until March 2006. Recruitment is now managed in-house.

Contractual provisions allowing access by the Auditor-General

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

Exempt contracts

No office contracts that cost more than \$10,000 including GST have been exempted by the Ombudsman from being published in AusTender on the basis that it would disclose exempt matters under the *Freedom of Information Act 1982*.

INFORMATION TECHNOLOGY

The Information Technology Steering Committee continues to guide activities aimed at improving the office's use and management of information technology to support the performance of its functions.

In 2005–06, we completed several information and communications technology projects:

- implementation of a new complaints management system, involving extensive functional and specification development, analysis of office work practices and workflows, reporting requirements and integration requirements with other office products such as email
- implementation of an automatic call distribution system to manage calls to the Public Contact Team in Canberra
- implementation of a dedicated TCP/IP Wide Area Network, replacing Frame Relay Services
- upgrade of network speed/capacity to our Adelaide and Perth offices
- launch of a new internet site using a web content management system framework and an enhanced search facility. Content was improved and new features added including an improved online complaint form.

During the year, we also began several IT projects for completion in 2006–07:

- installation of a secure network access for mobility and remote access
- connection to Fedlink (a secure communication channel between the Ombudsman's office and other Australian Government agencies)
- evaluation of options for network architecture enhancements, such as replacing ageing hardware, changing the operating system and improving backup and recovery software.

2006-118693 - Approach Entry

Save Undo Print Tasks Close Approach

Approach Details

Category: Category 1 Escalate Assigned To: Administrator Security: Investigation-In-Confident Manual

Received: 31-Aug-2006 Due: 4-Sep-2006 Title: Commonwealth Ombudsman, - OMB

Main Actions Documents Parties/XRefs

Caller Details

Caller: Commonwealth Ombudsman Find Open Street: 1 Farrell Place, Canberra City, CANBERRA ACT 2600 BH:02 6276 0111

Organisation: Find Open

Agency Details

Agency: OMB - Commonwealth Ombudsman Find Open

Intranet: www.ombudsman.gov.au No Agency

Common Details

How Recvd: N/A How Found: Not Applicable Sensitivity: Not Sensitive Rcvd Section: Applications

Initial Approach Details

Actions

Action	Commenced	Due
<input checked="" type="checkbox"/> Telephone conversation w...	31-Aug-06	1-Sep-06
<input checked="" type="checkbox"/> Briefing	31-Aug-06	1-Sep-06
<input checked="" type="checkbox"/> Decision	31-Aug-06	1-Sep-06

This is an Approach

The approach entry screen in Resolve, the office's new complaints management system.

international program—Pacific islands regional strengthening

The Commonwealth Ombudsman's office is part of a global network of bodies with the similar objective of promoting principles of administrative justice and good governance. Our office is well placed to provide practical assistance and peer support to Ombudsman offices in neighbouring countries to achieve this objective.

With funding assistance from AusAID, we conducted a needs assessment in 2004–05 for the ombudsmen of Fiji, Samoa, Solomon Islands, Vanuatu and the Cook Islands, and the Public Commissioner of the Royal Kingdom of Tonga. The assessment identified areas of common need where we could work with these offices to:

- reduce the sense of isolation of Pacific island offices and foster regional group cohesion
- improve staff skills and knowledge in core ombudsman functions in those offices
- provide access to legal resources
- share management, strategic planning, business planning and budget experience
- improve basic information technology skills.

This year, we addressed some of those needs by supporting the development of a Pacific island ombudsman network, which includes Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu and the Cook Islands. The network provided these countries with access to legal advice, assisted in strategic planning in individual offices, shared experienced investigation officers from Australia to work in various offices, and had our most senior officers brief ombudsmen and their staff about management and strategic planning processes. The network has increased morale and skills within the various ombudsman offices.

challenges in complaint handling

5

This chapter looks at some of the areas we have been working on over the past two years to improve the efficiency and effectiveness of complaint handling and investigation within the office.

We recognise that if we are to continue to maintain relevance and effectiveness in a strategic manner, we need to evolve with the changing environment in which we operate. At times we criticise other agencies and recommend that they implement better and fairer systems and procedures. This underscores the importance of being rigorous in our own work practices and continually striving for improvement.

In the past two years, we have reviewed many of our internal policies and processes to evaluate their quality, consistency and accountability. As a result, we adopted a new approach to complaint resolution, created the Public Contact Team (PCT) to manage more efficiently the approaches we receive

annually, and introduced a new complaints management system. We also responded to feedback on the difficulties people sometimes experience when we refer them to the agency they are complaining about, and collaborated with other ombudsmen in Australia about the management of unreasonable complainant conduct.

PUBLIC CONTACT

Our national structure, with investigation officers located in each Australian capital city, is a strength of the office. Historically, approaches and complaints were mostly handled in the state offices in which the contact was received. A review of our internal processes made it clear that it was time to change this practice and to use the national structure in a different and more effective manner. Over time there had been an increase in the volume and complexity of cases coming to the office, with



Public Contact Team members.

a heightened risk that work practices in responding to those initial contacts would vary between offices. This limited our capacity to:

- align complaints with the investigation officers with the most appropriate skills
- allow investigation officers to concentrate on more complex cases or investigations
- ensure national consistency in our response to complaints and enquiries
- recognise national trends in complaints and trouble spots in government administration.

In February 2006, we created the PCT to address these issues. The PCT comprises 12 people located in Canberra who:

- provide a national point of contact for all telephone approaches to the office
- respond to all electronically submitted complaints
- provide greater uniformity in data entry
- provide a physical reception and point of first contact for residents of the ACT and surrounding regions.

Between February 2006 and 30 June 2006, the PCT has handled 24,235 telephone calls.

Public contact officers (PCOs) and investigation officers have different roles. PCOs do not investigate complaints—they manage initial approaches to the office and resolve less complex cases. PCOs routinely refer a person back to an agency if the person has not yet discussed their problem with the agency, or provide advice on where to seek alternative assistance if the complaint is not within our jurisdiction. As 36% of approaches are outside our jurisdiction, the work of the PCOs ensures that people are efficiently referred to the appropriate agency for assistance and that the time of investigation officers is not taken up in providing this advice.

The PCT has enhanced our ability to provide a nationally consistent service. During the initial contact with a person, a PCO clarifies the scope of a person's complaint and the remedy they seek, and enters data into the office's complaints management system, such as personal details, details of the agency and issues complained about. If further investigation is needed, the PCO forwards

the complaint to an investigation officer with the relevant specialist skills to handle the complaint.

The PCT's role allows investigation officers to focus on approaches and complaints of a more complex nature and spend less time on routine public contact work and preliminary complaint analysis. Investigation officers will also have greater capacity to undertake own motion and other cross-agency investigations, increasing our capacity to improve government administration generally.

The number of investigation officers located in each state office has either been retained or increased. With the introduction of the PCT, the state offices now have a strengthened capacity to undertake outreach activities and to interact with Australian Government agencies in their state.

WORK PRACTICE CHANGES

We have also taken a new approach to managing and handling complaints. In October 2005, we implemented a five-tiered structure for categorising and responding to complaints, based on the type of approach, the degree of effort required to resolve a complaint, and any potential sensitivities. The categories range from simple contacts that can be resolved without investigation through to the formal use of the Ombudsman's powers. This tiered structure ensures that complex or sensitive matters are assigned to senior, experienced officers and delineates a clear path for internal review.

We have also refined our complaint-handling objectives and the way we record complaint statistics. The emphasis in our work is on assisting complainants and giving them practical remedies for redressing their grievances. In many cases, we can provide assistance or a remedy without having to reach a firm view on whether an agency's administrative processes were deficient.

'... complex or sensitive matters are assigned to senior, experienced officers ...'

Sometimes it can be difficult or unproductive to form an objective view on deficiencies in agency processes. For example, many people who complain to the office have misunderstood or been confused

about advice given by an agency. Generally, such complaints are most efficiently resolved through cooperation and responsiveness by agencies, without the Ombudsman needing to formally express critical views.

This change is reflected in the statistics in this annual report. The remedies provided during the year to people who approached the office are set out against the relevant agency in Appendix 4—Statistics. The most common remedy provided to complainants was a better or more detailed explanation by an agency of its decision or action, and expedition of an action.

Nevertheless, an important part of the work of the office is to decide whether there was any administrative deficiency by an agency. To do so feeds into the systemic work of the office; it is also an important message to an agency about its administrative performance and can help the agency improve its administrative processes. In line with other work practice changes, a recording of ‘administrative deficiency’ is signed off at the Senior Assistant Ombudsman level or above, and each finding is individually notified to an agency.

These and other changes to the work practices of the office were introduced by thorough work practice training for all staff members, a comprehensive online work practice manual, and the creation of the Professional Standards Team. The Professional Standards Team is responsible for implementing changes to improve the consistency, efficiency and effectiveness of complaint handling in the office. We also established the Work Practice Steering Committee to drive the change management agenda and to promote continuous improvement and consistency across the office.

DATA MANAGEMENT

As reported in the Ombudsman’s annual reports in 2003–04 and 2004–05, a major project for the office has been the development of a new complaints management system to meet the challenge of better alignment with other systems and activities in the office. This computer-based system is integral to the effective management of individual complaints and the collection of data from those complaints.

The new system (Resolve) supports the office’s work practice changes and provides significant enhancements over the previous system used since 2001, including:

- improved network response times
- simplified data entry and more effective data capture
- capacity to structure workflows
- improved reporting capability
- increased user assistance
- simplified system administration
- standard application interface to allow for future development
- greater interoperability with other office products and systems.

A key feature is the strength of Resolve’s workflow capability. This allows the office to build in procedures to the complaints management system that will help investigation officers manage both individual complaints and complaint workloads. We expect this will lead to greater efficiency and better service delivery to people using the office.

‘... a major project for the office has been the development of a new complaints management system ...’

During January and February 2006, the Resolve complaints management system was ‘rolled out’ to each of the Ombudsman’s eight offices. The rollout was supported by comprehensive training sessions for staff, followed by work practice training.

While Resolve has better statistical reporting capability, the transition from our previous complaints management system has made it hard to align statistics this year. In 2006–07, it will be possible to provide more reliable statistical reporting.

REFERRALS TO AGENCIES

The Ombudsman has discretionary power to decline to investigate a complaint, unless it has first been raised with the agency concerned. The results of a May 2004 client satisfaction survey and conclusions drawn from a 2005 sample study into

the referral of taxation complaints suggest that many people do not follow our advice to first raise their complaint with the agency involved.

With the creation of the PCT we can better control the guidance and advice we offer people when referring them back to an agency. As a large part of the PCT's work is referral work, we train PCOs to make referrals appropriately. In an attempt to limit 'complaint fatigue', PCOs give the person the contact details for an agency's complaint area and advise them to contact our office again if they are not satisfied with an agency's response.

Part of the training for PCOs is about when to depart from usual practice and refer a complaint to one of our own investigation officers rather than another agency. This may be more suitable if, for example, the person needs assistance in articulating their complaint with an agency, or if previous interaction between an agency and the complainant has been problematic.

OUTREACH INTO REGIONAL AREAS

A priority in 2005–06 was to build on the office's outreach activities to more effectively target key stakeholders in rural and regional Australia.

Awareness survey

A market research company surveyed 1,282 people in rural and regional areas to establish a benchmark level of awareness of the office. The research results indicated a high level of prompted awareness of the Commonwealth Ombudsman, with 74% of respondents having heard of the office. However, the survey also indicated confusion in the community about the roles of different ombudsman offices in Australia.

Outreach activities

We conducted 104 outreach activities across all states and territories, achieving our aim of conducting or participating in an average of at least one focused outreach activity each week during the year. One outreach activity was a seminar for federal parliamentarians and their electorate staff in Victoria, which we held in Melbourne in June

2006. It was the first of a series of such seminars to be held in all states in 2006–07. Another activity involved our staff visiting rural and regional locations, such as the Pilbara region of Western Australia. During the Pilbara visit, we participated in the local *FeNaCLNG* mining community festival in Karratha and talked to community groups in Port Hedland and other small towns in the region.

'We conducted 104 outreach activities across all states and territories ...'

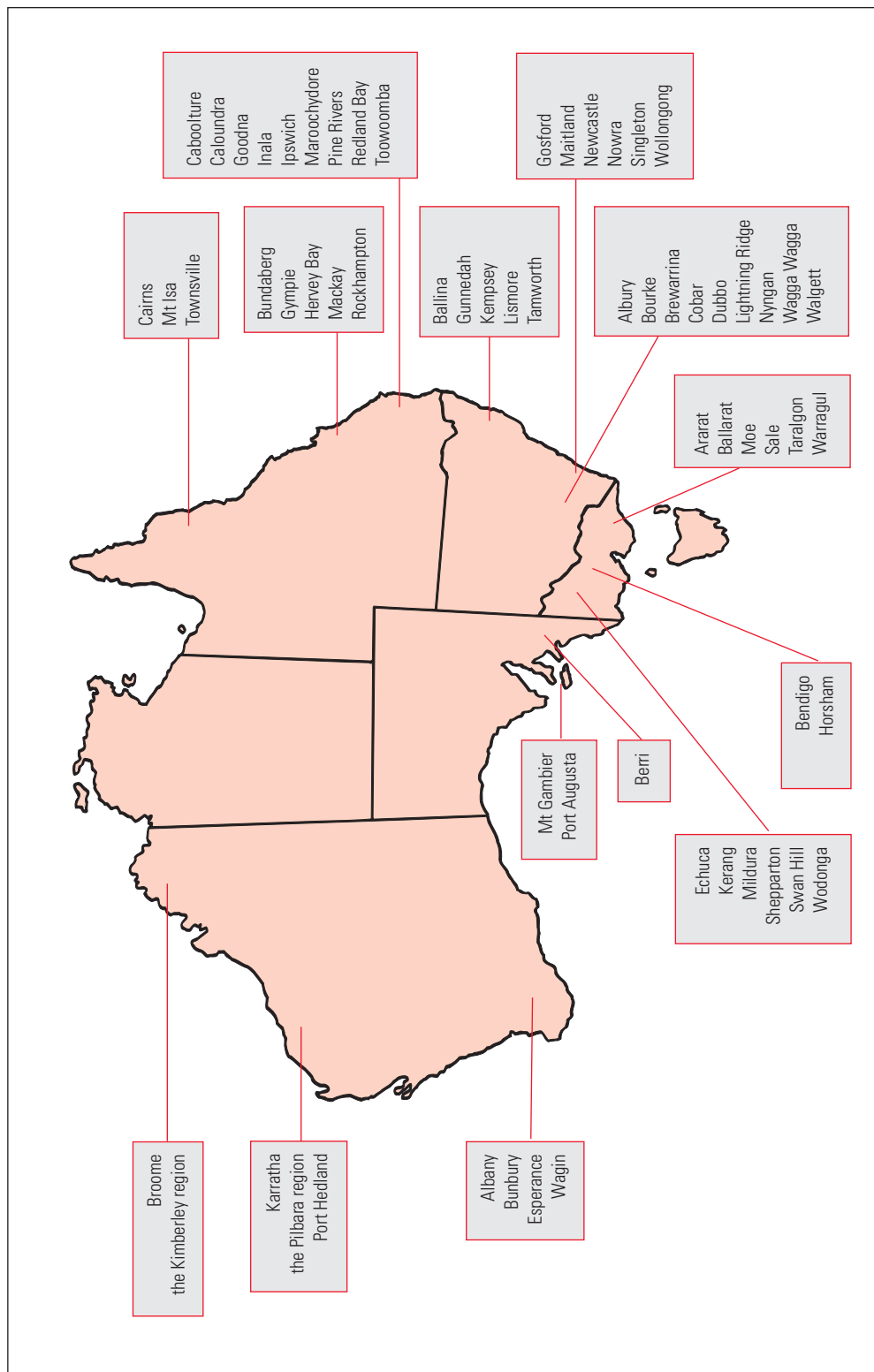
During the year, Ombudsman staff made presentations at a wide variety of functions to diverse audiences. There was an emphasis this year on establishing relationships with multicultural organisations, particularly those representing refugees, in the light of the office's expanded function as Immigration Ombudsman. Staff also made presentations at accountancy and taxation organisations to highlight the Taxation Ombudsman role, and at Defence Force establishments to highlight the Defence Force Ombudsman role.

In 2006–07, we intend to build further on our activities over the past two years, to draw on the results of the benchmark survey to better target outreach activities and to measure the effectiveness of our outreach program over time.

SERVICE DELIVERY TO INDIGENOUS AUSTRALIANS

In November 2005, the Ombudsman established an Indigenous Working Group to review the office's communication with, and service delivery to, Indigenous Australians. We recognise that we cannot by ourselves overcome the cultural and other barriers that lead to Aboriginal and Torres Strait Islander peoples being under-represented in approaches to the Ombudsman's office.

Implementing a culturally appropriate service is a long-term process requiring initiative in addressing issues of concern to Indigenous people and the development of partnerships with Aboriginal and Torres Strait Islander organisations and communities.



Areas visited during outreach activities in 2005–06.

The working group is developing a program of consultation with a range of Indigenous groups and individuals. This program is designed to improve our understanding of:

- Indigenous people and communities' experiences with and perceptions of the Ombudsman's office
- forms of communication that work best for Indigenous people who might want to complain to the Ombudsman
- key issues about how government agencies deliver services to Indigenous people and communities.

It is intended that the outcomes of this consultation program will inform the office's handling of complaints from Indigenous Australians and our program of own motion investigations.

DIFFICULT OR UNREASONABLE CONDUCT BY COMPLAINANTS

Many complaint-handling agencies have to deal with complainants who engage in unreasonable conduct: they can be verbally or physically aggressive, unreasonably demanding, excessively persistent or unwilling to accept the decision of the office to conclude an investigation. Such unreasonable conduct can place an inequitable demand on resources and can cause distress for staff.

When reviewing our work practices, we clarified our policies to reflect the need for balance between complainant expectations and the demands placed on the office. Part of the challenge for the office is to instil confidence in staff that it can be wise and defensible to conclude an investigation against the wishes of a complainant.

'... we clarified our policies to reflect the need for balance between complainant expectations and the demands placed on the office.'

More can always be done to develop complaint-handling policies and strategies that strike an appropriate balance. To that end, we are participating in a cross-agency project, coordinated by the NSW Ombudsman's office, to develop and trial management strategies for people who exhibit unreasonable conduct. The aim of the project is to develop strategies across ombudsman offices nationally to ensure that unreasonable conduct is managed consistently and that a high-quality service is provided without reinforcing inappropriate conduct or placing our staff at risk. This work will continue into 2006–07.

security legislation review

The Australian Parliament enacted a new legislative framework in 2002 to deal with the threat of terrorism, by discouraging and preventing terrorist attacks.

To address concerns that the legislation went further than was needed and unnecessarily infringed on fundamental human rights and freedoms, s 4 of the *Security Legislation Amendment (Terrorism) Act 2002* provided that a 'public and independent review ... of the operation, effectiveness and implications' of the new legislation was to be undertaken three years after its commencement. The review was to be undertaken by a committee of statutory office holders and nominees of the Attorney-General and the Law Council of Australia.

The Security Legislation Review Committee was convened by the Attorney-General, the Hon. Phillip Ruddock MP, in October 2005. Membership of the committee comprised:

- The Hon. Simon Sheller AO QC, Chair, former NSW Supreme Court Judge
- Mr Ian Carnell, Inspector-General of Intelligence and Security
- Ms Karen Curtis, Privacy Commissioner
- Mr Graeme Innes AM, Human Rights Commissioner
- Prof. John McMillan, Commonwealth Ombudsman
- Mr John Davies APM OAM, former ACT chief of police (Attorney's nominee)
- Ms Gillian Braddock SC, Barrister (Law Council nominee)
- Mr Dan O'Gorman, Barrister (Law Council nominee)

The Committee received 35 submissions, held eight days of public hearings, and reported to the Attorney-General in April 2006. The report was tabled in the House of Representatives in June 2006, and was considered at a public hearing by the Parliamentary Joint Committee on Intelligence and Security in July 2006.

The Committee accepted the need for special counter-terrorism legislation, but made recommendations for reforming the procedure for listing an organisation as a 'terrorist' organisation, and for repealing or re-drafting offences that were thought to be too broad (such as 'associating' with a terrorist organisation).

The Committee's report is available at <http://www.ag.gov.au/slrc>.

Much of the work of the Commonwealth Ombudsman's office involves investigating individual complaints and administrative problems. The matters that are investigated constitute only a small fraction of the total number of transactions and administrative actions that government agencies undertake each year. A core objective of an ombudsman's office is to move beyond those individual problems and to foster good public administration that is accountable, lawful, fair, transparent and responsive. The individual problems provide an excellent window to view government in the broader setting.

This chapter discusses some of the ways the Ombudsman's office has promoted good administration. Drawing on insights gained in complaint investigations, we made submissions to parliamentary and other government inquiries. We also initiated or participated in projects, described in this chapter, that aim for systemic reform on matters such as the use of automated decision making and protection of internal whistleblowers. Own motion investigations undertaken by the office are described in other chapters, and briefly noted in this chapter. Cooperation with other oversight agencies, and with ombudsman offices in Australia and the Asian and Pacific regions, enables us to undertake joint projects, share best practice experience and develop a mutual support network.

SUBMISSIONS, REVIEWS AND RESEARCH

Parliamentary committees and submissions

During the year, the Ombudsman and staff made submissions and appeared before parliamentary committees inquiring into aspects of government administration and proposed legislation. The office made submissions to three inquiries or reviews by

the Senate Legal and Constitutional Committee: its inquiry into the Administration and Operation of the *Migration Act 1958*; its review of the Telecommunications (Interception) Amendment Bill 2006; and its review of the Law Enforcement Integrity Commissioner Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006.

Our two appearances before the Parliamentary Joint Committee on the Australian Crime Commission were to contribute to its review of the *Australian Crime Commission Act 2002* and to provide an annual report on the Ombudsman's inspection of records relating to controlled operations. We also appeared before the Senate Select Committee on Mental Health (concerning immigration issues) and the Senate Foreign Affairs, Defence and Trade Legislation Committee (concerning reforms to Australia's military justice system).

The Ombudsman and the Inspector-General of Intelligence and Security made a joint submission to and appeared before the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Anti-Terrorism Bill (No 2) 2005. We made a written submission to the Joint Committee of Public Accounts and Audit inquiry into the administration of the taxation legislation (discussed in Chapter 9—Problem areas in government decision making).

The committee hearings are always challenging, especially when the terms of reference are broad or there is a heightened media interest in headline remarks. However, parliamentary inquiries provide a unique opportunity for the Ombudsman's office to convey our experience over a large range of topics to parliamentarians. We understand this to be of value to parliamentarians, as indicated by a comment of the Parliamentary Joint Committee on the Australian Crime Commission in a report in July 2005.

The Committee also wishes to acknowledge the assistance provided by the Commonwealth Ombudsman, Professor John McMillan, and his staff. The Commonwealth Ombudsman plays a vital role in accountability mechanisms of the ACC, through investigating complaints, and auditing records. The Committee considers that regular discussions and exchange of information with the Ombudsman is vital to maintaining the overall effectiveness of the accountability regime. In addition to the briefing on telecommunication intercepts required by statute, Professor McMillan has met with the Committee privately on several occasions and the Committee appreciates his insights and experience.

The Ombudsman was a member of the Security Legislation Review Committee, which was established by statute in 2005 to review the counter-terrorism legislation enacted in 2002. The statutory membership comprised a former judge, the Privacy Commissioner, the Human Rights Commissioner, the Inspector-General of Intelligence and Security, the Commonwealth Ombudsman, a nominee of the Attorney-General, and two nominees of the Law Council of Australia. The committee received public submissions and conducted public hearings in February and March 2006. Its report was tabled in Parliament on 15 June 2006.

'... parliamentary inquiries provide a unique opportunity for the Ombudsman's office to convey our experience ...'

Whistleblowing project

In 2004–05, we reported that the Commonwealth Ombudsman's office was taking a leading role in a national research project: *Whistling while they work: internal witness management in the Australian public sector*. This is a three-year collaborative national research project into the management and protection of internal witnesses in the Australian public sector.

The protection of whistleblowers and other internal witnesses of corruption, misconduct and maladministration remains a challenge in public

sector governance. This project aims to identify and promote current best practice in workplace responses to public interest whistleblowing, by drawing from the experiences and perceptions of internal witnesses and managers. This will enable us to identify strategies for preventing, reducing and addressing reprisals and other related conflicts.

During 2005–06, the Ombudsman and the Merit Protection Commissioner sent a joint letter to the heads of approximately 140 Australian Government agencies inviting participation in the project's first survey into agency practices and procedures. A survey of agency employees was commenced, involving 30 selected government agencies and approximately 6,000 of their employees. The project is expected to generate several major reports and papers, with the first to be finalised in 2007.

Automated assistance in administrative decision making

The Administrative Review Council (ARC) released a report about Automated Assistance in Administrative Decision Making (AAADM) in November 2004. That report commented on the various ways in which AAADM uses computer systems to automate or guide administrative decision making on matters ranging from the calculation of payment rates to the assessment of eligibility for beneficial schemes.

Representatives from the Ombudsman's office are participating in an Advisory Working Group established to address the ARC's recommendations. Our representatives are also members of a subgroup that is developing a better practice guide on transparency and accountability in the design and implementation of AAADM systems. The project will be completed in 2006–07.

Review of extradition law and practice

In December 2005, we were invited to contribute to the Attorney-General's review of Australia's extradition regime. Extradition is of critical importance in effectively combating transnational and domestic crime. A review of current legislation and processes was considered necessary to ensure that the extradition process is efficient and responsive to the heightened need for cooperative law enforcement arrangements between countries.

We provided a response in March 2006 to a discussion paper prepared by the Attorney-General's Department. Our comments were drawn from the complaints we received about extradition, as well as our understanding of good administrative practice. In particular, we noted the importance of providing sufficient safeguards where individual liberty is at risk. We suggested there might be a role for the Ombudsman in auditing the briefing papers prepared within government to inform extradition decisions. This audit would not affect individual decisions, but could increase public confidence in the process and provide the department with feedback about the quality of its briefs.

COOPERATION WITH OTHER OVERSIGHT AGENCIES

The Ombudsman's office is one of many independent statutory agencies that discharge a 'watchdog' role in relation to government. Some of those agencies have a similar role to the Ombudsman of receiving and investigating complaints from the public, initiating inquiries into systemic issues in government administration, or auditing compliance by agencies with legislative requirements. Examples are the Inspector-General of Intelligence and Security (IGIS), the Australian National Audit Office (ANAO), and the Privacy Commissioner. Given our similar objective of overseeing and improving government administration, we have looked for ways to work cooperatively with these agencies, to complement each other's work and to avoid unnecessary duplication of effort.

*'... we have looked for ways to ...
avoid unnecessary duplication
of effort.'*

Inspector-General of Intelligence and Security

In December 2005, the Ombudsman and the IGIS signed a memorandum of understanding that formally recognises the strong ties between the two offices.

The Ombudsman and the IGIS worked closely together during the year, discussing common issues



Inspector-General of Intelligence and Security, Ian Carnell, and Commonwealth Ombudsman, John McMillan, sign a memorandum of understanding.

that arose in handling complaints and inspecting the records of Australian Government agencies. They worked together in preparing a joint submission to the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Anti-Terrorism Bill (No 2) 2005. When the IGIS is either absent from the country or on extended leave, the Commonwealth Ombudsman is appointed to serve as acting IGIS. The Ombudsman and the IGIS are both members of the ARC, and both served on the Security Legislation Review Committee in its inquiry into Australian counter-terrorism legislation.

Inspector-General of the Australian Defence Force

The Ombudsman works closely with the Inspector-General of the Australian Defence Force (IGADF) to ensure the most appropriate agency coordinates issues within their particular areas of responsibility. This approach has proven effective in dealing with persistent complainants, in finalising complaints that have become protracted, and in avoiding successive investigation of the same complaint issue by both organisations.

We also participate in joint training activities. The Deputy Ombudsman regularly presents at IGADF training courses, and a similar level of involvement for IGADF staff is planned for Ombudsman training courses. We have also discussed the possible benefits of secondments to each office. In May 2006, Ombudsman staff and the IGADF, with a

number of other Defence complaint-handling agencies, participated in a cost of conflict seminar dealing with the problem of managing unreasonable complainant behaviour.

Administrative Review Council

The Ombudsman is an ex-officio member of the ARC, established by the *Administrative Appeals Tribunal Act 1977* Part V. The council provides advice to the government on administrative law reform in Australia. The Ombudsman was actively involved in many projects undertaken by the council during the year, including the publication of the council report *The Scope of Judicial Review*. The work of the council is more fully covered in a separate annual report prepared by the council.

Liaison with Australian National Audit Office

During the year, the Deputy Ombudsman and the Deputy Auditor-General met to discuss co-operation on areas of joint interest with a view to holding regular liaison meetings.

The Special Tax Adviser also met with ANAO staff to discuss ATO performance audits on the cash economy taskforce, superannuation lost members list, and high-risk refunds. The discussions involved a brief outline of the complaints profile for the area under audit and an explanation of our experience and understanding drawn from the complaints we received. The very low level of complaint about the cash economy taskforce and the superannuation lost members list suggested no notable problems with ATO administration of these areas as they affect individual taxpayers. We provided more useful feedback about the high-risk refund audit, particularly as complaints about delay are often sourced to issues of the treatment of high-risk refunds.

Information privacy principles

This year we initiated a collaborative project with the Australian Public Service Commissioner, the Inspector-General of Intelligence and Security and the Privacy Commissioner about the effect on the Australian Government complaint system of the Information Privacy Principles (part of the *Privacy Act 1988*). The project focuses on Information Privacy Principle 11 (IPP11), which constrains the

public disclosure of personal information, including personal information about the staff of Australian Government agencies.

IPP11 is especially relevant when a complaint agency has to decide, in finalising an investigation, whether the information or explanation that is given to the complainant can include findings or views that are critical of an agency staff member. The same issue arises more generally for government agencies when making a public report on a complaint investigation or administrative inquiry undertaken by the agency.

This project will be completed in 2007 after government agencies have been consulted.

OWN MOTION AND MAJOR INVESTIGATIONS

The Ombudsman can conduct an investigation as a result of a complaint or on his own motion, or initiative. During the year, we publicly released reports on seven own motion and major investigations. Those reports, which are more fully described in Chapter 7—Looking at the agencies, made recommendations designed to produce systemic improvement in the administrative processes of government agencies. The reports contained a total of 51 individual agency recommendations—agencies accepted 49 of the 51 recommendations. The generic issues taken up in those reports included the need for better training and clearer guidance for government officers, for further review of some contentious features of agency administration, and for senior level engagement in resolving problems of the kind addressed in those reports.

Four of the investigations dealt with matters relating to the Department of Immigration and Multicultural Affairs (DIMA). The topics of those four reports were: the immigration detention and removal from Australia of an Australian citizen, Ms Vivian Alvarez; the immigration detention of an Australian citizen, Mr T; the administration of s 501 of the *Migration Act 1958*; and the management of a frail aged visitor to Australia, Mrs Agha.

The other three investigations dealt with the Australian Defence Force's management of service personnel under the age of 18; the Australian

Taxation Office's administration of the Superannuation Co-contribution Scheme; and the administration of the *Freedom of Information Act 1982* in Australian Government departments and agencies.

Ongoing investigations

During the year, we commenced a number of own motion investigations that will be completed in 2006–07. These include investigations into:

- issues relating to the implementation of the marriage-like relationship policy, outlined in 'Looking at the agencies—other agencies' section in Chapter 7
- the administration of the pension bonus scheme, outlined in 'Looking at the agencies—Centrelink' section in Chapter 7
- complaint-handling procedures available in airports, outlined in Chapter 9—Problem areas in government decision making
- the management of complaints about unacceptable behaviour in the Australian Defence Force
- the complaint-handling process of the Migration Agents Registration Authority,
- the quality of the notification of reasons by DIMA for decisions and review rights for refused visa applicants.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

The office's international program is focused on strengthening mutual support among ombudsmen in our region through exchanging knowledge and skills. We are fostering this agenda with placements, seminars and training activities. In 2005–06, investigative, information technology (IT) and training officers from our office worked directly with staff with similar skills from other ombudsman offices in our region.

Key geographic areas for international program involvement are two near South-East Asian neighbours, Indonesia and Thailand, and some countries in the South Pacific, including Fiji, the Cook Islands, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga and Vanuatu. The Australian Agency for International Development

(AusAID) has provided financial support for many of the office's international program activities.

'The office's international program is focused on strengthening mutual support among ombudsmen in our region ...'

Participation in the international program offers many benefits to our staff, including an increased familiarity with the people of our region, a sense of accomplishment in collegiate work across borders, a sharpening of skills and ideas, and a much better understanding of the many common purposes we share with our neighbouring ombudsmen. The challenge for our office is having sufficient staff to participate in the program. We have met that challenge by building networks with Australian state ombudsmen and the New Zealand Ombudsman, who have generously assisted with staff and support for the international program.

Thailand

The Thai Ombudsman's office has developed strongly since it was established in January 2000. Over that period, our office supported Thai Ombudsman staff through training in complex investigations and generalist ombudsman issues aimed at improving an understanding of the ombudsman role.

The rapid development of the Thai Ombudsman staff resulted in a more specialist approach in 2005–06, including support for IT, outreach and training activities. We worked with the New South Wales Ombudsman to provide a two-week 'train the trainer course' for 10 Thai Ombudsman staff; and the Commonwealth Ombudsman worked with the three Thai ombudsmen in Bangkok and presented a seminar to staff. The Thai Ombudsman provided financial support for these activities, in addition to that provided by AusAID and the Commonwealth Ombudsman.

Pacific islands regional strengthening

In 2005–06, our work centred on creating a collegiate regional network with the South Pacific ombudsmen. We commenced a trial of short-term

activities to support the exchange of information, staff and ideas across the network. Ultimately, we envisage that the network will be self-sustaining. It presently consists of the Commonwealth Ombudsman, the New Zealand Ombudsman, the state ombudsmen of New South Wales (NSW), Queensland (Qld), and Western Australia (WA) and ombudsmen institutions in the South Pacific nations.

A deputy ombudsman worked with the Ombudsmen from Fiji, Samoa, Solomon Islands and Vanuatu on strategic and business planning. Legal counsel from the New Zealand Ombudsman's office and our office helped the Tongan Ombudsman and staff draft enabling legislation for the ombudsman function in Tonga.

Papua New Guinea

In 2005, we entered into a three-year twinning program with the Ombudsman Commission of PNG that includes staff placements for professional development. Our office supports three placements from PNG to Australia each calendar year and two placements from Australia to PNG.

In 2005–06, two officers from the Commonwealth Ombudsman's office were placed with the PNG Ombudsman's office (the first for three months and the second for four months) to work with staff in the head office in Port Moresby and in the Kokopo regional office.

Two officers from the PNG Ombudsman's office each worked in Australia for two months, honing their investigation skills. One officer worked mainly

in our Hobart office, and also worked with staff from the Tasmanian Ombudsman's office. The other officer worked in our Canberra office.

During the year, we hosted an IT scoping mission from the PNG Ombudsman's office. There was particular interest in our experience in implementing a new complaints management system and revising our online work practice manual and intranet.

A deputy ombudsman also visited PNG to assist with the strategic planning for the Ombudsman Commission.

Indonesia

The National Ombudsman Commission (NOC) of Indonesia is a small office that provides ombudsman services to approximately 240 million people living on 6,000 islands. In recent years we have assisted the Indonesian Ombudsman and his staff by providing training in Australia, international networking, decentralisation activities and IT planning. In 2005–06, we focused on decentralisation activities and IT planning, and provided support to assist the NOC in nine decentralisation activities that included work to establish offices and take complaints from locals.

The Commonwealth Ombudsman visited Indonesia in September 2005 as a member of a high-level Australian delegation to scope a program of public sector governance reform. This is part of the Australia Indonesia Partnership for Reconstruction and Development.



Rohan Anderson of the Commonwealth Ombudsman's office, assists the Solomon Islands Ombudsman to promote the role of the ombudsman to school children at Betikama College, Honiara.

Following the high-level visit to Indonesia, the Ombudsman took a coordinating role in bringing together representatives from the NSW and WA ombudsmen offices to work with our office and the NOC in developing a three-year program to June 2009. The program will build on activities to provide citizens across a larger part of Indonesia with greater access to more effective and sustainable complaint management services. We will continue to support the strengthening of both the central NOC office in Jakarta and the establishment of decentralised regional services in Indonesia.

Other international activities

Another means of international cooperation has been to host senior-level delegations from several foreign offices, including from Bangladesh, Canada, China, India, Indonesia, Korea, Laos, Malaysia, Taiwan and Vietnam.

In November 2005, the Commonwealth Ombudsman participated in the 9th Asian Ombudsman Association Conference, held in Hong Kong. The Ombudsman presented a paper 'Freedom of information and whistleblower legislation: an Australian perspective'.

COOPERATION AMONG AUSTRALIAN OMBUDSMEN

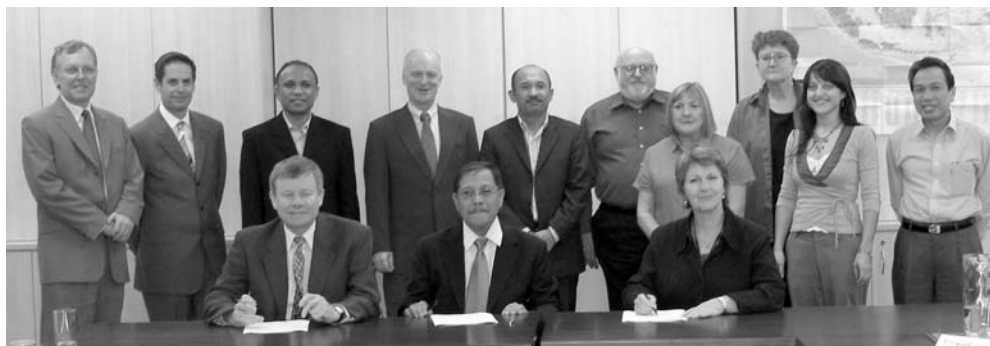
We enjoy a close working relationship with the large number of public and private sector ombudsman offices established in both Australia and the Asia-Pacific area. Those relationships are

strengthened by the Ombudsman's participation in groups such as the Australian and New Zealand Ombudsman Association (ANZOA) and the International Ombudsman Institute (IOI).

The IOI, which is an international association of public sector ombudsman offices, is divided into regions. The local region, the Australasia and Pacific Ombudsman Region (APOR), has established a mutual support network for ombudsman offices in the Pacific region. The APOR members meet annually: the annual meeting was held in Perth in April 2006, hosted by the WA Ombudsman.

The Commonwealth Ombudsman is a member of the Executive of ANZOA, which is an association of some industry and public sector ombudsman offices. Projects on which ANZOA has been active during the year include external review of ombudsman schemes, internal review of complaint handling by ombudsmen, benchmarking of workloads and efficiency measures, statistical significance of data, and the use of the term 'ombudsman'.

The deputy ombudsmen from all of the state ombudsmen offices and our office meet twice a year to discuss issues of common concern. The network of deputies is also used more informally to deal with a range of shared issues. One specific example is a joint project that was initiated by the NSW Ombudsman's office on the most effective handling of difficult complainant behaviour. This project is in its early stages and will continue into 2006–07. Further information is in Chapter 5—Challenges in complaint handling.



Ombudsman linkages design and planning workshop and launch held in Perth in May 2006, culminating in the signing of a statement of understanding. Seated left to right: Commonwealth Ombudsman, John McMillan, Chief Ombudsman of the NOC, Antonius Sujata, and Western Australian Ombudsman, Deirdre O'Donnell.



oversight of australian government agencies

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looking at the agencies

7

As in previous years, the majority of approaches and complaints received within the Ombudsman's jurisdiction (75%) concerned the five Australian Government agencies listed below. This chapter focuses on particular issues that arose during 2005–06 in investigating complaints about these agencies.

- Centrelink—7,095 approaches and complaints
- Child Support Agency—1,891 approaches and complaints
- Australian Taxation Office—1,451 approaches and complaints
- Australia Post—1,303 approaches and complaints
- Department of Immigration and Multicultural Affairs—1,250 approaches and complaints.

This chapter also looks at three other specialised areas of our complaint work: the Australian Defence Force, handled by the Ombudsman discharging the role of Defence Force Ombudsman; the Australian Federal Police, handled under the *Complaints (Australian Federal Police) Act 1981*; and the handling by agencies of freedom of information requests.

The 'Other agencies' section of this chapter provides examples of complaints received about agencies such as the Department of Employment and Workplace Relations, Telstra Corporation, the Australian Securities and Investments Commission, and the Department of Foreign Affairs and Trade.

While the discussion and analysis of complaints arising in specific areas of government illustrates the role of the Ombudsman, it does not fully portray the diversity of the work of the office. The issues

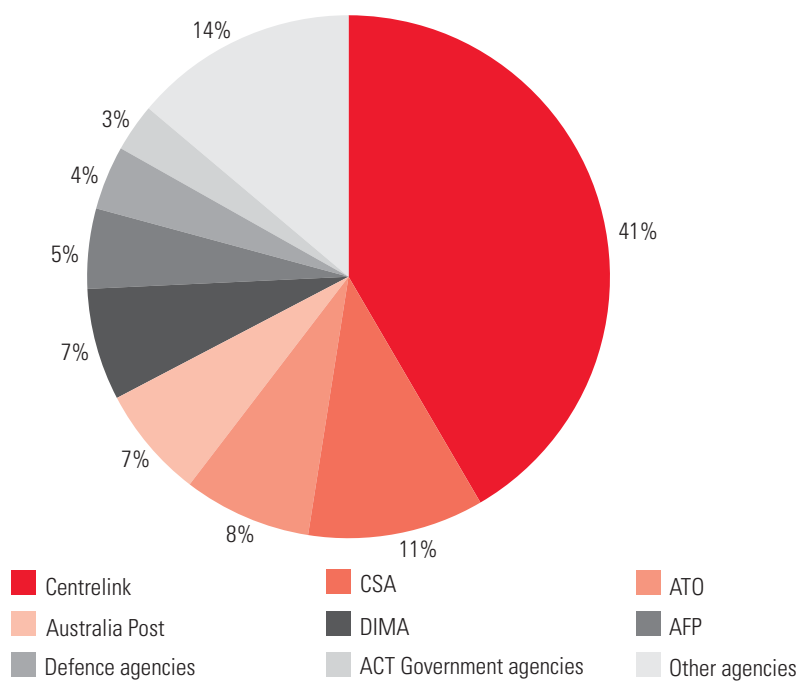
raised in complaints to the Ombudsman are mostly about difficulties that arise between people and government generally rather than about specific problems areas. We take up some of these general themes in other chapters of this report (Chapter 8—How the Ombudsman helped people, and Chapter 9—Problem areas in government decision making). Difficulties that commonly arise are about inadequate explanation of adverse decisions, deficient record keeping, delay in decision making, and discourtesy by agency officers.

The focus on complaints about specific agencies does not by itself accurately portray the standard of administration in those agencies. Issues have been selected in part to show the aspects of government about which people approach the Ombudsman. A common feature of each of the agencies is that they engage daily in a high number of direct transactions with members of the public. While complaints to the Ombudsman are only a minor fraction of the decisions and actions taken each year by agencies, they illustrate the difficulties that people face in dealing with government and to that extent provide valuable insight into the operation of government.

'... complaints to the Ombudsman are only a minor fraction of the decisions and actions taken each year by agencies ...'

Figure 7.1 shows approaches and complaints received from particular agencies. A detailed breakdown of complaints by portfolio and agency is in Appendix 4—Statistics.

FIGURE 7.1 APPROACHES AND COMPLAINTS RECEIVED WITHIN JURISDICTION, BY AGENCY, 2005–06



Australia Post is an incorporated government business enterprise wholly owned by the Australian Government. It operates under the *Australian Postal Corporation Act 1989* (Postal Act).

Under the Postal Act, Australia Post's primary function is to supply postal services within Australia, and between Australia and other countries. Australia Post can also undertake other business functions that are incidental to its postal functions or that can be carried on as part of that business.

In recent years, Australia Post has expanded its retail and agency functions to provide a wide variety of services. Approaches and complaint issues to our office remain largely about Australia Post's most traditional functions—sending and receiving letters and parcels.

In 2005–06, we received 1,327 approaches and complaints about Australia Post. Of these, 1,303

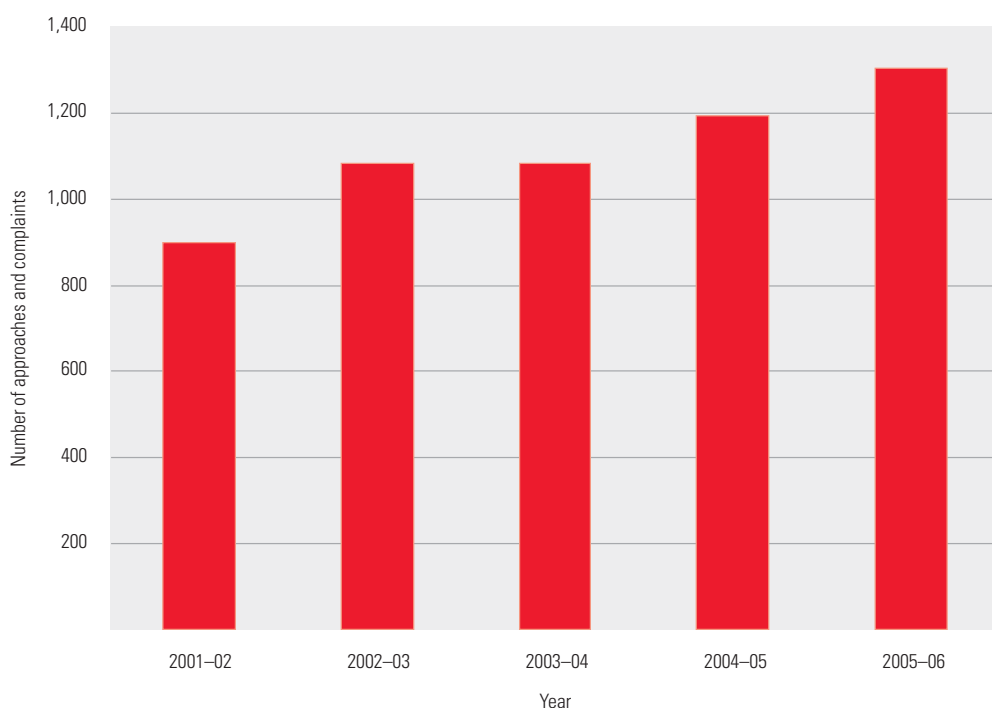
were within the Ombudsman's jurisdiction (1,190 in 2004–05), an increase of 9%. Figure 7.2 shows the trend in complaints about Australia Post.

'... issues to our office remain largely about Australia Post's most traditional functions—sending and receiving letters and parcels.'

MAIL SERVICES

We find that people who approach our office with a complaint about Australia Post often have a high expectation of the quality of the delivery service Australia Post provides. This can extend to expecting Australia Post to carry uninsured valuable items and to be liable if an item goes missing or is damaged.

FIGURE 7.2 AUSTRALIA POST COMPLAINT TRENDS, 2001–02 TO 2005–06



Under the Postal Act and the Australia Post Terms and Conditions, Australia Post has limited liability for loss and damage incurred through the carriage of ordinary post. We explained those limits on liability to numerous complainants.

In some cases, we asked Australia Post to pay compensation above the legal limit. For example, a person complained that a package containing contact lenses sent via Express Post had been left on top of the letterboxes at her block of units, as it was too bulky to fit in her letterbox. The package was opened and the contents, worth \$224, were stolen. A neighbour found the empty envelope nearby.

The delivery officer claimed he left a card so the package could be collected at the post office. Australia Post initially offered the maximum \$50 compensation. We found it difficult to reconcile the complainant's version of events with that of the delivery officer. The complainant provided us with the empty envelope, supporting her claim that the package had been delivered.

Australia Post investigated further, and found that the article would not have fitted in the letterbox. In this situation, the delivery officer should have left a card advising the addressee to collect the parcel from the post office. While emphasising that the conditions on the Express Post satchel specifically warn against posting valuable items, Australia Post decided to pay the full cost of the contact lenses as a gesture of goodwill.

INCORRECT ADVICE

Customers of Australia Post rely on advice given to them by Australia Post staff and agents. This is to be expected, and reflects the high level of trust that customers have in Australia Post. We investigated complaints where individuals relied on the advice they were given and suffered loss as a result. In these circumstances we recommended compensation be paid above the limit of Australia Post's liability.

In one case we investigated, a man paid cash on delivery for motorcycle handlebars worth several hundred dollars, and took delivery of them in the post office. He immediately saw the handlebars were the wrong ones. An Australia Post employee

suggested he send them back 'return to sender', although he had paid the delivery fees and technically should have paid postage to resend them. The 'return to sender' option provided no insurance on the handlebars, which went missing. Initially Australia Post argued it was liable for only the \$50 maximum compensation for ordinary postage. After further discussion, Australia Post agreed to refund the full cost of the handlebars.

We investigated two complaints where Australia Post gave incorrect advice about the purchase of Western Union money orders. Two members of the public were told, on separate occasions, that the recipient of a money order would require the money transfer control number (MTCN) before being able to access the money order. This advice was incorrect.

Both complainants had sent a money order overseas to buy goods, expecting to provide the MTCN, and therefore release the money, when they received the goods. However, the overseas recipient was able to access the money immediately and the goods did not arrive.

Australia Post initially considered that the primary redress was against the sender of the products and the complainants should have put in place proper mechanisms to protect themselves when purchasing from overseas. While not disputing the legal correctness of this position, we suggested to Australia Post that the complainants would not have conducted their business dealings in this way if an Australia Post employee had not given them incorrect advice.

After further discussions, we agreed there was fault on both sides, and Australia Post refunded half of the amount of the money order. Australia Post also conducted training at the particular post office to ensure that correct advice is given in the future.

COMPLAINT HANDLING

Australia Post's Customer Contact Centres (CCCs) handle most complaints about postal services. We normally ask a person to contact the CCC in the first instance and to contact our office again if they are dissatisfied with the resolution provided by the CCC. During the year, we investigated some

matters that had not yet reached a resolution, but had stalled within the CCC.

In one case, a customer contacted the CCC because of failures to redirect his mail as requested. Largely because of the problems encountered, the customer extended his redirection for another six months and asked Australia Post to refund the \$34.50 fee. Australia Post closed the initial complaint a week after it received it without advising the customer. When he called about progress three weeks later, Australia Post reopened the matter and investigated it, but did not process the customer's request for a free extension of his mail redirection.

After experiencing continuing problems with the redirection of his mail, the customer called again three weeks later and repeated his request for a free extension. After numerous phone calls in the following month, Australia Post advised that he might receive a three-month refund.

At that point, the customer complained to our office. After we raised the central issues with Australia Post, the customer received his six-month refund. Australia Post also explained why the matter had taken so long to resolve and acknowledged that the complaint could have been handled better.

POSTAL INDUSTRY OMBUDSMAN

On 29 March 2006, Parliament passed legislation to establish the office of Postal Industry Ombudsman (PIO). The PIO scheme will commence operation by 6 October 2006.

As Australia Post will automatically become a member of the scheme, the PIO will take over the existing role of the Commonwealth Ombudsman in investigating complaints against Australia Post. Participation by private postal operators in the PIO scheme is voluntary. Fees charged for investigations will fund the PIO.

The PIO will have available the normal powers of an ombudsman when investigating a complaint to:

- require information or documents
- publish findings
- make a formal report to the Minister for Communications, Information Technology and the Arts, which can be tabled in the Parliament.

The PIO is required by the Ombudsman Act to observe procedural fairness in investigations.

During 2005–06, we worked on establishing contacts within the postal and courier industries to provide information about the PIO scheme. The office is also setting up a framework for handling PIO complaints and for determining and charging investigation fees. The PIO website at www.pio.gov.au has more information about the scheme.

australian taxation office

The Commonwealth Ombudsman has always dealt with complaints about the Australian Taxation Office (ATO). In 1995, the Ombudsman was given the title of Taxation Ombudsman to give a special focus to the office's handling of tax complaints in recognition of the unequal position of taxpayers and the ATO. In fulfilling this function, the Taxation Ombudsman is supported by the Special Tax Adviser, a small Tax Team dedicated to dealing with tax matters, and generalist complaint investigation officers in the Ombudsman's offices in each Australian capital city.

The Taxation Ombudsman is the only external complaint-handling agency for taxpayers with complaints about the ATO. The Taxation Ombudsman also continues to identify systemic issues and remedies arising from individual complaints, and works with other external oversight bodies such as the Inspector-General of Taxation and the Australian National Audit Office to improve aspects of tax administration.

Our specialist Tax Team continues to monitor complaints to identify emerging complaint trends that may warrant more active intervention by the Special Tax Adviser or the Taxation Ombudsman.

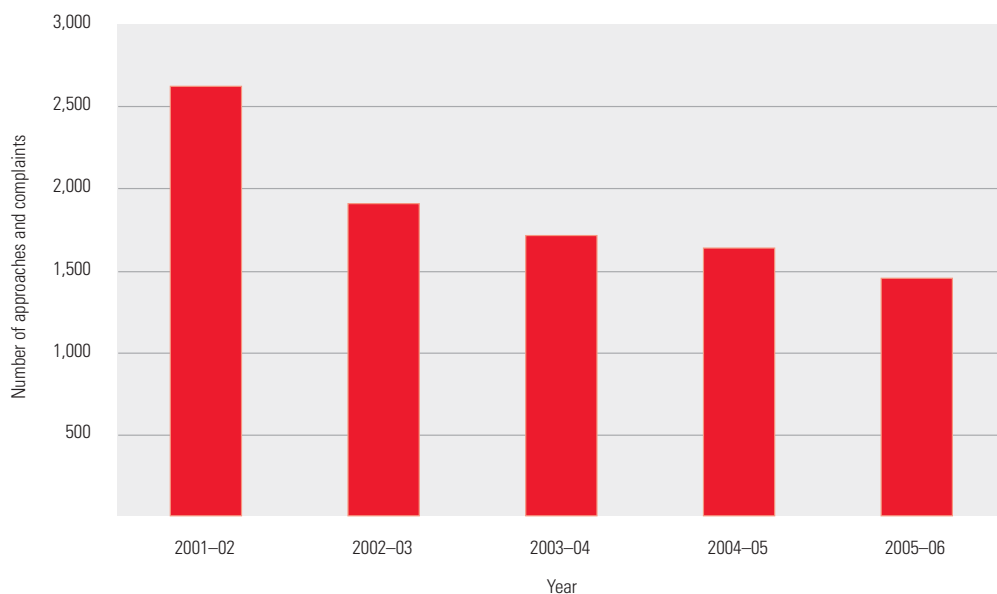
This role was strengthened in 2005, enabling the Tax Team to focus its attention increasingly on providing tax-related technical and contextual advice to our generalist investigation officers, and to commence project work on areas of interest in tax administration. For example, during 2005 we identified an increase in complaints about superannuation co-contributions, initiated a project to analyse such complaints, and issued a report in March 2006. Further information on our program of tax projects is provided on page 63.

'The Taxation Ombudsman is the only external complaint-handling agency for taxpayers with complaints about the ATO.'

COMPLAINTS OVERVIEW

In 2005–06, the Ombudsman received 1,523 approaches and complaints about the ATO, 1,451 of which were within the Ombudsman's jurisdiction (1,633 in 2004–05). Figure 7.3 shows the trend in complaints about the ATO.

FIGURE 7.3 AUSTRALIAN TAXATION OFFICE COMPLAINT TRENDS, 2001–02 TO 2005–06



There has been a steady decline in the number of tax complaints over the last few years. We have previously attributed this to the bedding down of the new tax system and the resolution of many of the mass-marketed scheme issues that dogged the ATO in the late 1990s and early 2000s. This year, we believe the continuing decline in the number of tax complaints is due to improvements in ATO administration, and particularly to the increasing effectiveness of the ATO's internal complaints process.

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

TAX ENVIRONMENT

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

The challenge for the ATO is to develop mechanisms and strategies that balance the tax system's complexity. Administrative systems and review processes that enable taxpayers to challenge ATO decisions are important mechanisms for achieving that balance. The ATO has formal objection and review processes, as well as an internal complaint-handling service—ATO Complaints—that it substantially revamped after a report in 2003 by the Taxation Ombudsman. The ATO's positive response to that report has resulted in a system that reflects best practice complaint management principles and that maintains a consistent approach across the ATO. For example, the new centralised complaint-recording system in the ATO includes an area dedicated to tracking, monitoring and resolving potential systemic issues; this enables the ATO to respond effectively to issues that have the capacity to impact on large numbers of taxpayers.

'The ATO's positive response to our report has resulted in a system that reflects best practice complaint management principles ...'

The ATO's responsiveness suggests a cultural commitment to complaint resolution within the agency. This commitment perhaps offers taxpayers better remedial options than externally imposed rules. While there is always room for improvement, the ATO's progress during the year in this area is acknowledged. For example, we understand that approximately 66% of all complainants using ATO Complaints receive a satisfactory outcome as a result of ATO complaint-processing action. This suggests that in some cases the ATO may not always get it right initially. However, it also suggests that the ATO has in place mechanisms that provide appropriate remedial options.

Another way to address tax complexity is for the ATO to have effective education and information strategies in place to assist taxpayers to better understand the tax system and how to comply with it. We are satisfied with the ATO's action in this regard as evidenced by improvements to the ATO website and tax agents' portal, and the ATO's publication of its approach to key issues such as its compliance strategy. Where appropriate, we make suggestions about how the ATO might improve its advice to taxpayers. In one case, we asked the ATO to consider changes in the way it responded to enquiries about eligible termination payments and advised taxpayers that income below the threshold may affect other entitlements such as the senior Australian tax offset. The ATO agreed and changed the written guidance it provided to staff on this matter.

UPDATE ON REFERRAL SURVEY PROJECT

Our usual practice is to suggest to complainants that they first try to resolve their concerns directly with the ATO as we consider the agency should first have the opportunity to correct any perceived problems. We will either suggest they contact the ATO, or we may offer to transfer their complaint directly, with the understanding that the complainant can contact us if dissatisfied with the outcome.

Last year, we reported that we had commenced a pilot project to test the effectiveness of our complaint referral process. We surveyed a small sample of tax complainants, who we had referred back through ATO Complaints to obtain feedback on whether the advice we provided was useful in progressing their complaints. Generally, the survey produced a positive result about the service provided by the Ombudsman's office. The results indicated a moderate level of complainant confusion about the advice provided to them and highlighted the need for more work in skilling our staff to provide appropriate advice. The survey also indicated there was a high percentage of complainant satisfaction with the complaint transfer service provided for written complaints.

The area of greatest concern was the low rate of take-up when we advised complainants to contact ATO Complaints directly. We raised this issue with the ATO, and ATO Complaints is exploring what steps it might take to better encourage complainants to make contact if they have problems or concerns. We identified changes to our own work practices to help increase this take-up rate and we are working with the ATO to make the referral process as easy and efficient for complainants as possible.

PROJECT WORK

Towards the end of 2005, the Taxation Ombudsman implemented a work program of internal and external tax projects to carry forward to the end of the 2005–06 financial year. Internal projects look at ways in which the Ombudsman's office can improve its own policy, procedures and decision making to more effectively manage tax complaints, such as the referral survey project described above. External projects generally examine individual tax complaints to assess the health of specific areas of tax administration, identifying any potential problem areas in the ATO's administration and making recommendations where appropriate.

In designing the project program, we avoided any overlap with the work of the Inspector-General of Taxation and the Australian National Audit Office, identifying instead areas that complement their work. We aim to work closely with our fellow 'watchdogs' in feeding into improvements to tax administration. Because of the knowledge we have gained through handling individual complaints, we

can bring to these broader projects a valuable perspective on the impact that government administration can have on individuals.

By using those complaints as a window to tax administration, and with almost thirty years' experience in handling complaints both about the ATO and across Australian Government administration, we hope to provide useful observations and commentary on the health of the system of tax administration and to identify improvements that should benefit all taxpayers. We also hope that the projects will improve our understanding of tax administration, to the benefit of individual taxpayers who come to us with their problems. We also plan to engage more with the tax profession to identify possible topics for future projects.

'We aim to work closely with our fellow 'watchdogs' in feeding into improvements to tax administration.'

Internal projects we initiated during the year include:

- construction of a revised list of 'issue strings', which is an internal Ombudsman office device for classifying the different issues and sub-issues in complaints. This supports investigation officers in analysing and investigating issues in individual tax complaints, and provides for more effective statistical reporting and systemic trend analysis
- analysis of the way we have exercised the statutory powers in the Ombudsman Act to decline to investigate tax complaints received by the office. The aim of this project was to facilitate the appropriate exercise of those statutory discretions, by developing instructional material to assist investigation officers, particularly where taxation legislation provides for formal and informal review rights.

External projects we initiated include the review of ATO administration in areas such as the use of garnishee powers, the compromise of taxation debts, superannuation co-contribution payments, remission of the general interest charge, and release from tax debts because of financial hardship.

We also have an ongoing outreach project focused on tax agents, to help and encourage them to raise issues of concern with this office. We want to analyse the issues they raise and identify areas that we consider merit further examination.

Issues relating to some of the external projects the Tax Team undertook during the year are outlined below.

SUPERANNUATION CO-CONTRIBUTION

The Superannuation Co-contribution Scheme (Super Co-contribution), effective from 1 July 2003, aims to assist eligible individuals to save for their retirement by providing matching government contributions for personal superannuation contributions. In March 2006, we issued a report on the ATO's administration of Super Co-contribution.

Our review of complaints relating to Super Co-contribution did not disclose any major concerns with, or systemic problems arising from, ATO administration of this scheme. As an example, almost a third of the complaints about Super Co-contribution related to concerns that the information about the scheme in ATO advertising was not sufficient for a person to make an informed decision on whether they met the requirements. However, we found that the advertising was clear in outlining the purpose of the scheme and basic eligibility criteria. In all cases, the advertisements clearly advised people about how and where they could seek further information. While we considered that the ATO advertising achieved an appropriate balance between simplicity and sufficiency, we also acknowledged that all government agencies grapple with the perennial problem of how much information is enough.

We suggested the ATO review its own complaints profile in relation to Super Co-contribution. We may revisit our review of the scheme at some future stage to see if there have been any changes of significance.

DEBT COLLECTION

Most taxpayers accurately declare their income, pay due tax and have a relatively incident-free interaction with the ATO. Where due tax is not paid, the ATO has a responsibility to collect outstanding debts as fairly and effectively as possible. In

general, the ATO encourages voluntary compliance. It will help taxpayers who find it difficult to meet their obligations by allowing flexible payment arrangements. Increasing or persistent non-compliance is likely to attract progressively more severe sanctions.

Not surprisingly, a significant proportion of complaints received about the ATO (12% in 2005–06) relate to debt recovery. For this reason, our project work program this year has had a particular focus on aspects of the ATO's debt collection and receivables policy, with projects relating to release from taxation debts on serious hardship grounds and the use of garnishee action to recover tax debts.

Release from debt

A taxpayer who is unable to pay a debt can apply to the ATO for whole or partial release from the debt due to serious financial hardship. Hardship in these circumstances is considered to be where payment of the debt would mean that a person would be unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves, their family or other dependants.

Before September 2003, the former Tax Relief Board decided hardship applications and complaints about its decisions could be made to the Ombudsman. Hardship decisions are now made by the Commissioner of Taxation and are reviewable by the Small Taxation Claims Tribunal.

Our examination of the ATO's handling of hardship applications indicates no major problems, a position confirmed by the falling number of complaints to this office.

'Our examination of the ATO's handling of hardship applications indicates no major problems ...'

The Small Taxation Claims Tribunal has upheld, partially or fully, only a small percentage of the objections pursued through it, which also gives a measure of confidence in the primary decisions. We also noted an improvement in the timeliness of decision making since the Commissioner took responsibility for deciding hardship applications.

Garnishee action

Where a tax-related liability is payable, the Commissioner of Taxation may issue a notice requiring a person who owes money to the taxpayer to pay that money to the Commissioner instead. This power enables the Commissioner to collect the tax-related liability without proceeding to judgment or execution. A third party is treated as owing money in various circumstances, including where that person holds money for or on account of the taxpayer, for example a bank or similar institution. Although only a small number of our complaints relate to garnishee notices served on banks and other third parties, we recognise that the impact of garnishee action on an individual can be significant.

Taxpayers often see garnishee action as being premature, intrusive and generally unwelcome. Given that the Commissioner is targeting outstanding debt, and garnishee action may be a part of any debt recovery strategy, we felt it timely to examine the ATO's approach to garnishee action.

We examined the ATO's approach to garnishee action as reflected in complaints received between July 2003 and November 2005. We identified 44 such complaints, and we investigated approximately 25% of them. In those cases, we generally found the ATO had acted reasonably in taking garnishee action. We found that it took such action generally only after other attempts to recover the debt had been unsuccessful, which was in line with the ATO's advice to us and its policy guidelines.

CASE MANAGEMENT

Taxpayers often have to deal with different parts of the ATO when managing their tax affairs, particularly if they have a number of problems or one problem with many aspects. A small business person may face several problems simultaneously, such as being subjected to a GST audit, being behind with some related lodgements and payments, and having difficulties in meeting superannuation guarantee contributions. Many taxpayers find it difficult to understand the tax system and how they might best resolve their problems.

In these circumstances, we may suggest that the ATO take a case management approach to a particular complaint. This means that one ATO officer will coordinate different areas of the ATO in

seeking to resolve a complaint that has different components. We found the ATO agreeable to such an approach and generally found it to be effective.

One unemployed complainant had an ATO debt of \$32,000 relating to self-assessed tax liabilities, GST and general interest charges. At our request, ATO Complaints appointed a case officer, who monitored the progress of aspects of his complaint. The ATO released him from part of the debt on hardship grounds and agreed to payment arrangements for the remainder of his debt.

'... we may suggest that the ATO take a case management approach to a particular complaint.'

In another case, an elderly taxpayer was having difficulty in comprehending his Pay As You Go obligations and was confusing these with the former provisional tax system. The usual approach of writing to the taxpayer about his concerns had proved ineffective, and the ATO agreed to our suggestion that an experienced ATO case officer work with him to sort out his current problems and to help him avoid such problems in future.

One of our aims in the coming year is to encourage the ATO to take a more systematic approach to using case managers to help people through these kinds of issues.

THE YEAR AHEAD

During 2006–07, we intend to continue the internal and external project schedule we began this year. The project schedule will include:

- a review of the effectiveness of the ATO administration relating to matters such as superannuation guarantee
- debt collection payment arrangements
- data matching bank interest
- tax issues for Indigenous communities
- audit activity of work-related expenses
- 'conferencing' for tax disputes
- call management capability and delivery
- lodgement compliance penalties and prosecution
- issues around the private health insurance rebate.

Centrelink is responsible for delivering a wide range of programs and payments on behalf of a number of Australian Government agencies. This office receives more approaches and complaints about Centrelink than about any other agency, consistent with the high volume and complexity of the services it provides.

In 2005–06, Centrelink approaches and complaints accounted for 42% of all approaches and complaints to the Ombudsman. We received 7,333 approaches and complaints about Centrelink, 7,095 of which were within the Ombudsman's jurisdiction (7,699 in 2004–05). This was a decrease of 8%. Figure 7.4 shows the trend in complaints about Centrelink.

The Ombudsman investigated 29% of complaints received about Centrelink. The majority of complaints were about the Newstart Allowance (19%), the Family Tax Benefit (16%), the Disability Support Pension (14%), the Parenting Payment (12%) and service delivery (9%).

We also received complaints about a large range of other issues, including correspondence with customers, information stored on customer files, the pension bonus scheme, the internal review process, nominees and banning customers.

CORRESPONDENCE WITH CUSTOMERS

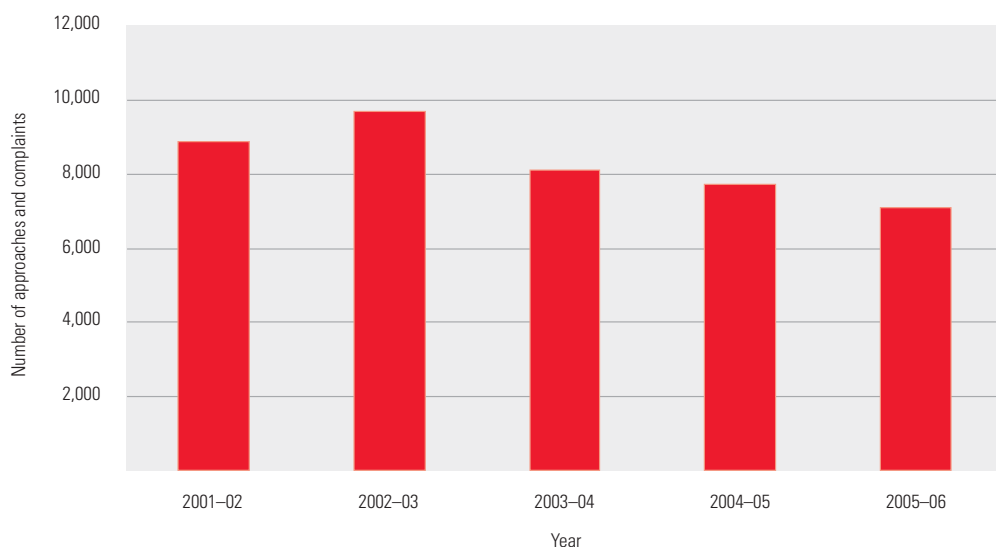
During the year, the Ombudsman received complaints that highlighted problems in the content and style of Centrelink correspondence. Among the issues were the clarity and consistency of Centrelink decision letters and notices, the use of templates and standard letters, the absence of reasons and information for Centrelink decisions, and the adequacy of key information printed on the back of the notices. We raised all these issues with Centrelink during the year in the context of its Letters Improvement Project. We discuss some of these issues below, and in Chapter 9—Problem areas in government decision making.

'... the Ombudsman received complaints that highlighted problems in the content and style of Centrelink correspondence.'

Decision letters

Complaints about decision letters focused on either the absence of reasons for Centrelink decisions, or the adequacy of reasons. If the reasons for a

FIGURE 7.4 CENTRELINK COMPLAINT TRENDS, 2001–02 TO 2005–06



decision are inadequate, a Centrelink customer may lack the necessary information or understanding to make an informed choice about whether to seek review of the decision.

One example is grant letters, which often contain information about the start date of a payment and the rate to be paid. The letters report a person's income and assets as a combined figure, rather than as separate components. This can leave the customer uncertain as to what Centrelink took into account in the assessment. Unless customers seek further detail from Centrelink, they cannot identify discrepancies in the data. In particular, where the decision is favourable (such as a grant of payment or increase in rate) most customers are likely to assume that the decision is correct, when that may not be the case.

A customer who does not check with Centrelink runs the risk of being underpaid or incurring a recoverable debt. In one complaint that we investigated, Centrelink failed to correctly calculate financial information provided by the customer. The decision letter advised of a reduced rate of age pension and only stated the total assets and income used in the assessment. As the letter did not provide sufficient information to allow the customer to realise Centrelink's mistake, the customer was underpaid over an extended period. Compensation in the amount of the underpayment was paid under the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

In another complaint, a customer was unaware that calculation of his age pension rate had been incorrectly based on his being a homeowner, which resulted in a lower rate of pension being paid. The decision letter failed to include that information, making it difficult for the individual to determine the accuracy of his payment.

Templates and standard letters

The use of templates and standard letters can assist in controlling the consistency and quality of correspondence. A possible drawback is that a template letter will not be tailored to the circumstances of the recipient. Generally, it is important that template letters are of good quality and do not contain irrelevant or incorrect information.

In a number of complaints we received, the decision letter from the Authorised Review Officer used the standard phrase 'I have not had any previous involvement in your case'. This phrase was used even when the same officer had considered an earlier review request from the same customer.

Another source of complaints was the use of incorrect codes for standard letters, where customers were incorrectly advised they were receiving a different payment, or about activities being undertaken with their payment.

INFORMATION STORED ON CUSTOMER FILES

We investigated a complaint from a Centrelink customer who had requested to see the content of her Centrelink file under the *Freedom of Information Act 1982*. Among the information she obtained was a copy of an article she had written that had been published in the local press and which Centrelink had placed on her file. The individual was apprehensive that this article would prejudice any future dealings she may have with her local Centrelink office. As a result of our investigation, Centrelink developed national guidelines on the storage of media articles by customers, and how to respond to complaints on that issue.

PENSION BONUS SCHEME

In March 2006, we commenced an own motion investigation into the pension bonus scheme, because the number of complaints about the program was disproportionate to its size.

The pension bonus scheme is an incentive program that rewards people who qualify for receipt of the age pension but continue working instead of claiming their pension. Centrelink administers the scheme and pays a tax-free, lump-sum bonus when the person eventually retires and claims the age pension. The Department of Veterans' Affairs (DVA) administers a parallel pension bonus scheme.

'... the number of complaints about the pension bonus scheme was disproportionate to its size.'

A person must register for the scheme and will not be eligible for the maximum bonus payment until they have been working for five years after their initial registration. During those five years, there is no legislative requirement for the customer to contact the agency. This presents particular challenges for the agency's administration of the scheme in terms of provision of information and staying in touch.

The rules of the scheme, particularly those related to claiming the bonus, are complicated and not well understood by Centrelink staff or customers. For example, to be paid a bonus the person must have passed a work test throughout the period they have deferred claiming the age pension, and must claim within 13 weeks of when they cease work or fail to pass the work test. They must also simultaneously lodge a claim for their bonus and a claim for the age pension.

In some instances, complainants received no information about the work test requirements, and after deferring their claim for over four years found out they had failed the work test in the first year and were therefore not entitled to receive a bonus at all.

It can be difficult to decide when to claim a bonus because it is calculated on the rate of age pension when the pension is first granted. For instance, if a person has not made decisions about their superannuation and termination payments or ceased work entirely, the initial rate of pension would be reduced and result in a smaller bonus being paid. However, the person generally has only 13 weeks from when they retire to make a claim or they risk losing all or part of their bonus. Generally, Centrelink encourages people who register for the scheme to see a Financial Information Service (FIS) officer about the optimum timing to claim their bonus.

The majority of complaints made to this office about the pension bonus scheme are because the complainant received a smaller bonus than they had expected. Often they were not referred to a FIS officer and did not understand the factors affecting the amount of bonus payable. For similar reasons, the pension bonus scheme is over-represented in the volume of complaints about CDDA claims received about Centrelink.

As part of our investigation, we are examining the underlying causes for:

- complaints received by the Ombudsman
- customers appealing against their assessment
- customers seeking compensation under the CDDA scheme.

We are also examining the processing guidelines provided to Centrelink staff, the promotional material used to inform customers and potential customers about the scheme, the registration and claim procedures and forms, and the arrangements in place for ongoing contact with members of the scheme. The chief purpose in this part of the investigation is to gauge whether the problems that are encountered by Centrelink customers stem from the way the scheme is being administered. We will also examine whether these administrative documents and arrangements accurately reflect the legislation.

We are currently analysing data from Centrelink and the DVA and hope to complete our report in late 2006. We will draw from the experiences of both agencies to identify areas for improved administration. We will make recommendations after consulting the service delivery agencies and discussing policy-based issues with the relevant policy department, such as the Department of Families, Community Services and Indigenous Affairs (FaCSIA), the Department of Human Services (DHS), and the DVA.

ONGOING ISSUES

Some of the issues outlined in the Centrelink section of our 2004–05 annual report are ongoing. These issues involve Centrelink's internal review process, its nominee arrangements and the absence of national guidelines for banning customers from contacting staff.

Internal review process

In last year's annual report we identified two problems with Centrelink's internal review process—delays and appeal fatigue. A further area of complaint that came to notice this year related to the internal review path adopted by Centrelink.

We received complaints where Centrelink considered cases under the CDDA scheme (which is a non-statutory scheme), when it would have been more appropriate to allow the case to be resolved under the social security law.

Some customers had delayed pursuing review by the Social Security Appeals Tribunal pending a decision about their claim for compensation. In some cases, the compensation decision declining payment had taken several months, well outside the 13-week period allowed for the customer to lodge an appeal with the Tribunal and be able to receive full arrears from the date of the original decision in the event of a positive outcome. In other cases, the complainant was not aware that their case had been referred for consideration for compensation.

The Ombudsman participated in a Centrelink steering committee made up of representatives from both Centrelink and external organisations. The committee considered the internal review process within Centrelink about decisions made under the social security and family assistance laws. We understand that Centrelink is yet to make final decisions on the committee's recommendations.

Nominees

A Centrelink customer can authorise a person or organisation to act and make changes and/or receive payments on their behalf. This person or organisation is called a nominee.

We keep receiving complaints about these arrangements, which continue to be problematic. These complaints raised the question of whether Centrelink is being sufficiently rigorous in its oversight of nominee arrangements.

In one case, a public trustee advised Centrelink of their appointment as a woman's financial administrator and requested that her social security pension be paid to them as the woman's nominee. At the time, the woman was also receiving another allowance that continued to be paid to her carer. Centrelink acknowledged that they should have reviewed the appropriateness of continuing to make payments to her carer. This may well have prevented a dispute when Centrelink subsequently granted the woman family tax benefit and paid a lump sum to her carer.

We plan to do further work with Centrelink on these aspects of the process in the coming year.

Banning customers

Last year, we reported that we had received a number of complaints from customers who had been banned from either attending Centrelink offices or having telephone contact with staff. We noted that although we found that the decisions to ban the individuals concerned were not unreasonable, these complaints highlighted that Centrelink did not have national guidelines for the process of banning customers. Centrelink indicated they would develop national guidelines to be implemented in the first half of 2005–06.

At 30 June 2006, the absence of national guidelines for staff on banning customers from contacting Centrelink staff is still an issue. However, significant progress has been made on developing national guidelines for dealing with difficult customers and it is expected that these will be available to all Centrelink staff later in 2006.

'... the absence of national guidelines for staff on banning customers from contacting Centrelink staff is still an issue.'

WELFARE TO WORK INITIATIVES

Preparation for the implementation of the Welfare to Work initiatives in July 2006 was a major topic of discussion and liaison between the Ombudsman's office and Centrelink this year. The policy and assessment processes draw together a number of Australian Government agencies as well as contracted services providers. The interaction that Centrelink establishes with these agencies and providers will be critical to their administration of the initiative.

We met with other relevant government agencies to discuss the Welfare to Work initiative, including the Department of Employment and Workplace Relations (DEWR), DHS, FaCSIA, and the Child Support Agency. We also attended Centrelink's monthly Community Reference Group meeting. The reference group comprises national representatives

of peak community groups, and provided a valuable forum to present information about the extended role of the Ombudsman, in particular around the complaint and appeal processes.

Responsibility for Welfare to Work initiatives extends across a number of government and non-government agencies. Individual complaints may be related to the work of those agencies that have responsibilities under the scheme, including Centrelink, DEWR and DHS. A large proportion of elements of Welfare to Work will be delivered by community-based agencies such as job network providers, job capacity assessors and welfare agencies. These agencies will make decisions and recommendations that will affect the lives of people claiming income support payments.

Under changes made to the *Ombudsman Act 1976* in December 2005, the Ombudsman has jurisdiction to investigate the actions of 'Commonwealth service providers' as if those actions had been made by the relevant department or authority. A Commonwealth service provider is a contractor or subcontractor that provides goods or services for or on behalf of an Australian Government agency, to a person other than an agency. This effectively means that the Ombudsman now has authority to investigate complaints about organisations that are contracted to the Commonwealth as job network providers, job capacity assessors and financial case managers. The complexity of the process of complaint investigation is expected to increase because of this.

From 1 July 2006, an individual who fails to meet specific obligations required under Welfare to Work or who has a third 'participation failure' recorded, will incur an eight-week non-payment period. Centrelink staff will assess those people who are

subject to the eight-week non-payment period to determine if they meet the criteria for being classified as 'exceptionally vulnerable'. Those who have children or who are considered exceptionally vulnerable will be referred to community organisations for financial case management.

The role of the financial case manager will be to assess what, if any, financial assistance an individual should be given, up to the amount the individual would have received in fortnightly payments if they had not incurred the eight-week non-payment period. The financial assistance will be in non-cash forms except in exceptional circumstances. There are criteria for what expenses can be considered 'essential' for payment by the financial case managers.

Given the impact of these measures on the individuals affected by them, we anticipate that we will receive complaints about many related issues including:

- job capacity assessments and their resulting decisions and recommendations
- reasons for and impacts of failing to meet specific obligations
- reasons for and consequences of non-payment for an eight-week period
- decisions by the financial case manager about which expenses are considered 'essential'.

The role of Centrelink in the Welfare to Work initiative is pivotal. In some cases, Centrelink will be the relevant service delivery agency for a specific function such as job capacity assessments or financial case management; in other cases, Centrelink will refer the client to a contracted external agency.

child support agency

The Child Support Agency (CSA) was established in 1988 to administer the Child Support Scheme, which provides for the assessment, collection and disbursement of child support. The scheme was devised to enable compulsory payment of child support based on the relative incomes, earning capacities and care responsibilities of both parents.

The Child Support Scheme operates under two statutes—the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*. Together, those Acts provide for registering child support cases, calculating child support assessments, recovering moneys owed for child support and disbursing child support payments. Payers are those parents responsible for paying child support, while payees are those parents entitled to receive child support.

In 2005–06, the Ombudsman received 1,927 approaches and complaints about the CSA, 1,891 of which were within the Ombudsman’s jurisdiction (2,094 in 2004–05)—a decrease of 10%.

Approaches and complaints about the CSA accounted for 11% of all complaints received by the Ombudsman this year. Figure 7.5 shows the trend in complaints about CSA.

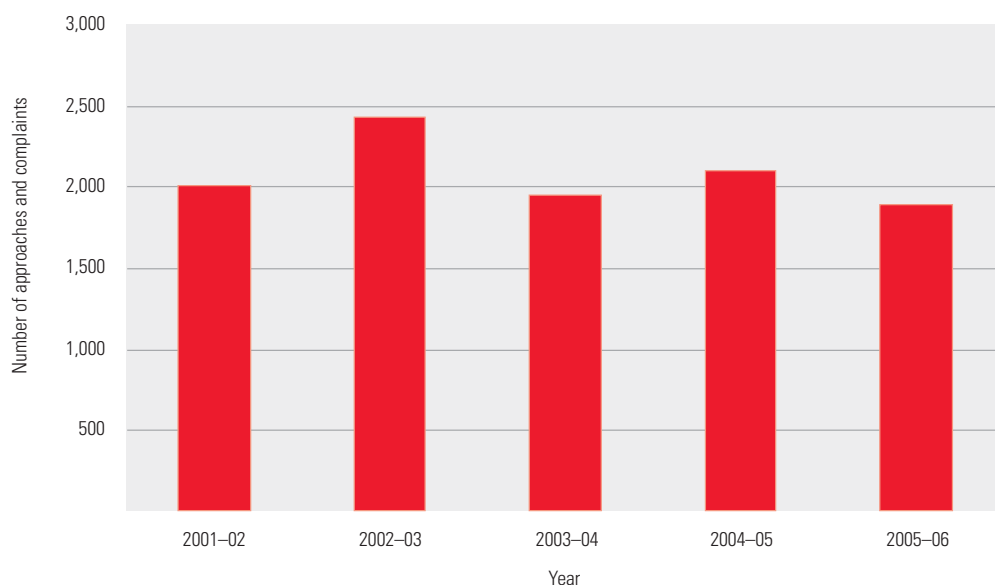
The main complaint themes that featured this year were about the ongoing issue of the CSA’s registration and interpretation of court orders, the accuracy of its advice to parents, and its actions in withholding or disbursing child support funds. A brief description of the scope of our investigations in these areas follows.

COURT ORDERS AND AGREEMENTS

Although most child support assessments are made according to the formula set out in the child support legislation, some clients negotiate their own child support agreement or obtain a court order that establishes the rate of child support payable. Agreements and court orders can be registered with the CSA, and the CSA can take on the responsibility of collecting child support on behalf of the payee. At the end of June 2005, 5.3% of all active child support assessments were based on agreements or court orders (up from 4.6% at June 2004).

In the Ombudsman’s 2004–05 annual report, we drew attention to errors in registering agreements or court orders and failures to properly inform

FIGURE 7.5 CHILD SUPPORT AGENCY COMPLAINT TRENDS, 2001–02 TO 2005–06



clients of the effect (or lack thereof) that particular provisions would have on their child support arrangements. These issues continue to be the subject of many complaints to the Ombudsman.

In one complaint that we investigated the payee claimed that the CSA had failed to correctly advise him in advance of its interpretation of a clause in a private child support agreement between him and his ex-wife. The parties had included a provision in their agreement that allowed either parent to withdraw from the arrangement if they were dissatisfied. This provision required the withdrawing parent to indicate their intention during a certain period at the end of each financial year, but did not clearly state to whom the written notification should be given.

In line with his understanding of the terms of this arrangement, the payee wrote to the CSA, advising of his intention to withdraw from the agreement and asking that an assessment under the child support formula be generated. The CSA subsequently advised the payee that his letter did not meet the requirements of the agreement, as he was required to advise the payer (as the other party to the agreement) rather than the CSA. By the time the payee received this advice, the allocated withdrawal period had lapsed and the payee was therefore unable to withdraw from the agreement for another year.

The payee lodged a claim with the CSA for compensation, and later complained to the Ombudsman when the CSA refused that claim. It may be that the CSA's interpretation of the relevant agreement was not unreasonable, yet the complaint nevertheless enabled us to highlight with the CSA the importance of clarifying the intention and practical impact of court orders and agreements at the time of registration, rather than some months or years later.

ACCURACY OF ADVICE

The CSA had 732,634 active cases at 30 June 2005, 47.8% of which were registered for collection of child support by the CSA. With so many active cases to handle, CSA officers are responsible for providing written and verbal advice to a significant section of the Australian community.

In 2005–06, the Ombudsman received a number of complaints about the accuracy of the advice provided by the CSA and the impact of this advice on the recipients. Two common themes in the complaints were that the CSA was alleged to have provided incorrect advice about the operation of the child support scheme or had failed to provide adequate advice about a client's child support responsibility.

In one investigation, the payer's tax refund had been intercepted by the CSA so that the money could be applied to reduce her child support arrears. When she later contacted the CSA to request that the money be returned to her on the basis of hardship, she was advised by the CSA client service officer to obtain a stay order to prevent the CSA from disbursing the money to the payee. She proceeded to seek legal advice and file the appropriate applications, incurring the related costs. When she advised the CSA of her progress in this matter, she was advised that the money had already been disbursed to the other parent.

The advice to this payer to obtain a stay order was incorrect, as a stay order can only be obtained when a change of assessment or departure order application is in progress. The client service officer should have invited the payer to provide details of her assets and liabilities and request the CSA to consider releasing all or part of her refund on the basis of hardship. Such a request would then have been considered in accordance with the CSA's procedural guidelines.

As a result of the Ombudsman's involvement in this matter the CSA offered to reimburse the payer for her legal costs, under the Compensation for Detriment caused by Defective Administration scheme.

WITHHOLDING AND DISBURSEMENT OF CHILD SUPPORT FUNDS

The CSA has an obligation to collect overdue child support amounts where an appropriate source can be identified and to disburse these amounts to payees. The CSA can, however, decide that it is appropriate to negotiate the refund of some or all of a collected amount to the paying parent on the basis of demonstrated hardship. In some instances it has been the CSA's practice to place a 'hold' on the payment to prevent it from being disbursed until the CSA has considered the payer's hardship application.

During the year, the Ombudsman received a number of complaints about this issue. These complaints came both from payees (who were unhappy their disbursements had been delayed) and from payers (who complained that the CSA had disbursed payments to payees despite an oral agreement to delay them while considering a hardship request).

In the course of investigating these complaints we became aware that the CSA's current policy of delaying disbursement pending the determination of hardship requests is contrary to the payment provisions of s 76 of the *Child Support (Registration and Collection) Act 1988*. The Act clearly states that, on or before the first Wednesday following the end of the month, a payee is entitled to receive any collected amount that is owed to the payee. There is no provision in the Act for a payment to be delayed for any reason.

We highlighted this issue with the CSA in early 2006, and we are continuing to work with the CSA to identify an appropriate resolution to the current inconsistency.

EMERGING ISSUES

The Ombudsman's office cannot conduct thorough and efficient investigations unless agencies respond quickly to requests for information and documents. Although most general enquiries from our office to the CSA were addressed in a timely manner, in a small number of instances our investigation was hindered by a significant delay in obtaining information and documents from the CSA.

We also experienced some difficulties in prompting the CSA to instigate internal action to remedy an identified problem.

We initiated discussions with the CSA's executive about the resolution of these issues and will continue our focus on these matters in 2006–07.

FUTURE DIRECTIONS

The CSA and the child support scheme was the subject of much public discussion in 2005–06. In June 2005, the Ministerial Taskforce on Child Support publicly released its report, *In the Best Interests of Children*. The taskforce made 30 recommendations for reform to child support legislation and to the way in which the CSA delivers its services. A number of these recommendations also have implications for other areas of government including Centrelink, FaCSIA, the Attorney-General's Department, and those courts with family law jurisdiction.

The government responded to the taskforce's report in February 2006, agreeing to accept the majority of its recommendations. The first phase of changes, including an increase to the minimum weekly rate of child support and a reduced income cap for high earners, take effect from 1 July 2006. Another reform to be implemented in January 2007 is that decisions made by the CSA will be subject to review by the Social Security Appeals Tribunal. Most significantly a new child support formula will be implemented from 1 July 2008.

It is unclear at this stage what, if any, effect the child support reforms will have on the number or type of complaints to the Ombudsman's office. As with any substantial legislative change, it is possible that in the early years there will be an increase in complaints while parents adjust to the new child support regime. We will track the progress of these changes and ensure our staff are given training on the technical changes to the child support law and on the CSA's new service delivery model.

Complaints relating to Defence fall into two categories: the Defence Force Ombudsman (DFO) jurisdiction, covering employment-related matters for serving and former members of the Australian Defence Force (ADF); and the Commonwealth Ombudsman jurisdiction, covering complaints about administrative actions of the Department of Defence, the Department of Veterans' Affairs (DVA), the Defence Housing Authority (DHA) and Defence Service Homes.

We received 750 Defence-related approaches and complaints, 690 of which were within the Ombudsman's jurisdiction (662 in 2004–05). Table 7.1 shows the trend in Defence complaints.

DEPARTMENT OF DEFENCE

We received 121 approaches and complaints about the Department of Defence (125 in 2004–05). The relative stability in complaint numbers observed over recent years has continued. Importantly, the proportion of protracted and older complaints has been reduced, reflecting action taken by the department to improve access by Defence personnel to internal complaint-handling processes. The newly established Fairness and Resolution Branch in the department has played a key role as the conduit between operational areas and our office, facilitating the timely flow of information and monitoring and following up on complaints.

AUSTRALIAN DEFENCE FORCE

We received 286 complaints from serving and former members about the actions and decisions of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force (298 in 2004–05).

An important distinction in the work of our office in relation to ADF complaints is that we consider employment complaints if they come from people who are serving or have served in the defence forces. Types of complaints can include access to entitlements associated with conditions of service, promotion, posting, return of service obligation, termination of enlistment or appointment, pay and allowances, medical categorisation, debt management and Defence's internal handling of complaints.

The office is pleased that in the past twelve months it has been able to finalise complaints about ADF matters more quickly. By 30 June 2006, only four complaints had been open for six months or more. The improvement in our performance can be attributed to a more effective working relationship with the department and the ADF, and the department's implementation in 2005 of a number of the recommendations made by the joint Ombudsman and Department of Defence review of the effectiveness of the Redress of Grievance (ROG) process.

TABLE 7.1 DEFENCE-RELATED APPROACHES AND COMPLAINTS, 2003–2004 TO 2005–06

Agency	2003–04	2004–05	2005–06
Royal Australian Navy	68	67	50
Australian Army	205	170	159
Royal Australian Air Force	79	61	77
Defence Housing Authority	23	24	27
Department of Defence	135	125	121
Department of Veterans' Affairs	172	203	253
Other (see breakdown for 2005–06 in Appendix 4–Statistics)	8	12	3
Total	690	662	690

Review of the ADF redress of grievance system

Released in April 2005, the *Review of Australian Defence Force Redress of Grievance System 2004* report recommended changes to improve the process and reduce the time taken by the ADF to investigate complaints from members. As at June 2006, the department advised that 23 of the 72 recommendations made in the review had been implemented. The other recommendations should be implemented within the agreed timeframes.

The Department of Defence took an important step in streamlining the ROG process by establishing the Fairness and Resolution Branch. The branch was formed in January 2006 by amalgamating a number of complaint agencies within the Defence portfolio—the Complaint Resolution Agency, the Defence Equity Organisation and the Directorate of Alternative Dispute Resolution.

It is encouraging to note that there has been a significant improvement in the department's handling of ROGs over the past year, with a reduction in both the number of cases awaiting allocation to a case officer and the time taken to finalise ROGs. There has also been a reduction in the number of complaints to the Ombudsman about ROG processes.

Senate inquiry into the effectiveness of the military justice system

On 5 October 2005, the government announced its response to the recommendations of an inquiry into the effectiveness of the military justice system conducted by the Senate Foreign Affairs, Defence and Trade References Committee. The then minister for defence, Senator the Hon. Robert Hill, noted that implementation of recommendations from the joint Ombudsman and Department of Defence review of the ROG process would 'improve the accountability, impartiality and timeliness of processing and monitoring'. The government also advised that a decision had been made not to create an Administrative Review Board as recommended by the committee, noting that the DFO already provides an independent and external complaint-handling mechanism for members of the ADF.

The Senate committee conducted a further hearing in June 2006 to consider the action taken by the government in response to the earlier report. The Ombudsman appeared before the committee and reported on the positive steps that had been taken within Defence during the previous year to meet many of the criticisms made in earlier reports. Much of the reform was in response to the joint review of the ROG process.

'Much of the reform was in response to the joint review of the ROG process.'

Young people in the military

In October 2005, we published a report of an own motion investigation into the ADF's management of service personnel under the age of 18.

The investigation was initiated in 2003 after several serious complaints were received from parents of young people in the ADF. The chief findings of the investigation were that:

- establishments and commanding officers require a comprehensive and unambiguous definition of the ADF's duty of care to minors so that a consistent level of care can be provided to all minors within the ADF
- many training establishments are yet to develop a culture that allows trainees to feel confident about seeking support while undergoing training
- commanding officers require support so that they can deliver appropriate care to minors.

In responding to the report, the Chief of the Defence Force (CDF), Air Chief Marshal Angus Houston AO, AFC, advised that the ADF will implement all but one of the recommendations. The recommendation that was not accepted was that the ADF analyse the costs and benefits of accepting minors for enlistment in the ADF with a view to determining whether the enlistment age should be raised to 18.

A key recommendation accepted by the CDF is the need to seek legal advice on the extent of the ADF's duty of care to minors and how that should be

interpreted in service and training establishments. The CDF has advised that once the extent of the duty of care has been defined, procedural guidelines for commanding officers and training officers will be developed to meet the gap identified in current reference material.

Other recommendations, when implemented, will have a positive impact on the selection and training of instructional and support staff in training establishments, the provision and access to health services for trainees, and the capture of feedback from trainees about their experiences.

'A key recommendation is the need to seek legal advice on the extent of the ADF's duty of care to minors ...'

The CDF also announced that many of the recommendations in the report would be extended to all young members in their first year of service and not merely to those members under the age of 18. This is a pleasing response to the report.

DEPARTMENT OF VETERANS' AFFAIRS

Services administered by DVA affect the lives of up to half a million Australians. These services include service pensions, income support supplement and allowances, disability pensions, war widows' and widowers' pensions, allowances, special purpose assistance, Defence Service Home Loans Scheme assistance and concession cards.

We received 276 approaches and complaints, 253 of which were within the Ombudsman's jurisdiction (203 in 2004–05), an increase of 25%. A continuing concern in our investigation of these complaints has been delays in receiving responses to our enquiries from the DVA.

Consequently, we have worked with the DVA to achieve more timely responses to our queries and resolution of complaints. We introduced regular monthly meetings with representatives of the DVA to discuss outstanding complaint issues. Senior Ombudsman staff discussed more complex and protracted complaints with their DVA counterparts in an effort to find a productive resolution to particularly difficult cases.

This consultation resulted in a reduction in the time taken to handle DVA complaints. By 30 June 2006, only five DVA complaints had been open for six months or more. This achievement is particularly significant given that more complaints were received in 2005–06 than in previous years.

F-111 (fuel tank) deseal/reseal programs

Shortly after the F-111 aircraft entered service with the Royal Australian Air Force in 1973, it was discovered that the sealant in the integral fuel tanks of most of the aircraft had degraded to the point that extensive maintenance was required. A program adapted from the United States Air Force was introduced requiring fuel tanks to be desealed and then resealed to correct the problem and prevent serious fuel leaks. Over the course of the next 27 years, four separate 'deseal/reseal' programs were conducted. In 2000, it was determined that the deseal/reseal processes could be damaging to the health of the individuals involved and the programs were discontinued.

As a result of the findings of a board of inquiry, the government implemented a series of health care schemes to provide treatment for personnel affected by involvement in deseal/reseal work. In August 2005, the government announced ex gratia lump sum payments of \$10,000 or \$40,000 for defined groups of F-111 deseal/reseal participants. The payments are in addition to assistance provided for medical treatment.

As the payment arrangements had the capacity to give rise to complaints to our office, the DVA briefed us on the mechanism used prior to the government's announcement and on how they intended to consider complaints from unsuccessful applicants. This enabled us to understand how the DVA would be assessing claims and identify any potential problems with the process before any claims were lodged.

The DVA advised that at 30 June 2006, 1,131 applications had been received and 715 had been determined. Sixty-two of the applications assessed were unsuccessful. Between August 2005 and June 2006 we received 28 complaints from unsuccessful applicants.

Decisions made under this ex gratia scheme cannot be appealed to the Veterans' Review Board or the Administrative Appeals Tribunal. The Ombudsman is not authorised to review the definitions that determine which groups of individuals are eligible for a payment (as these criteria were adopted by the Minister for Veterans' Affairs). However, we can consider the process undertaken by the DVA to determine an application, ensuring that the application has been considered thoroughly and fairly against the established criteria, taking into account all relevant information.

DVA staff have consistently demonstrated a willingness to respond quickly to our enquiries about the deseal/reseal ex gratia payment decisions, which has enabled us to finalise complaints in a timely manner.

Military Rehabilitation and Compensation Scheme

The *Military Rehabilitation and Compensation Act 2004* was enacted in July 2004. All claims relating to injury, disease or death due to service in the ADF are dealt with under this Act. In 2005–06, we received a range of complaints about the processing of claims under the provisions of the Military Rehabilitation and Compensation Scheme (MRCS). Often the cause of complaint was the time the DVA took to determine a claim. Our investigations established that the delays were not generally due to the DVA's inaction. Often the processing of a claim was suspended while the DVA awaited the receipt of documentation from the claimant or the ADF. We understand that the ADF and the DVA are working to improve liaison and

communication so that MRCS claims can be determined more quickly.

In one case, a member complained that his application for payment of a specific allowance had been refused. We established that while the member's claim had been correctly assessed according to the current policy, the outcome did not appear consistent with the intention of the legislation. Enquiries with the DVA and the Department of Defence confirmed that the member's claim had highlighted a deficiency in the existing provisions.

Following discussions between the DVA and the department, action was taken to rectify the deficient provisions. An additional allowance was also added to the schedule of available payments as a result of the investigation of this case.

DEFENCE HOUSING AUTHORITY

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

We received 27 approaches and complaints about the actions and decisions of the DHA (24 in 2004–05). The majority of the complaints were about the suitability of housing provided or relocation entitlements. In most cases we were able to resolve the matter quickly through informal liaison with DHA representatives.

The role of the Ombudsman's office in overseeing immigration changed substantially during 2005–06. The change followed the report prepared by former police commissioner Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (Palmer report). The changes stemmed also from vigorous debate in parliament and the public about the rules governing immigration detention and compliance.

The title of Immigration Ombudsman was conferred on the Ombudsman, with the responsibility of undertaking a more intensive oversight role in relation to immigration administration. The office has responded by establishing a more active program of visiting detention centres, and monitoring and inspecting immigration compliance activity.

A new function was also conferred on the office, of conducting a review of the case of each detainee who has been held in immigration detention for more than two years, and thereafter every six months for those who remain in detention. The office was also asked by the Australian Government to investigate over 200 cases in which Australian citizens or people lawfully in Australia

had been either held in detention for some period or removed from Australia.

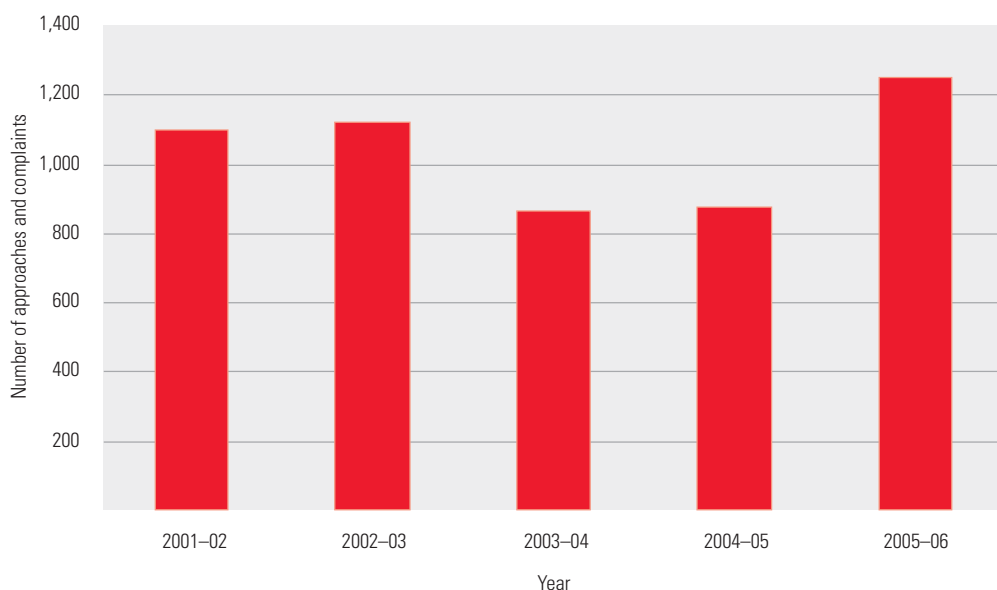
In addition to those new functions and activities the office has continued to discharge its accustomed role of handling complaints about immigration matters.

COMPLAINTS OVERVIEW

The Ombudsman responded to a steady flow of complaints about immigration matters in 2005–06. Overall we received 1,300 approaches and complaints about DIMA, 1,250 of which were within the Ombudsman's jurisdiction (873 in 2004–05). This represents a 43% increase on the number of approaches and complaints, and is the highest number the office has dealt with about DIMA in any one year. The probable reason for the increase is the higher profile of the office in discharging the oversight role of Immigration Ombudsman.

The team reviewing the circumstances of people who have been held in detention two years or more also handled complaints that have not been included in those statistics. Figure 7.6 shows the trend in complaints about DIMA.

FIGURE 7.6 DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS COMPLAINT TRENDS, 2001–02 TO 2005–06



Issues arising in complaint handling

Complaints about DIMA can be categorised into three distinct areas: migration issues, which are usually about decisions on visa applications; immigration detention issues raised by or on behalf of detainees; and other issues such as freedom of information applications and citizenship processes. This year complaints about detention issues replaced complaints about migration issues as the largest category.

The office investigates a higher proportion of the approaches and complaints received about DIMA (45% in 2005–06), compared to the average rate of investigation across all Australian Government departments and agencies (35% in 2005–06). We have discussed this issue with DIMA, pointing out that Ombudsman staff will not refer a complainant to an agency unless the staff are confident that the agency's complaint-handling system is adequate to deal with the particular complaint. We recognise that a project is underway within DIMA to develop an improved complaint-handling system. It is an issue that we will continue to monitor.

The following two cases illustrate the kinds of issues that arise in the Ombudsman's complaint jurisdiction.

The investigation of a complaint about DIMA's policy on conjugal visits at immigration detention centres led to reconsideration of the policy. The complaint highlighted the lack of clear guidelines as well as the inconsistent and restrictive application of the policy. The initial response we received from DIMA was that a conjugal visit would not be facilitated where it is requested by a detainee's partner who is not in immigration detention. DIMA argued that to allow such visits might compromise the good order and security of the detention facility. After discussion of the issue at a senior level between our offices, DIMA indicated that policy and operational guidelines would be reviewed to allow for conjugal visits as part of the wider review of its visits policy flowing from the Palmer report.

Another complaint investigation concerned the detention of a husband and wife and their two children, who had their bridging visas cancelled when they went to renew them at a DIMA office. They were detained at the same time. They

complained to the Ombudsman that it was unnecessary to cancel their bridging visas and detain the whole family, and that they were not given the opportunity to pick up their car or collect personal items and medication from their home before being taken into detention. The Ombudsman's investigations supported the complainants' broad claims and proposed a series of remedies, which included compensation and the waiver of debts resulting from detention.

DIMA acknowledged that the situation might have been handled with more care. The department did not reinstate the visas, but did offer to facilitate a request to waive their debts, to improve departmental officer awareness of the protocols and procedures for detaining people, and to write to the family apologising for any distress its actions had caused.

Administration of s 501 of the Migration Act

Following a number of complaints to the Ombudsman from long-term permanent residents of Australia whose visas had been cancelled on character grounds, the Ombudsman decided to conduct an own motion investigation into DIMA's administration of s 501 of the *Migration Act 1958* (Migration Act). The report of this investigation was released in February 2006.

Under s 501, the Minister for Immigration and Multicultural Affairs (or delegate) can cancel the visa of a non-citizen who is unable to satisfy the minister that they are of good character, most commonly because they have a criminal record. The person can be removed from Australia after their visa is cancelled. Some of the people to whom s 501 has been applied are long-term permanent residents of Australia, who have lived here with their families since infancy and have well-established family and community ties, including parental responsibilities. They have served, or are serving, the correctional sentence imposed after conviction for their criminal activities. While our investigation did not question the underlying policy of protecting the Australian community from non-citizens who have committed serious crimes, it assessed whether the highest standards of procedural and substantive fairness were observed in cancellation decisions.

The report concluded that in a majority of the cases that were examined in this investigation, there were significant omissions or inaccuracies in the information provided to the decision maker. Given the gravity of the decisions, it could be expected that a higher standard of procedural fairness should have been observed.

'The report concluded that in a majority of the cases ... there were significant omissions or inaccuracies ...'

The investigation made nine recommendations, including that DIMA should:

- develop guidelines for sourcing the information on which to base a decision to cancel the visa of a long-term non-citizen; reliable information should be obtained on matters such as the best interests of family members, and the implications for the health of the visa holder of their removal from Australia
- develop quality assurance mechanisms to ensure consistency in the decisions made by delegates of the minister, and to ensure that visa holders are warned of the possibility of visa cancellation and have the opportunity to respond to the documents on which a decision may be based
- provide advice to government on whether s 501 should be applied to residents who came to Australia as children, have strong family and community ties to Australia, and have lived here for more than ten years before committing an offence.

DIMA agreed to the recommendations relating to procedural deficiencies in the administration of s 501 in the report and indicated that it has introduced a help desk to provide assistance to decision makers applying the relevant legal and policy framework. A 'sensitive case' register has also been developed for referring cases to senior management as early as possible in the decision-making process. DIMA advised that it was an issue for government as to when and whether s 501 should be applied to those who have lived in Australia for more than ten years.

DETENTION

In 2006, the Ombudsman's office expanded its program of visits to detention facilities. Visits enable us to take complaints, provide information about the Ombudsman to detainees and their representatives, resolve complaint issues, and identify emerging issues for further investigation with DIMA. Two issues that attracted special attention during our visits are mental health concerns and restrictive accommodation arrangements.

Mental health

The mental welfare of those in detention was raised often with the office during the year. Sometimes it was said that detention had exacerbated a mental health problem a person had prior to their detention; at other times it was suggested that a person's period in detention caused their mental health to deteriorate. Such issues were raised frequently with the office during its review of those who have been held in detention for more than two years. In some reports on those cases, the Ombudsman recommended that a person who had been held in detention for a long time be released and be granted a permanent visa. The person's mental illness could then be addressed in a different context to detention. We also encouraged DIMA to ensure that individuals who are released into the community after long periods of detention are provided with medical and psychiatric assistance.

In one case (reported as Immigration Report No. 36, 2006), a man who arrived in Australia by air in 1999 with his wife and three children claimed political asylum before being cleared by immigration authorities. He and his family were then detained in an immigration detention centre. His wife and children were released from detention and granted protection visas in August 2000, but the man remained in detention because of concerns about his character. He appealed the decision to the Administrative Appeals Tribunal (AAT), the Federal Court and the Full Federal Court; the Full Court upheld his appeal and sent the case back to the AAT. The AAT set aside the decision and allowed him to lodge a fresh application for a protection visa.

Ombudsman staff interviewed him in detention in late 2005. A psychiatric report received by the Ombudsman noted that the man was suffering from major depression and that 'indefinite detention and consequent separation from his wife and family contributed directly to the onset and perpetuation of psychiatric illness'. He had been placed on suicide watch many times. The medical report also spoke of the effect of his detention on his children, stating that 'their preoccupation with their father and sense of perplexity and shame about his detention limits their peer relationships ... [They] will never arrange to do anything with friends at the weekend in case they are able to visit their father'.

The Ombudsman recommended to the minister on 17 January 2006 that the man be released from detention pending any final decision on his immigration status. He was granted a permanent protection visa on 31 January 2006 and released from detention.

Restrictive detention

We continued to monitor the use of restrictive accommodation arrangements in detention facilities. As mentioned in last year's annual report, we have paid close attention to the use of the Red One compound at Baxter Immigration Detention Facility. DIMA, in collaboration with GSL (Australia) Pty Ltd (GSL), addressed many of the issues we had previously raised about Red One, in the context of developing a new generic operational procedure for 'Management Support Unit—Transfer and Accommodation'.

We welcomed this review of the operational procedures. However, we note that DIMA envisages making further changes as an outcome of a much broader review of immigration detention policy and programs following the Palmer report. We will monitor this ongoing review, as well as the use of restrictive accommodation arrangements in immigration detention facilities, including the Red One compound.

COMPLIANCE

Complaints were received this year about DIMA's use of its compliance powers, particularly the quality of information relied on to issue a search warrant, the manner in which warrants were executed and

the lack of documentation by DIMA officers of what occurred. We are establishing an inspection and monitoring function to oversee DIMA's compliance activities, including its use of search and entry powers and removal operations. This will bring the oversight arrangements for DIMA more into line with oversight in other areas of government administration that involve use of coercive warrant powers.

Two cases illustrate some of the problems that can arise in compliance. In one case, a person complained to the Ombudsman that DIMA had unduly delayed responding to his complaint that its officers had behaved inappropriately at the time of cancelling the visa of his then fiancé. Our investigation of this complaint unearthed significant breaches by DIMA officers of the department's procedures concerning privacy, the visa cancellation process, dealing with conflicts of interest and pursuing prosecution action. We were also concerned with the way DIMA had dealt with the person's complaint before it was brought to the Ombudsman. We recommended improving staff awareness of the relevant procedures, strengthening mechanisms to monitor compliance with the procedures, apologising and paying compensation to the complainant, and that DIMA consider the adequacy of its code of conduct guidelines and associated procedural matters. DIMA accepted the bulk of the recommendations. Among the steps since taken by DIMA are the issuing of a comprehensive set of guidelines (National Fraud Investigations Guidelines) to all investigations staff in September 2005 and the drafting of new code of conduct guidelines.

In the second case, a community organisation complained to the Ombudsman about how one of their clients had been treated by a DIMA compliance officer. The person was initially detained for overstaying his visa. He had advised DIMA officers on a number of occasions that he feared execution if returned to his home country and that he wished to lodge an application for a protection visa. DIMA failed to provide him with the documentation, instead informing the embassy of his home country of his details and seeking to arrange return travel documents.

Following our investigation, DIMA acknowledged that it should have given him the relevant visa forms

when he first requested them, which may have meant he did not have to spend almost two years in detention. Following his release on a protection visa, DIMA agreed to apologise to the complainant and direct him to the relevant compensation scheme, to draw the seriousness of the issue to the attention of departmental officers, and to review instructions to ensure that clearer advice is provided to staff.

'... DIMA agreed to apologise to the complainant and ... to draw the seriousness of the issue to the attention of departmental officers ...'

REPORTING ON PEOPLE HELD IN DETENTION FOR TWO YEARS OR MORE

The Migration Act was amended in June 2005 to confer upon the Commonwealth Ombudsman the specific role of reviewing the cases of people held in immigration detention for two years or more. Section 486O of the Migration Act provides that the Ombudsman, upon receiving a report from DIMA, is to provide the Minister for Immigration and Multicultural Affairs with an assessment of the appropriateness of the arrangements for the person's detention.

DIMA must give its report to the Ombudsman no later than 21 days after a person has been in detention for two years. If the person remains in detention, new reports to the Ombudsman are to be prepared every six months. The Ombudsman is required to undertake an assessment, even if the person has since been released from detention.

The Ombudsman's report on a person is to be provided to the minister as soon as practicable and the minister is required to table the report in the parliament, suitably modified to protect privacy, within 15 sitting days. A copy of the report with identifying details deleted, together with the minister's tabling statement, is published on the Ombudsman website at www.ombudsman.gov.au.

The Ombudsman can use the investigation powers conferred by the Ombudsman Act. These include the powers to obtain information or documents

from an agency, to interview people, and to enter premises such as a detention centre.

Each person on whom a report is prepared is given an opportunity to be interviewed and to provide additional information. Each report deals with the circumstances of a person's detention, visa claims and litigation, their health, family issues, attitude to detention or removal, problems occurring in detention, and recommendations on matters such as detention arrangements and whether the granting of a visa should be considered. The report is made available to the relevant person when the minister has tabled the report in parliament.

During the year, our priority was to prepare reports on those who had been in detention the longest, and on those who presented with mental health or other significant health concerns, or whose family members were affected directly or indirectly by their detention.

Progress on the oversight function

In July 2005, we recruited and trained new staff to discharge this function, fitted out new premises, and commenced work on initiating a tendering process to provide the office with translation, interpreting and transcription services.

DIMA initially identified 149 persons who had been detained for two years or more and an additional 77 persons who had been detained for more than 18 months but less than 24 months. In conjunction with DIMA, the Ombudsman set priorities and sought urgent reports on all people who had been in detention for a lengthy period, who suffered significant health problems, or who had a compelling reason for an early report.

We conducted our first interview with a person in detention on 29 July 2005. By the end of August 2005, we had interviewed all the people who had suffered mental health problems serious enough to cause their admission to Glenside Hospital in Adelaide. We sent the first reports to the minister on 12 October 2005. On average, we took four months to prepare a report on people within that priority group.

At the end of June 2006, we had received 235 reports from DIMA concerning 262 people who had

been in detention for two years. In 65 cases we had received a second report (covering 75 people), where the person had been in detention for a further six months since the first report was received. We had interviewed 167 people, and provided reports on 70 cases. The minister had tabled responses to 66 of those reports.

Of the 66 reports containing 106 different recommendations, the minister agreed to 54 (51%) of the recommendations, disagreed with 26 (25%) and delayed making a decision on a further 25 (24%). One recommendation was no longer relevant because the person had left Australia.

Of the 26 recommendations where the minister disagreed with the Ombudsman, 12 (46%) concerned the grant of bridging visa; 11 (42%) concerned the Ombudsman's recommendation that the minister make a decision before tabling of the report in parliament; and the remaining three (12%) involved consideration of an alternative to detention, the issue of a permanent visa or the revocation of a decision to cancel a visa.

'We had interviewed 167 people, and provided reports on 70 cases.'

It should be noted that this data is an analysis of the responses in the minister's statements tabled in parliament. The Ombudsman is aware that on some occasions a decision providing a different outcome has followed the tabling statement.

REFERRED IMMIGRATION DETENTION MATTERS

In July 2005, the Australian Government asked the Ombudsman to take responsibility for completing the investigation of the removal from Australia of an Australian citizen, Ms Vivian Alvarez. The investigation could be completed using the existing team that had been assembled under Mr Neil Comrie (a former Victorian police commissioner). The government also asked the Ombudsman to investigate a further 199 immigration detention cases. The Ombudsman accepted the request, and advised that these matters would be investigated as an own motion investigation under s 5 of the *Ombudsman Act 1976*. At 30 June 2006, a further 48 matters had been referred for investigation.

Additional staff were recruited and trained, and we first identified and investigated the most difficult and complex cases. The cases were categorised so that similar matters could be investigated at the same time to maximise efficiency, still allowing a full investigation of each individual case.

The common issue in all cases is that a person who was taken into detention was later released with their computer record marked with the descriptor 'not unlawful'. This might mean that they should not have been detained or could no longer lawfully be detained. For example, in some cases the person was an Australian citizen, or they held a visa that entitled them to live in the community, or something had occurred (such as a court case) which meant they should no longer be detained. The core issue in each investigation is whether all or any part of the person's detention was unlawful or wrongful. A subsidiary issue in some cases is whether there is a systemic problem in DIMA administration that needs to be addressed, or whether a remedy should be provided to a person who was wrongly detained.

The cases have been divided into seven categories that raise some of the following issues.

- **Children in detention:** was a child taken into detention when the child was an Australian citizen or lawful non-citizen, or was a child in detention released at an appropriate time, for example, when the child became a citizen on their tenth birthday by operation of the *Australian Citizenship Act 1948*, or when an issue concerning the child's paternity was resolved?
- **Data problems:** did DIMA hold incorrect or out-of-date data on a person that led either to their initial or continuing detention?
- **Mental health:** did DIMA detain a person because they failed to take proper account of the person's mental illness when attempting to identify the person or their immigration status?
- **Validity of notification:** was a person not notified of a decision in accordance with the procedures in the Migration Act and detained when the person still held a valid visa?
- **Srey case:** was a person taken into detention, or held in detention longer than necessary,

because the decision of the Federal Court in *Chan Ta Srey and Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCA 1292 was not applied to their circumstances?

- **Other legal issues:** was a person wrongly held in detention because of some other legal misunderstanding or deficiency, or did the immigration status of a detained person change because of a subsequent legal action?
- **Detention process issues:** was there a procedural deficiency in DIMA administration that led to the initial or continuing detention of a person?

Progress on the referred cases

The office's initial target was to complete all the investigations by 30 June 2006. We were unable to because the investigations were more complex and time consuming than first thought and the government referred additional matters to the office. By 30 June 2006, we had published two reports; and completed the draft of one further report relating to the detention of a mentally ill person, sought comments from individual DIMA employees and submitted the draft to DIMA. We had finished investigating more than 60 individual cases and prepared them for comment by DIMA. We had also nearly completed reports relating to the categories of children in detention, data issues and mental health issues; we expect to release these reports in the first half of 2006–07.

Published reports

We published the first report, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, in September 2005. This report found that Ms Alvarez, an Australian citizen, had been wrongly removed to the Philippines. The report made 12 recommendations, all of which were accepted by DIMA. These included recommendations to:

- redress a negative culture in the Brisbane Compliance and Investigations Office and examine whether a similar problem existed in other compliance areas in the department
- conduct a thorough and independent review of DIMA information management systems and IT training requirements
- take steps to improve departmental administrative practices on matters such as record keeping, interviewing people in detention, dealing with known or suspected mental health problems, providing health and medical assistance, and arranging the removal of a person from Australia
- investigate further whether some officers had acted in breach of the Australian Public Service Code of Conduct in relation to Ms Alvarez.

The next report, released in March 2006, dealt with the circumstances of the detention, on three separate occasions totalling 253 days, of Mr T, a mentally ill Australian citizen. Mr T's mental illness, his homelessness, and his lack of English language skills and an effective personal social support structure, all contributed to his repeated detention by DIMA and DIMA's prolonged inability to correctly identify him. Evidence gathered during the investigation revealed many of the systemic failures in immigration administration that had previously been identified in the reports into the circumstances of the detention of Cornelia Rau and Vivian Alvarez.

The report on Mr T highlighted serious problems in the management of people with a mental illness. Building on the recommendations in the Alvarez and Rau reports, the report drew attention to a number of shortcomings in immigration administration and detention management, including:

- inadequate detention release procedures, which in this case failed to ensure continuity of care upon release for a person suffering from mental illness
- poor record-keeping practices
- inconsistent and inadequate file and data system input
- a lack of understanding by officers of language and naming conventions
- deficient use of interpreters.

The practice of taking suspected unlawful non-citizens into detention on a Friday and not interviewing them until the following week was of particular concern. The Ombudsman raised this concern during the course of the investigation and

DIMA immediately took steps to stop this practice. DIMA accepted all of the Ombudsman's recommendations.

Management of a frail aged visitor to Australia

Another matter that was referred to the Ombudsman was the case of Mrs Agha, a frail aged visitor from Lebanon who died shortly after attending a medical examination in Melbourne requested by DIMA. The Ombudsman investigated the administrative actions of the department in this case, following a request from the Secretary. The Ombudsman found no evidence to support a conclusion that the actions of DIMA officers constituted 'harassment', as had been claimed in some media reports.

The Ombudsman found a number of deficiencies in administration, but concluded that although the errors were not, on their own, of major concern, their cumulative effect put unnecessary stress on Mrs Agha and her family. Areas highlighted for review by DIMA included:

- adequacy of the management of health assessments at overseas posts for elderly persons seeking to travel to Australia
- adequacy of the guidelines for granting bridging visas in cases such as this, and the period for which visas are granted
- adequacy of the advice provided to visitors about conditions attached to their visa
- effectiveness of the departmental procedures for identifying matters that require urgent attention or senior management supervision.

'The Ombudsman found no evidence to support a conclusion that the actions of DIMA officers constituted 'harassment'...'

DIMA has accepted the recommendations and the Ombudsman will seek a formal progress report against each of them within six months.

STRENGTHENING RELATIONSHIPS

In the new Immigration Ombudsman role we have implemented an active consultation program, both within and outside government.

Over the past year we have focused on developing a positive working relationship with DIMA. We have regular liaison meetings and briefings to establish effective communication on all aspects of immigration administration and detention. We also participate in more formal arrangements that strengthen external oversight of immigration activities. Senior representatives of the Ombudsman's office are members of DIMA's Values and Standards Committee, the Detention Services Steering Committee and the Detention Health Advisory Group.

In April 2006, DIMA's Secretary issued a directive to all staff emphasising the department's focus on improving accountability in decision making:

A strategic theme of the department's work is to ensure we have 'fair and reasonable' dealings with all our clients. Being 'fair and reasonable' in DIMA is to provide clients with accurate, consistent and relevant information about our products and processes; a clear view of next steps, remaining requirements and likely timeframes, as well as options as to how they might contact us and lawful, sensible decisions based on all of a client's circumstances.

DIMA has actively sought input from the Ombudsman's office on policy and procedural changes, both in direct response to our recommendations and in DIMA's general program of reform. We welcomed the opportunity to assist the department in reviewing its operating instructions on privacy, in developing training modules for compliance officers, in commenting on the guidelines on the Minister's Detention Intervention Powers, and in clarifying the information to be provided to visitors to immigration detention facilities. We also provided advice to GSL, the operator contracted by DIMA to manage detention facilities, who requested urgent advice on the process for relocating detainees when Villawood Immigration Detention Centre was vacated briefly due to concerns about asbestos.

A similar effort has been made to engage with interest groups and non-government agencies that take an interest in immigration issues. During the year, we consulted a broad range of organisations and community groups across the country, from the Mental Health Council of Australia to Amnesty International, legal aid commissions, migration agents and refugee advocacy and support services. These consultations ensure that we have a comprehensive understanding of immigration and detention issues. They also assist us in meeting detainees who are now living in the community, and in improving public awareness of the scope and potential of the Ombudsman's role in this area.

'... we consulted a broad range of organisations and community groups ...'

FEEDBACK FROM COMPLAINANTS

The guiding principle in ombudsman work is to be impartial and balanced in dealing with each complaint and problem that comes to the office. This is essential if the Ombudsman's findings and recommendations are to be accepted by the government and public alike.

The preceding discussion has outlined the steps taken by the office to secure government confidence in our immigration oversight work and government acceptance of the Ombudsman's recommendations. Though harder to gauge, public acceptance is equally important, especially in an area as sensitive and complex as immigration administration. This area illustrates well the maxim that at the end of every government decision or program is an individual who is affected in a unique and unscripted manner. We therefore close this section with a couple of anecdotes from the last year that

provide a poignant reminder of the importance of the Immigration Ombudsman function.

We sent a copy of the report *Administration of s 501 of the Migration Act 1958 as it applies to long-term residents*, with DIMA's response to it, to those who were used as case studies in the investigation. One person we wrote to at the Villawood Immigration Detention Centre rang and said that he had been dealing with the issue of his visa cancellation and his removal from Australia for a number of years; he had appealed to the department, the AAT and the courts; and they had all rejected his claims. He had given up hope; even his solicitors could not do anything for him. He thought no-one cared about what happened to people like him and that there was nowhere he could turn for assistance. He said that as he was reading the report, he felt for once that there was someone out there who understood the issues, who cared about the plight of people like him, and who was willing to investigate the issue.

Another person who had been detained for many years was admitted to hospital with major depression with psychotic features, anxiety and complex post-traumatic stress disorder. On 9 December 2005, the Ombudsman recommended in a two-year detention report that the minister use her discretion under the Migration Act to decide that the person not be returned to an immigration detention facility. The minister tabled the Ombudsman's report in parliament on 28 March 2006; two days later a decision was made to allow him to live in the community on a residence determination while a decision was being made about his permanent status in Australia. He rang the Ombudsman's office to thank us for the report, saying that it was honest, kind and just. He was pleased that the report picked up the issues he had been talking about for years.

This section provides an overview of the work of the Ombudsman's office in overseeing the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). Table 7.2 lists the areas of law enforcement that come within the Ombudsman's independent complaint and oversight role and the legislative underpinning for each role.

The Ombudsman continued to deal with complaints from members of the public against the actions of the officers of these law enforcement agencies. We also started a number of special investigations, conducted jointly with the AFP Commissioner. The Ombudsman was also closely involved in developing legislation to modernise the AFP complaint-handling system.

AUSTRALIAN FEDERAL POLICE

During 2005–06, most of the Ombudsman's law enforcement work involved complaints from members of the public about the conduct of AFP officers. Many of these complaints arose from the AFP's community policing role in the ACT. The Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the

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

Another significant area of complaint was the conduct of the Australian Federal Police Protective Service officers, arising from their higher security profile at Australian airports. A small number of complaints were also made about the conduct of AFP and Protective Service officers in their international deployment role in Solomon Islands and Papua New Guinea

The complaints about community policing, airport security and international deployment reflect the high level of public contact involved in those areas of policing. The highest frequency complaints about the AFP, in its national and international policing roles, involved issues of:

- surveillance or unwarranted scrutiny
- rudeness at Australian airports
- property handling
- disclosure of information
- excessive use of force
- requests for compensation.

TABLE 7.2 LEGISLATIVE BASIS FOR COMMONWEALTH OMBUDSMAN OVERSIGHT OF LAW ENFORCEMENT ACTIVITIES

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

Many of the complaints about these issues were resolved without the need for an investigation, or were not substantiated on investigation.

Complaints about the AFP are managed under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). The *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* will replace the Complaints Act. This is discussed further under 'The Fisher reforms' on page 90.

Complaints

In 2005–06, we received 801 complaints about the conduct of the AFP, 769 of which were within the Ombudsman's jurisdiction (696 in 2004–05), an increase of 10%. We finalised 723 complaints (751 in 2004–05). Figure 7.7 shows the trend in complaints about the AFP.

Fluctuations in complaint numbers have occurred over the past seven years and are not easily explained. However, some of the increase can be attributed to a steady rise across the range of national complaints, with a small number of international complaints due to the AFP's ongoing commitment to overseas deployments. Further complaints may have arisen from the increase in AFP staffing numbers during the year.

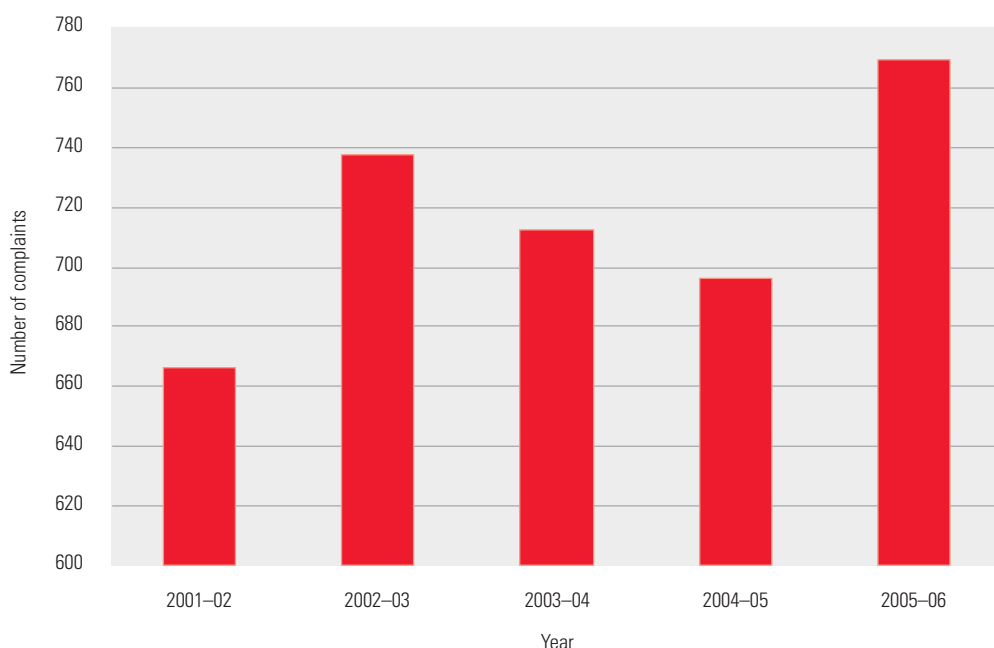
Security vetting

Some complaints received by the office this year raised the question of whether security-vetting methods employed by the AFP accord with good administrative practice. We have decided to explore the matter further by conducting an own motion investigation into AFP security vetting during 2006–07.

One issue to be examined is whether there are adequate procedural safeguards in the security vetting process for those subject to an adverse decision. The AFP is responsible for processing a large number of security clearances each year, and has had to develop a streamlined vetting process to deal with the volume of work. It is nevertheless important that procedural fairness is observed in the process and that there is an opportunity for adverse decisions to be reviewed.

Another issue raised in some of the complaints to the Ombudsman is the efficiency of the vetting process in dealing with difficult issues, such as checking a person's overseas background, criminal history or personal integrity. The own motion investigation will look at whether candidates for security vetting are disadvantaged when difficult issues arise.

FIGURE 7.7 AUSTRALIAN FEDERAL POLICE COMPLAINT TRENDS, 2001–02 TO 2005–06



Practice and procedural guidelines

Regular access by Ombudsman staff to current AFP Practice and Procedural Guidelines is a necessary part of our work. The Complaints Act enables the Ombudsman to gain access to AFP documents by issuing a statutory notice, but this level of formality can be unproductive. We generally rely on agencies to make documents available without a formal notice.

During 2005–06, the AFP was reluctant, and in some cases refused, to provide copies or access to relevant AFP Practice and Procedural Guidelines without a formal notice. The Ombudsman wrote to the AFP in April 2006, pointing to the need for ongoing access by Ombudsman staff to documents within the AFP's Corporate Governance Framework contained on the AFP's intranet. The AFP responded positively by granting two Ombudsman staff access to its intranet in June 2006. This access will enable the office to more efficiently handle investigations.

Review of management of property and exhibits

The Ombudsman conducted an own motion investigation in 1999 into the procedures for handling property and exhibits, following an AFP internal review. The investigation found there was a need for improved registry practices and procedures for exhibit recording and management of property and exhibits.

Following complaints received this year about the loss of property seized by the AFP, we are considering a review to assess the adequacy of the AFP's current guidelines on handling property and exhibits and how effectively changes resulting from the recommendations of the 1999 own motion investigation have been implemented.

Special investigations

Ombudsman staff are conducting two special investigations under the Complaints Act. One of the investigations is looking at the interviewing techniques used by the AFP Professional Standards when interviewing other police about conduct matters. The other investigation stems from a complaint that the AFP did not conduct an adequate investigation into a sensitive personal issue the complainant had earlier raised with the AFP.

Critical incidents

The AFP notifies the Ombudsman of all critical incidents involving the actions of AFP officers. During 2005–06, two incidents were reported to this office about AFP ACT Policing matters.

The first incident concerned the death of a young woman after she was struck by a vehicle that was being pursued by an AFP vehicle in the Canberra city centre on 30 July 2005.

It is generally not our policy to become actively involved in the investigation of critical incidents. In this case, the Ombudsman requested regular updates on the investigation due to the seriousness of the incident and community concern about police pursuits.

The regular updates allowed our office to monitor the progress of the police internal investigation and to clarify issues as they arose. The AFP also provided a copy of the final report of its investigation for our comment. We were generally satisfied with the quality of the investigation, but felt that some issues dealt with in the report required further consideration, particularly in relation to the police pursuit. The AFP agreed and took up those issues in a revised report.

Further involvement by this office in the AFP's investigation was discontinued pending a decision by the Coroner as to whether to hold an inquiry. The Ombudsman supported the option of holding a coronial inquiry to provide a public forum where all interested parties would have an opportunity to make submissions. At 30 June 2006, the Coroner had not yet decided whether to hold an inquest.

On 23 May 2006, the AFP notified the Ombudsman of a second critical incident. It involved an intoxicated person with disabilities who was arrested under the *Intoxicated Persons (Care and Protection) Act 1994* (ACT). The person sustained a broken collarbone during the intake process in the ACT's City Watch House. The Ombudsman decided not to investigate, as the AFP advised that the complainant had withdrawn the complaint. This matter is within the scope of an own motion investigation the Ombudsman is considering conducting in 2006–07 to look at current practices and procedures in relation to a number of systemic issues identified in complaints received involving the processing of intoxicated people since 2001.

Australian Federal Police Protective Services

In 2005–06, we received 36 complaints about the conduct of officers of the Australian Federal Police Protective Service (AFPPS) (46 in 2004–05). Sixty-eight per cent of the complaints were about issues arising at airports, which may be related to the higher visibility of AFPPS officers at airports due to increased security measures.

There was a matching increase in the number of complaints made about some other Australian Government agencies with a role in managing Australian airports. Many of the complaints stemmed from the increased scrutiny of the public at airports by public and private sector security personnel. An issue that we highlighted, and that we have taken up in a separate own motion investigation, is the effectiveness of complaint handling at airports. There is further discussion of this own motion investigation in Chapter 9—Problem areas in government decision making.

The Fisher reforms

The Australian Parliament recently enacted major reforms to the AFP complaint-handling system, which flow on to the Ombudsman's current role in overseeing complaints about the conduct of AFP members. The reforms are contained in the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*, which passed through parliament on 23 June 2006 and is awaiting proclamation.

The Act is based on the findings of a review of AFP Professional Standards conducted by Justice William Fisher AO, QC in 2003 (the Fisher review). The Fisher review recommended that in dealing with professional standards issues the AFP adopt a managerial model, or administrative approach, with a greater emphasis on performance management and changing poor behaviour. The Ombudsman was consulted on the reforms and supported the introduction of the new complaint-handling model in the Act.

The reforms streamline the current system. At present, the Complaints Act requires all complaints from members of the public to be dealt with jointly by the AFP and the Commonwealth Ombudsman. This has resulted in disproportionate resources

being allocated to minor complaints, and causes delay in the resolution of more serious matters. It is also likely to mislead people into thinking that the Ombudsman has been more actively involved in conducting an investigation than is sometimes the case.

The new model removes the requirement for joint handling of all complaints. AFP line management will deal with minor matters, providing a faster and more efficient method for resolving these issues. The AFP will notify the Ombudsman's office of more serious complaints, allowing us to decide whether to become further involved in their resolution; the AFP will have primary responsibility for resolving the complaints. The categorisation of complaints into minor or serious matters will be agreed by the AFP Commissioner and the Ombudsman and set out in a legislative instrument to be made under the new Act.

The Act designates the Commonwealth Ombudsman as the Law Enforcement Ombudsman. In this role, the office will oversee complaint handling and conduct issues in the AFP and investigate more serious conduct issues.

'The Act designates the Commonwealth Ombudsman as the Law Enforcement Ombudsman.'

The new model also requires the Ombudsman to audit the records of all AFP complaints on at least an annual basis. During the first few years of the new system, we will conduct more frequent audits. This new auditing obligation will ensure that the quality of AFP complaint-handling procedures is assessed and reviewed on a regular basis.

It is anticipated that the increased flexibility of the new system will allow the Ombudsman's office to increase its focus on serious complaints and allow more time to undertake own motion investigations into systemic issues arising in the AFP.

AFP powers to combat terrorism

Amendments to the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) allow police to enter and search property to arrest and detain persons on behalf of the Australian Security

Intelligence Organisation (ASIO). Those amendments to the ASIO Act preserve the complaint role of the Commonwealth Ombudsman under the Complaints Act, by confirming that a person taken into detention can complain about the actions of AFP members.

We received one complaint in 2005–06 under these new provisions. Our initial enquiries with the AFP identified that the complaint related to issues involving the NSW Police, and the matter was referred to the NSW Ombudsman for attention.

Anti-Terrorism Act

In November 2005, the Ombudsman and the Inspector-General of Intelligence and Security provided a joint submission to the Senate Inquiry into the Anti-terrorism (No 2) Bill 2005. The joint submission recognised their shared interest in overseeing law enforcement and security intelligence activities that have a potential to infringe the liberty of individuals or adversely affect them.

In May 2006, the AFP briefed the Ombudsman on new procedures to be adopted in relation to Control Orders and Preventative Detention Orders contained in the anti-terrorism legislation that was enacted in June 2004. That legislation likewise preserves the right of any person detained under the preventative detention provisions to contact the Commonwealth Ombudsman under the Complaints Act.

The AFP has produced a document setting out an individual's rights that will be handed to all detainees and persons subjected to Control Orders. These rights will include contact telephone numbers for the Commonwealth Ombudsman on a 24-hour basis.

AUSTRALIAN CRIME COMMISSION

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

In 2005–06, we received nine complaints about the ACC (12 in 2004–05). While we are not obliged to refer all complaints to the ACC, it was highly responsive to the complaints that were referred.

One complaint we investigated involved a registered informant. The complaint related to an agreement between the informant and the agency about security measures for the informant. The complainant believed that the ACC had not met the requirements of the agreement. The ACC advised us that the offer made to the registered informant in the agreement was still valid, but due to communication difficulties between the ACC and the informant, the matter remained unresolved. We advised the informant that the offer was still open. The ACC has advised us that the security measures are now being put in place.

MONITORING AND INSPECTIONS ACTIVITIES

Significant new functions were added to the Ombudsman's inspecting functions of monitoring law enforcement agencies' compliance with specified legislation. These arose from the passage, firstly, of amendments to the *Telecommunications (Interception) Act 1979* (renamed the *Telecommunications (Interception and Access) Act 1979*) (TI Act) and, secondly, of legislation to establish an office of Law Enforcement Integrity Commissioner (*Law Enforcement Integrity Commissioner Act 2006*). The office made submissions about both pieces of legislation to the Senate Legal and Constitutional Legislation Committee.

'Significant new functions were added to the Ombudsman's inspecting functions ...'

The amendments to the TI Act authorised law enforcement agencies to access stored communications. The Ombudsman has a new function of monitoring and reporting on agencies' compliance with the procedures governing that new power. As there is a greater number of agencies authorised to access stored communications than are authorised to access telecommunications, the number of agencies requiring inspection by the Ombudsman's office will increase.

The Ombudsman's inspection role in regard to telecommunications interception has also been extended by the same legislative amendments to cover B-party warrants. A warrant of that type can

be used to intercept a communication occurring between people who are not suspected offenders.

The new office of Law Enforcement Integrity Commissioner (LEIC) will be authorised to exercise the same coercive powers as the AFP and the ACC to undertake telecommunications interception and to access stored communications under the TI Act, to use surveillance devices under the *Surveillance Devices Act 2004* and to carry out controlled (covert) operations under Part 1AB of the *Crimes Act 1914* (Crimes Act). The use of those powers by the Commissioner will be subject to regular inspection and monitoring by the Ombudsman's office.

Passage of the *Building and Construction Industry Improvement Act 2005* brought to an end the Building Industry Taskforce and the function of the Ombudsman under the *Workplace Relations Act 1996* to review the use of coercive powers by the taskforce. We conducted a final review of the taskforce's use of coercive powers before it ceased to exist. The new body that replaces the taskforce, the Australian Building and Construction Commissioner, will be subject to the jurisdiction of the Ombudsman in the same way as other Australian Government agencies.

The office's monitoring and inspection role now encompasses:

- telecommunications intercepts by the AFP, ACC and LEIC
- access to stored communications by the AFP, ACC, LEIC and other Commonwealth and State law enforcement agencies
- use of surveillance devices by the AFP, ACC and LEIC and, in some instances, use of Commonwealth powers by State law enforcement agencies
- controlled (covert) operations by the AFP, ACC and LEIC.

Telecommunications interceptions

Under the TI Act, the Ombudsman is required to inspect the records of the AFP and the ACC to ensure the accuracy of records and the extent to which the agencies have complied with the provisions of the Act. A report on these inspections is then presented to the agency and to the Attorney-General. Reports on the results of the inspections undertaken in 2004–05 were presented to the Attorney-General in September 2005.

We carried out two inspections of each agency in 2005–06. The reports provided to the agencies after each inspection concluded that generally there was a high degree of compliance with the detailed record-keeping requirements of the TI Act. We made recommendations after each inspection and both agencies implemented a range of measures aimed at improving compliance.

Surveillance devices

The *Surveillance Devices Act 2004* came into operation in December 2004 and a program of two inspections each year for law enforcement agencies was commenced in 2005. The first inspections of records under the Surveillance Devices Act were held at the AFP in October 2005 and at the ACC in November 2005.

Although we identified some compliance issues, overall there was a satisfactory level of compliance, particularly taking into account the challenge faced by both the AFP and the ACC to settle procedures under the new regime within a short time. It was apparent that the ACC, in particular, had done a considerable amount of work to ensure that their law enforcement officers complied with the Act.

Both the AFP and the ACC responded positively to our recommendations to amend templates or procedures to ensure compliance.

We conducted further inspections of surveillance device records at the ACC in February 2006 and the AFP in April 2006.

Controlled operations

Controlled operations can be broadly described as covert operations 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. These operations may also result in law enforcement officers behaving unlawfully if they take part in controlled operations without a controlled operations certificate.

The Ombudsman has an oversight role in ensuring that controlled operations are approved and conducted in accordance with Part 1AB of the Crimes Act and that information in formal reports is comprehensive and adequate. At present, relatively

low numbers of controlled operations are undertaken in the federal law enforcement arena.

During the year, we conducted four inspections of controlled operations records, two at the AFP and two at the ACC. We found that both agencies are generally complying with the requirements of the Crimes Act and providing comprehensive information in formal reports. We provided reports on the inspections to both agencies, and briefed the Parliamentary Joint Committee on the Australian Crime Commission.

An annual report on controlled operations for 2004–05 was presented to parliament in November 2005.

The jurisdiction of the Commonwealth Ombudsman extends to nearly all Australian Government agencies. However, the vast majority of the complaints we receive relate to the agencies covered earlier in this chapter. The remaining 2,451 (14%) of the approaches and complaints we received within our jurisdiction in 2005–06 related to 90 Australian Government agencies.

The consistently high numbers of approaches and complaints about some agencies has resulted in their being included in our ‘top ten other agencies’ for several years (Table 7.3). Although FaCSIA does not make the top ten list, we comment on some noteworthy issues raised in complaints about it.

Common themes in the complaints we receive about most agencies are to do with matters such as record keeping, oral advice and agency complaint handling. We also receive a rich diversity of complaint issues about government. The diversity of the issues illustrates the challenge that government agencies face in maintaining a high standard of administrative practice and service delivery. This section provides some examples.

DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS

We received 394 approaches and complaints within the Ombudsman’s jurisdiction about the Department of Employment and Workplace Relations (DEWR). We finalised 376 approaches and complaints, which contained 388 issues. Issues about employment programs managed by DEWR, primarily the Job Network, accounted for 176 (45%) of the 388 issues finalised in 2005–06. This compares to 152 (41%) in 2004–05. The increase in complaint numbers is not statistically significant in the context of the scope of activity in the Job Network program, but it is an issue that we will monitor in 2006–07. The introduction of the Welfare to Work initiative on 1 July 2006 makes it all the more important to keep an eye on complaint trends in this area.

In our last two annual reports, we reported on the steps taken by DEWR to address systemic problems we had identified about the administration of the General Employee Entitlements and Redundancy Scheme (GEERS). The number of approaches and complaints about GEERS has declined markedly in the past year: 121 issues (31%) of the 388 DEWR complaint issues finalised (163, or 44%, in 2004–05).

TABLE 7.3 APPROACHES AND COMPLAINTS RECEIVED WITHIN THE OMBUDSMAN’S JURISDICTION ABOUT TOP TEN OTHER AGENCIES 2003–04 TO 2005–06

Agency	2003–04	2004–05	2005–06
Department of Employment and Workplace Relations	295	352	394
Telstra Corporation	101	115	210
Australian Securities and Investments Commission	114	129	183
Medicare Australia (formerly the Health Insurance Commission)	137	179	149
Department of Foreign Affairs and Trade	99	82	136
Department of Health and Ageing	101	93	132
Australian Customs Service	73	84	115
Family Court of Australia	90	79	88
Comcare	116	94	85
Insolvency and Trustee Service Australia	78	67	71

The decline in GEERS complaints follows the introduction by DEWR of improved processes that addressed identified problem areas. An important step was an improvement in the detail provided to applicants in decision notification letters.

There was also an increase (though small in overall terms) in the number of complaints about Trades Recognition Australia (TRA). TRA provides international skills assessment for people intending to migrate to Australia and domestic skills assessments for Australian residents. The increase in complaint numbers may stem from an Australian Government decision to increase the targets for skilled migration, which led to a significant increase in the number of applications TRA processed in 2005–06.

One of the main areas of complaint about TRA has been its delay in processing applications. During the year, TRA streamlined its assessment processes and delay is no longer an issue of concern for our office. We will continue to monitor developments in complaint issues, as we expect the trend of increasing complaint numbers to continue in 2006–07 as TRA processes a large number of applications.

TELSTRA CORPORATION

While the Commonwealth Ombudsman retains jurisdiction over Telstra, we have investigated very few Telstra complaints since the introduction of the Telecommunications Industry Ombudsman (TIO) scheme. Most approaches to our office about Telstra relate to disputes over billing, contracts, faults or customer service. Generally, we advise a person complaining about Telstra to raise their concerns with the TIO. (In 2004–05, the TIO received 78,915 complaints about telecommunication suppliers.)

The Ombudsman receives a small number of complaints about Telstra that fall outside the charter of the TIO. One example was a complaint about Telstra's response to a '000' emergency call. In that case, the complainant was left listening to a recorded message for between four and five minutes when she called an ambulance after a child was rescued unconscious from a swimming pool.

The child survived the accident, and although Telstra provided the complainant with an apology, she wanted to ensure that such a delay did not occur again. In response to our investigation, Telstra advised that the delay was a result of an unprecedented demand placed on the '000' service because of bushfires in South Australia. We were able to provide the complainant with specific details about the delay and the steps Telstra had taken to address the problem. The complainant was satisfied that the delay was an isolated incident and that Telstra was doing what it could to ensure a reliable emergency call service.

'We were able to provide the complainant with specific details about the delay and the steps taken to address the problem.'

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Most complaints we receive about the Australian Securities and Investments Commission (ASIC) fall into two broad categories: complaints about ASIC's company registry functions under the *Corporations Act 2001*; and complaints about the way in which ASIC discharges its role as corporate watchdog, particularly regarding the investigation of alleged breaches of company law.

Registry function complaints

A common ground of complaint is that a penalty was imposed on a company for failing to pay an annual review fee or other charge. Although ASIC has to impose a late fee, in certain circumstances it may waive the fee on application by the company affected. It is a prerequisite for waiver that the circumstances leading to the fee being imposed were beyond the control of the company or its officers or agents.

In some cases, companies have complained to us that a penalty was imposed for non-payment of a fee, even though the company had not received an invoice for the fee. In response to our enquiries, ASIC advised that annual fees are payable on a company's annual review date regardless of

whether a reminder or invoice is sent, and that it is the company's responsibility to be aware of its review date and pay any fees due accordingly. We have concluded that, generally speaking, this interpretation of the relevant legislation is reasonably open to ASIC.

A number of complaints arose from the changes to the company reporting rules in the Corporations Legislation Economic Reform Program (CLERP) 7 reforms of 2003. Some people complained that they were charged a penalty for failing to provide information that they had provided before 2003. Before the CLERP 7 amendments there was no requirement for ASIC to record details of some matters. That requirement was imposed in 2003 and, consequently, companies had to submit this information again.

In response to our queries, ASIC explained that a penalty was imposed on a company if it failed to respond to a notice requiring it to submit the information again. The fact that a company had provided information in the past did not excuse it from responding to a notice requiring it to provide the information again. As in the case of penalties for non-payment of fees, it was open to the affected companies to apply to ASIC for waiver of those penalties. This could occur where a company was able to show that the failure to respond to a notice was outside the control of the company, its officers or agents.

Corporate watchdog complaints

We receive a number of complaints each year about ASIC declining to investigate allegations of breaches of the laws governing corporations or declining to take regulatory action in relation to such breaches.

ASIC has wide legislative discretion to decide which allegations it investigates. Often our role is to explain the nature of that discretion to complainants and the fact that it is lawful for ASIC to decline to investigate or take regulatory action even in relation to a well-founded complaint.

The statutory duty of confidentiality imposed on ASIC in relation to information acquired in the course of its functions means that ASIC is often prevented from providing full reasons to a complainant for a decision not to take action in a

particular case. However, we are able to consider confidential information and, without disclosing it to a complainant, satisfy ourselves that an ASIC decision was reasonably open to it in the light of all the information in its possession. We are then able to advise a complainant that, although we cannot disclose ASIC's reasons, we have conducted an impartial review of the decision-making process.

One example is where a company in the financial services market had been the subject of regulatory action about the way it presented information in its product disclosure statement (PDS). The company complained that it had reported a competitor to ASIC for presenting information in a similar way in its PDS. ASIC declined to take regulatory action against the competitor, which the complainant considered to be unfair treatment. We sought an explanation from ASIC for its differing decisions in two apparently similar sets of circumstances. We were unable to advise the complainant of the confidential explanation provided by ASIC, but could advise that our independent review of the basis for ASIC's decision confirmed that it was within the limits of the broad discretion given to ASIC by legislation.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

The great majority of complaints we received about the Department of Foreign Affairs and Trade (DFAT) related to the cost, processing and identification requirements for passports. The increase in complaints in 2005–06 appears to be linked to the introduction of the *Australian Passports Act 2005* and the *Australian Passports (Application Fees) Act 2005*, which came into effect on 1 July 2005.

Passport complaints

A significant number of complaints were received from women who had been married for more than 12 months and sought to have a passport issued in their married name. The women had been charged a fee by DFAT to process their request even where they held a valid passport in their maiden name. The *Australian Passports Determination 2005* provides that a fee can be waived or refunded if an application for a new passport is made within one year of the person's marriage.

A common criticism in these cases was that the person had not been told that a fee would be charged when they applied for a passport in their married name or when they made a preliminary inquiry with DFAT. Nor were they notified of the fee on the passport application form. In response to our enquiries, DFAT advised that their staff had been well informed about the legislative changes, which were also included on the passport website. The passport application form in circulation from that date made it clear that the applicant needed to contact DFAT to discuss possible waiver of fees. Because of the complaints about this issue, changes were made to the application form to provide additional information to people in this situation.

Other complaints to our office were about a range of passport issues, including the non-refundable nature of fees for passport processing in general; the issuing of passports to children and the involvement of estranged parents in this process; problems with meeting identification requirements; the cost of replacing a lost or stolen passport even where the original is subsequently located.

The new passports legislation in 2005 resulted in more stringent proof of identity requirements for passport applicants. We received a number of complaints about DFAT's refusal to accept a person's birth certificate as proof of identity where the person had changed their name since birth. In these cases the person must register their new name with the births, deaths and marriages authority in their state or territory and provide relevant documentation with their application form.

Foreign staff entitlements

We resolved a long-running and complex investigation about the entitlements of local staff employed by DFAT at an Australian embassy. A locally employed staff member at the Australian Embassy in Belgrade complained to the Ombudsman that he and other former Belgrade staff were receiving less retirement income from the Serbian state social security fund than they should have received, because of DFAT contributions to the fund.

DFAT explained that the locally employed staff had received additional assistance in the context of the hyperinflation gripping the former Yugoslavia during the Balkan wars of the 1990s; the trade-off was that

DFAT made a reduced level of contributions to the former Yugoslav state fund. Further, some of the former staff had signed a 'no further claims' declaration at the time they left DFAT service.

The investigation was complex, and resulted in a recommendation that DFAT institute a mechanism to assess whether the additional assistance rendered to locally employed staff in the 1990s balanced any long-term losses in retirement income. Among the issues that arose in the investigation, but which did not need to be finally resolved, were whether DFAT was required either by Serbian law or by Australian law to make a higher level of contribution; and whether the 'no further claims' declaration would be effective under Australian legislation.

After obtaining legal advice and actuarial assessments, DFAT offered to settle the claim by providing a supplementary lump sum pension payment to affected current and former staff. This affected staff employed by DFAT, DIMA, Austrade and Centrelink. DFAT has set aside funding (around \$2 million) to cover accrued liabilities for current and former staff.

AUSTRALIAN CUSTOMS SERVICE

The most common cause of complaint about the Australian Customs Service was passenger processing at Australian airports. In particular, Customs searches, questioning of travellers and the seizure of goods were frequent sources of complaints. The imposition of duties or taxes on goods brought in by arriving passengers also accounted for many complaints.

In November 2005, the Ombudsman commenced an own motion investigation into complaint handling at Australian airports. Customs participated in a workshop, facilitated by our office, in February 2006, aimed at sharing information and ideas about how Australian Government agencies can work together to improve complaint handling in Australian airports. Further details are included Chapter 9—Problem areas in government decision making.

'... the Ombudsman commenced an own motion investigation into complaint handling at Australian airports.'

DEPARTMENT OF HEALTH AND AGEING

During the year, the Ombudsman finalised his view on a long-running investigation about a New South Wales aged care provider's refusal to refund an accommodation bond to the estate of a deceased resident of the facility unless probate was obtained on the will. It is not compulsory to obtain probate on a will in New South Wales and the executors of the will chose not to do so. The *Aged Care Act 1997* (Aged Care Act) did not oblige the provider to require probate prior to repayment, and the provider's refusal to repay the balance within two months of the death of the resident may have been in breach of their responsibilities under the Act at that time.

The Department of Health and Ageing is responsible for administering the Aged Care Act. The Ombudsman therefore took the view that the department was obliged to address the impasse reached by the parties. Further, a determination had been made by the Commissioner for Complaints under the Aged Care Complaints Resolution Scheme that the provider was in breach of the Aged Care Act in not repaying the bond.

The department advised that it had been in contact with the aged care provider, which had proposed a means of resolving the impasse that had been rejected by the executor. After considerable further correspondence between the Ombudsman and the department, the department and the provider, and the complainant and all parties, the provider agreed to repay the bond without probate being obtained. (Although there is continuing discussion about the conditions of repayment between the executor and the provider.) The Ombudsman formed the view that DHA's decision not to impose sanctions created a delay in the resolution of the impasse between the two parties.

A recent amendment to the Aged Care Act specifically allows aged care providers to require that probate be obtained before bond monies will be released. The Secretary of the department advised the Ombudsman that the department would remind providers of aged care services that the law requires that an accommodation bond agreement must specify that probate will be required before release if the provider proposes to insist on this

procedure. We have also been advised that the department will normally regard any failure to draw this provision to the attention of the signatory as a breach of the provider's responsibility under s 56–1(1) of the Aged Care Act.

The Ombudsman has accepted that these steps will reduce the likelihood of similar situations arising in the future.

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

We received a number of complaints about the administration of personal insolvency law by the Insolvency and Trustee Service Australia (ITSA). These complaints were generally made by people in bankruptcy who alleged that the actions of ITSA were unreasonably harsh or that their fees were too high. Many of the complaints were resolved by an explanation of the legal framework in which bankruptcy operates.

One complaint we received was about ITSA's regulation of the activities of a private trustee in bankruptcy. In that case a trustee did not take action to recover funds allegedly transferred by the bankrupt to defeat creditors because there were insufficient funds to support legal action. We explained that it was reasonable for ITSA to take the view that the trustee in bankruptcy was justified in not taking court action in these circumstances.

DEPARTMENT OF FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Although it is not part of the Ombudsman's role to investigate or take issue with government policy in a broad sense, we can investigate whether legislation is being administered correctly or has unintended or unfair consequences. As a result of complaints by Centrelink customers in 2005–06, we pursued a number of issues of that kind with FaCSIA.

Among the issues were the delayed payment of the family tax benefit supplement, unfair outcomes under the assets test, and assessment of marriage-like relationships.

Delayed payment of family tax benefit supplement

We approached FaCSIA about information in its 'Guide to the Family Assistance Law' relating to the timing of payments of the family tax benefit supplement. We received a complaint from a person who had separated in the last twelve months in circumstances involving domestic violence. The FaCSIA policy guideline relating to payment of the family tax benefit supplement requires a customer in these circumstances to wait until their former partner has lodged their tax return or until 31 October, whichever is the earlier.

As the complainant's former partner had not lodged his tax return within the lodgement period, the family tax benefit supplement was based on an estimate of his income and was paid after 31 October. The Ombudsman's investigation established that the complainant was legally entitled to have received her supplement several months earlier in July, when she was trying to find suitable accommodation for herself and the children.

Based on our approach, FaCSIA agreed to properly align the guidelines and procedures with the provisions of the law, which allow for the supplement to be paid as early as July where the person meets all qualifying criteria.

'... FaCSIA agreed to properly align the guidelines and procedures with the provisions of the law ...'

Towards the end of 2005–06, concerned that no changes had been made, the Ombudsman urged FaCSIA to resolve the matter. FaCSIA subsequently advised the Ombudsman that it had arranged to implement a short-term solution from July to November 2006. This solution allows any customer who separated in the immediate past financial year to ask Centrelink to conduct an interim reconciliation of their family tax benefit supplement entitlement to avoid having to wait. FaCSIA is working to arrange a longer-term solution that does

not require customers to self-identify themselves to Centrelink staff. The solution is to be put in place by July 2007.

Unfair outcomes under the assets test

We wrote to FaCSIA about a complaint that showed how the social security law can have a variable application depending on the order in which an existing home is sold and a replacement home purchased. In this instance, the complainant purchased a replacement principal home before selling their existing home.

The social security law currently allows a person intending to replace their existing home to sell it and have the proceeds excluded from asset assessment for 12 months. The complainant delayed the sale of their existing home until after they had found a new home and took a mortgage over both properties to secure the purchase. (This often occurs when a person is buying into a retirement village or home.) Both the existing and the new home were counted as assets using the formula applied under s 1121(4) of the *Social Security Act 1991*, with the result that the complainant did not qualify for a benefit.

FaCSIA advised that this issue would be considered along with the overall impact of the assets test changes announced in the 2006–07 Federal Budget.

Assessment of marriage-like relationships

In June 2005, we commenced an own motion investigation into marriage-like relationships. There are several complex concepts to be considered in determining whether or not customers are in a 'marriage-like relationship' for social security purposes. The decision has a direct impact on entitlement to certain payments, rates of payment, and how income and assets tests are applied.

We have completed a draft report. We will seek comments from FaCSIA and complete the final report in 2006–07.

freedom of information

The purpose of the *Freedom of Information Act 1982* (FOI Act) is to extend, as far as possible, the legal right of individuals to obtain access to documents held by Australian Government agencies. The Act also enables individuals to seek amendment of records that contain inaccurate personal information.

The FOI Act expressly empowers the Ombudsman to investigate complaints about the actions of Australian Government agencies under the FOI Act (s 57). It also requires agencies to inform applicants of their right to complain to the Ombudsman about FOI matters (s 26).

The Ombudsman's role under the FOI Act reflects the more general role of the office in promoting transparency and accountability in government administration.

SCRUTINISING GOVERNMENT

In March 2006, the Ombudsman released a report titled *Scrutinising Government: Administration of the Freedom of Information Act 1982 in Australian Government Agencies*, which dealt with the way Australian Government agencies managed their responsibilities under the FOI Act. The report surveyed previous Australian studies of freedom of information laws and noted that there had been no response by government to many of the recommendations in those earlier studies. This included an earlier report by the Commonwealth Ombudsman in 1999, *Needs to Know* (available at www.ombudsman.gov.au).

The most recent Ombudsman report examined FOI administration by undertaking a case study analysis of how FOI requests were handled in 22 Australian Government agencies. Some major problem areas were identified, including excessive delays in processing FOI requests, a lack of consistency among agencies in acknowledging FOI requests in a timely manner, delay in notifying charges and inconsistencies in their application, and variable quality in the standard of decision letters, particularly regarding the explanation of why documents were exempted from access.

The report also acknowledged that there was a clear

commitment to FOI in some agencies, and a high degree of compliance with the spirit and detailed requirements of the FOI Act. Drawing from these examples of good and bad practice, the report set out guidelines for achieving better FOI practice. These include clear procedures on FOI processing, close monitoring of incoming correspondence, quality control of FOI correspondence, and open communication between the agency and FOI applicants.

'The Ombudsman's report dealt with the way agencies managed their responsibilities under the FOI Act.'

Two findings stand out from the recent study: there is an uneven culture of support for FOI among Australian Government agencies; and the vitality and success of the FOI scheme depend heavily on the way the Act is administered within agencies. The report recommended that agency heads indicate a clear commitment to sound FOI practice and the objectives of the FOI Act, having regard to the kinds of good and bad practice identified in the Ombudsman report.

In the course of the report's preparation, a number of agencies wrote to express support for the review and to indicate systemic changes they had made to bring about better FOI management. Following the release of the report, the Secretary of the Department of Defence wrote commending the report and indicated his intention to release a statement, jointly with the Chief of the Defence Force, identifying the consequences of failing to manage FOI and to seek continuing briefings about the department's management of FOI requests. This is a good example to other agencies. We are aware that some other agencies are taking similar action, and one sought our advice in drafting a statement to be issued by the agency head. We will follow up this issue more generally during 2006–07.

The report also recommended (as had some previous reports from the Australian Law Reform Commission, the Administrative Review Council, and the Senate

Legal and Constitutional Legislation Committee) the creation of a statutory position of FOI Commissioner. An FOI Commissioner could provide leadership in promoting the ideals of FOI, monitoring compliance with the Act, and promoting its effective operation. As well as providing more effective FOI oversight, such an office could also work with Australian Government agencies in addressing areas of administrative difficulty that sometimes arise in FOI administration. At 30 June 2006, there had been no response to this recommendation.

COMPLAINTS OVERVIEW

In 2005–06, we finalised 259 complaint issues (289 in 2004–05) about the way 44 Australian Government agencies handled requests under the FOI Act.

The majority of complaint issues were about three agencies: Centrelink (25%); the Department of Immigration and Multicultural Affairs (DIMA) (15%); and the Child Support Agency (11%). The remaining 49% were about 41 agencies.

Most complaints related to delays by agencies in processing FOI requests (23%) and to the primary decision reached by agencies (21%). In cases of delay, we contacted the relevant agency about expediting a decision.

In a number of cases, the agency told the FOI applicant that it did not have a specific document that the person believed it should have. The FOI Act provides a right for an agency to refuse a request for a document that does not exist or that cannot be found. These agency decisions are reviewable by the Administrative Appeals Tribunal (AAT). Sometimes it is more expedient if we enquire of an agency whether it has made reasonable attempts to locate the document—for example, whether the agency has checked correspondence logs and asked all staff likely to have dealt with such a matter if they have any recollection of the document.

Other cases raised a familiar issue—the extent of an agency's obligation under the FOI Act to assist applicants to make valid requests (s 15(2)). An associated question is the scope of an agency's obligation to give an applicant an opportunity to consult before refusing a request on the ground of breadth or because the request does not adequately specify a document (s 24(6)).

One complaint to the office concerned a decision by an agency to refuse a request at a point where the applicant considered he was still negotiating its scope. While the agency did not accept our view that it had erred, following our investigation the agency agreed to allow the applicant to pursue the request. In a similar matter, another agency appeared to have construed an applicant's submission about the level of fees as a request for internal review and made a review decision. The general effect of the agency taking that course is that the applicant would then be restricted to an appeal to the AAT, because the applicant would have exhausted his internal review rights.

In a case received towards the end of the year, a government officer complained about the proposed disclosure of sensitive personal information about her to another officer. The agency had provided her with an opportunity to comment before making the initial decision to exempt the document from disclosure under the Act; no similar opportunity was given when a different decision to disclose the document was made on internal review. The agency's decision is now being reviewed by the AAT. We are continuing to consider some of the processing issues that led to the complaint.

Access to policy-related information

During the year, parliamentarians, their staff and journalists contacted the Ombudsman to discuss FOI issues relating to requests for policy and similar information. The *Scrutinising Government* report observed that the FOI Act works well in facilitating public access to personal information, but not so well in providing access to policy-related information. There appear to be two major concerns—the level of charges assessed and the involvement of ministers and their staff in relation to requests made to agencies.

The FOI (Fees and Charges) Regulations set a scale of charges, which are below the real cost to agencies of handling FOI requests. A decision by an agency to impose a charge can be challenged on internal review or before the AAT. The FOI Act also confers a discretion on agencies to waive a charge, for reasons such as hardship and the public interest. The policy of successive governments has been that FOI applicants should contribute to the costs of their requests. There is no automatic waiver for

parliamentarians or journalists. Complaints to the office sometimes focus on that issue, and argue that an agency should have waived a charge because, for example, the document could have been obtained by a parliamentary committee, or the document relates to a current issue of public controversy on which there is a public interest in disclosure.

It is difficult for the Ombudsman's office to take a definitive stance on those issues, when the Act confers a clear (and reviewable) discretion on agencies to impose or waive a charge. If some of these charging decisions were challenged in the AAT, it may result in principles being established that provide better guidance.

Ministers have a proper interest in the management of government agencies within their portfolio and it will often be appropriate for an agency to consult its minister about an FOI request. In the same way, agencies often consult other agencies about possible disclosure. While a minister's views are entitled to great weight, they are not determinative of the public interest unless a conclusive certificate is issued (in relation to a limited class of exemptions). The larger issue for the Ombudsman's office is whether a decision was reasonably available to the decision maker. If so, we will usually suggest that the AAT is a better forum to decide the merits of the FOI decision.

DELAYS IN PROCESSING FOI REQUESTS BY DIMA

In 2004–05, we reported on significant delays in the processing of FOI requests by DIMA and the range of strategies DIMA was implementing to address the situation.

While the Ombudsman was satisfied that the strategies DIMA was putting in place were appropriate to get the processing of FOI requests under control in the longer term, the situation has not improved to the degree we expected over the past year. DIMA has experienced some delays in implementing its strategies, such as recruiting and training additional staff. The processing of many FOI requests far exceeds the statutory timeframe. At 30 June 2006, there were 1,101 FOI requests outside the statutory timeframe that required processing, compared to 907 at 30 June 2005. This continues to be an unsatisfactory outcome.

We are pursuing a number of specific issues with DIMA about its processing of FOI requests and will ask for more frequent reporting on progress in dealing with the backlog of cases. In the meantime, we continue to accept complaints about FOI delays and may investigate individual complaints if we consider that particular matters should be given priority or that the complaint raises a special area of concern in relation to DIMA's handling of requests.

reaching rural and regional Australia

Outreach activities in 2005–06 focused on increasing awareness of the Ombudsman's role in communities in rural and regional Australia.

We conducted 104 outreach activities across all states and territories. Places visited included: Albury, Bourke, Brewarrina, Cobar, Dubbo, Lightning Ridge, Nyngan, Wagga Wagga and Walgett (in New South Wales); Bundaberg, Caboolture, Caloundra, Goodna, Gympie, Inala, Ipswich, Maroochydore, Pine Rivers, Redland Bay and Rockhampton (in Queensland); Berri, Mt Gambier and Port Augusta (in South Australia); Ararat, Ballarat, Echuca, Horsham, Kerang, Moe, Sale, Traralgon, Warragul (in Victoria); and Albany, Bunbury, Esperance, and the Kimberley and Pilbara regions (in Western Australia).

Community leaders and community assistance groups and parliamentarians were key targets of the outreach visits.

We commissioned a market research company to conduct a public awareness benchmark survey. The survey explored the level of knowledge of the role of the Ombudsman's office among individuals and community leaders in rural and regional Australia.

The survey confirmed that people know they have a right to complain. When asked what they could do if they had an unresolved complaint with a government agency, close to 60% of respondents from rural and regional Australia said they could complain to their local member of parliament or the Ombudsman. Nearly three-quarters of respondents recognised the Commonwealth Ombudsman as a complaint resolution agency when prompted (a lower number when unprompted). Community leaders demonstrated both an awareness and understanding of the role of the Commonwealth Ombudsman.

Ombudsman staff also made presentations at a wide variety of functions. There was a particular emphasis this year on establishing relationships with multicultural organisations, particularly those representing asylum claimants and refugees, in the light of the Ombudsman's new role as Immigration Ombudsman.

how the ombudsman helped people

8

Review of administrative decision making by courts and tribunals focuses on the correctness of a decision—for example, a decision to refuse a visa, to revoke a licence, or to cancel a social support benefit. The Ombudsman's office can examine the correctness of decisions, but most investigations focus on other problems that people encounter in their dealings with government agencies. This chapter illustrates the broader focus of the Ombudsman's role by looking at some of the varied ways in which we help people to relate more successfully to government.

'This chapter illustrates the broader focus of the Ombudsman's role ...'

PINPOINTING THE ISSUE IN DISPUTE

There can be multiple elements in a single administrative decision. When a person is told by an agency that an adverse decision has been made, it can be important for the person to know if the decision turned on one particular issue. This will help them better understand the decision and query or challenge it in a constructive manner.

We are often able to help people penetrate the complexity of decisions and identify the core issues. Often an agency gives us a fuller explanation for its decision than it gave the complainant; that enables us to explain the decision more effectively to the complainant. This clarification can assist a person to understand or revisit a decision, as shown in the *Insufficient reasons* case study on page 105.

Even when a person can identify the issue that concerns them, they are often unaware of the range of services offered by an agency that may help them resolve that issue. We can help by making people aware of their options and providing advice

about the best course of action, as the *Various options* case study on page 105 shows.

'We can help by making people aware of their options ...'

DEALING WITH URGENT AND PRESSING ISSUES

Although the Ombudsman's office does not provide emergency assistance to the public as a matter of course, it can sometimes intervene to avert executive action that cannot be undone—for example, it can elicit an undertaking from a government agency not to remove someone from Australia or to dismiss someone from the Australian Defence Force (ADF) pending an investigation. Decisions that have a significant and irreversible impact on people require flexibility in how they are implemented.

Members of the ADF can be involuntarily discharged in certain circumstances. Although members facing discharge are provided with 28 days notice of their discharge date, often they approach our office for assistance only towards the end of that period. In such circumstances, we ask the ADF to suspend discharge action while we review the records. The ADF's practice has been to agree to suspend discharge action for two weeks, during which time we review the matter and present any concerns to the ADF for reconsideration.

'Decisions that have a significant and irreversible impact on people require flexibility in how they are implemented.'

In the *Delayed removal* case study on page 105, the Department of Immigration and Multicultural

CASE STUDY insufficient reasons

The Trade Recognition Authority (TRA) refused Ms A's application to have her trade qualifications recognised on the basis that she had not provided some relevant employment records. Ms A requested a review and pointed out that she had provided the relevant records. Her review was not successful. Reasons were not given in the review notification letter from the TRA.

The TRA's response to our enquiries was significantly more detailed than that provided to Ms A. The TRA told us that Ms A's employment records did not include the dates on which she commenced and finished employment; and the area of work for which she was seeking trade qualification recognition was categorised differently in Australia than in her country of origin. Had Ms A been given this information when her application was initially refused, she would have been in a position to reapply and supply that information.

The TRA conceded that Ms A may have been disadvantaged in seeking a review because of the lack of detail in the original reasons and agreed to reconsider the application and any additional supporting documents. The matter was decided in Ms A's favour and her professional qualifications were recognised.

CASE STUDY various options

Ms B complained to our office when she had difficulty meeting her tax debt due to personal and financial circumstances. We advised Ms B about the range of options available to her, and suggested that she consider seeking a review of the debt and suspension of the general interest charge. We also advised Ms B that the Australian Taxation Office sometimes gives full or partial relief from tax debts on the grounds of serious hardship, and told her where to obtain a debt relief application form. Finally, we suggested Ms B consider obtaining professional advice on debt and financial management.

CASE STUDY delayed removal

Mr C arrived in Australia with his parents when he was nine years old and assumed he was an Australian citizen. He was not, and the minister cancelled his visa on character grounds under s 501 of the Migration Act after he was convicted of criminal offences. On his release from prison, he was detained in immigration detention as he was an unlawful non-citizen. He was not removed from Australia at this time as he had outstanding litigation.

Mr C was within the scope of the Ombudsman's investigation into the cancellation of visas of long-term Australian residents, which was published in February 2006. We reviewed his case as part of our statutory role of reviewing the cases of people detained for two years or more. His litigation concluded and his removal became imminent while we were conducting the review of his case.

The Ombudsman wrote to the Secretary of DIMA, asking him to delay Mr C's removal until the completion of the report on s 501 decisions, as 'it is possible that we will make recommendations that, if accepted, would change the immigration status of some of those subject to the report ... and if removed, they would lose the benefit of any changes arising from the report'. Several meetings were held with DIMA officials to explore the legal options open in this case. In December 2005, DIMA asked the minister to consider using her detention intervention powers, while Ombudsman staff continued to monitor the situation, remaining in contact with the detainee, as removal remained a possibility.

The report on the Ombudsman's review of Mr C's long-term detention was submitted to the minister in November 2005. In December 2005, Mr C was granted a Removal Pending Bridging Visa and released from detention to live with his family. Mr C is currently included in a review being conducted by DIMA in response to the Ombudsman's report on s 501 decisions, and will not be removed until that review is finalised.

Affairs (DIMA) considered whether a person's removal from Australia should be suspended until a review of their case was completed. After much negotiation with our office and obtaining legal advice, DIMA agreed to suspend removal in this case to ensure that the benefit of any changes recommended by the review of the case would not be negated by the fact that the person was no longer in the country.

The investigation of complaints must also take account of the serious effect that decisions can have on people. This is illustrated by the following two case studies, in which the circumstances of the decisions were closely examined to ensure that they

were properly made. In one case, described in the *Priority hearing* case study, our investigation showed that a decision to decline a priority hearing for an appellant was made by a person lacking the authority to make such a decision and without due regard to all the circumstances of the case. Our intervention resulted in the expedited consideration of the matter by the relevant tribunal. In the *Family reunion* case study, the decision maker was not aware of all relevant information. In this case, our intervention resulted in the reunion of a mother with her baby.

CASE STUDY

priority hearing

Mr D complained to our office that the Migration Review Tribunal (MRT) declined to give his case a priority hearing, as he had requested. He was living in Australia and was seeking to sponsor his wife, who was pregnant and living in Cambodia. The MRT's decision not to give his case a priority hearing was likely to result in his being separated from his wife and child until some time after the birth. Tribunal policy provided that agreement to a priority hearing should be given in compelling circumstances, including those where delay might result in the separation of a child from their parent.

We found that the decision to decline priority to Mr D was made by a non-ongoing, junior officer who was not authorised to decide requests for expedited processing. Further, information concerning Mr D's probable separation from his child following the birth had not been taken into account.

The MRT promptly reconsidered the decision and apologised to Mr D. As a result of our intervention, the MRT agreed to consider Mr D's case at an earlier date.

CASE STUDY

family reunion

Ms E visited family in Australia and overstayed her visitor's visa. While she was being voluntarily removed, she gave birth to her baby prematurely and was taken to hospital.

Ms E was issued with a bridging visa that allowed her to stay until the baby was well enough to travel. After some weeks the baby left hospital, but remained unfit for travel. Ms E was offered another visa, but chose to return home to care for her other children, leaving her baby in the care of her family in Australia. When she wanted to return to Australia to collect her baby, Ms E was denied a visa because she had overstayed her previous visa.

After being contacted by Ms E's brother, we ascertained that the embassy in question had not been made fully aware of Ms E's unique circumstances. Working closely with DIMA officers, we were able to ensure Ms E promptly received a visa to return to Australia to collect her baby.

DETOXIFYING THE RELATIONSHIP

Many people have an ongoing, even lifetime, relationship with a particular agency. For example, a person will be a taxpayer throughout their life, may receive a Centrelink benefit for an extended period, or be subject to a Child Support Order for many years. Sometimes a particular incident can taint a person's relationship with an agency and colour their subsequent interaction. A person may then distrust the agency and assume that standard administrative requirements are ill-intentioned.

The Ombudsman's office can sometimes detoxify the relationship, by isolating the issue that led to the difficulty and ensuring better understanding and communication in the future. This is demonstrated in the *Repeated investigations* case study, where interaction between the person and the agency had deteriorated to the point that the person was

suspicious of the agency's unintentional administrative error.

In a similar position are cases in which a person has special needs of which an agency is unaware or for which it has not made special provision. If the agency puts in place particular rules for contacting the client, it can improve the relationship and reduce the chance of later difficulty, as in the *Special contact needs* case study.

PLACING AN ITEM ON THE LEGISLATIVE OR POLICY AGENDA

Some complaints are substantially about the wisdom of a legislative or administrative rule that is being applied by an agency. It is difficult for a person to argue from their individual case that a general reform is required to relieve the harsh or

CASE STUDY repeated investigations

Centrelink had repeatedly investigated Ms F's circumstances to determine whether she was a member of a couple. In her complaint to our office, Ms F alleged that Centrelink officers had deliberately falsified her record and threatened and intimidated her. The relationship between Ms F and the agency had deteriorated to the point where she viewed even the most helpful actions by Centrelink officers, such as suggesting that she claim a more beneficial payment, as ill-intentioned.

We investigated the complaint and explained the policy behind some of Centrelink's actions. We were able to ensure that Ms F's electronic record was corrected and that she received the full payment to which she was entitled. Centrelink provided several written apologies to Ms F. Other aspects of the complaint are still being investigated.

CASE STUDY special contact needs

Ms G complained to our office about a series of instances where she considered that she had not been provided with adequate advice by an agency. During our investigation, we established that Ms G suffered from agoraphobia and that she was not comfortable seeking assistance from males.

In response to our enquiries, the agency provided Ms G with the contact details of an officer who understood her situation and with whom she would be comfortable. That officer could obtain information from other officers on Ms G's behalf and organise a home interview if required. This arrangement appears to have improved Ms G's confidence in the agency and reduced the likelihood of further complaints.

impractical consequence of a law or policy. The Ombudsman's office is better placed to take up those issues. Sometimes we can point to other complaints that raise the same problem, or persuade an agency to see that an individual complaint raises a larger or systemic issue that should be addressed.

An example, taken up in the *Requirement to reclaim* case study, concerned a legislative rule that imposed an onerous burden on a particular group of concession cardholders. They had to complete a claim form to reclaim their concession card after travelling overseas, by contrast with the holders of other types of concession cards, who were automatically regranted their cards on return to Australia. There appeared to be no policy reason for this difference, and the agency agreed to seek legislative change to reduce the administrative burden on both its clients and staff.

Another legislative change, which becomes effective in September 2006, originated in an Ombudsman investigation of a complaint received in 2001 about an anomalous provision that affected Centrelink customers receiving parenting payment at the partnered rate. They were unable to apply for an advance of that payment, by contrast with most other payment recipients, who had limited access to a \$500 advance.

Since 2001, we had urged the former Department of Family and Community Services to take steps to rectify this anomaly because it was discriminatory and inequitable. A legislative change was made

after the Ombudsman sent a report on the matter to the Prime Minister under s 16 of the *Ombudsman Act 1976*. The legislation now provides that parenting payment (partnered) recipients will have access to an advance payment from 20 September 2006. The Department of Employment and Workplace Relations is now responsible for the parenting payment (partnered).

'A legislative change was made after the Ombudsman sent a report on the matter to the Prime Minister ...'

Another legislative amendment has been foreshadowed as a result of the investigation, described in the *Unlawful policy* case study on page 109, into the eligibility rules for the low-income health card. The need for legislative amendment to provide a practical solution to a veteran's problem has been highlighted by the investigation described in the *Recuperating with family* case study. The legislation under scrutiny in that case was inflexible and did not allow officers from the Department of Veterans' Affairs (DVA) to take a practical approach to the medical needs of a client.

In some instances a policy, rather than a legislative, amendment can achieve the necessary reform. This is illustrated by the *Production delays* case study on page 109, concerning an anomaly in the criteria for the grant of research funding based on the publication year of an article. The department amended the policy criteria on research funding to take account of the possibility that publication of an article can be unexpectedly delayed.

CASE STUDY requirement to reclaim

Mr H held a Commonwealth Seniors Health Card (CSHC) when he advised Centrelink that he was travelling overseas for a short period. Centrelink applied the relevant provisions of the social security law to cancel Mr H's card from the date that he left Australia and required him to reclaim the card upon his return a few weeks later. Mr H complained to our office that this seemed to be unnecessary and bureaucratic.

It became clear that holders of the CSHC were disadvantaged when compared with holders of some other concession cards, which are automatically regranted upon the cardholder's return to Australia.

The Ombudsman wrote to the Secretaries of three departments—Families, Community Services and Indigenous Affairs; Employment and Workplace Relations; and Education, Science and Training—asking whether the reclaim process for CSHC holders could be simplified. We were advised that representatives from these departments met and are working together to streamline the process for CSHC holders to reclaim the card upon their return.

CASE STUDY unlawful policy

Our investigation of a complaint about multiple incorrect cancellations of a low-income health care card (LIC) revealed a conflict between the social security law and policy as defined by FaCSIA. Contrary to the legislation, the policy required the assessment of a person's claim for an LIC to include the amount of their partner's social security pension or benefit.

FaCSIA told us that while it had always been the policy intention to include pensions and benefits in the income test for the LIC, an error occurred when the legislation was amended and they were not included. FaCSIA nevertheless advised Centrelink to apply their policy position.

After we brought this matter to the department's attention, FaCSIA reconsidered its approach and advised Centrelink to disregard any pension or benefit received by the partner of an LIC claimant until legislative amendment had brought the law and intended policy into line.

CASE STUDY recuperating with family

Mrs J lived in a remote location and needed hip surgery. Under s 110 of the *Veterans' Entitlements Act 1986* eligible veterans are entitled to reimbursement of some of their travelling expenses, including transport, meals and accommodation, when travelling for medical treatment. The regulations prescribe that a veteran attend the 'closest practical provider,' which is determined with reference to the distance from the veteran's home, and whether the appropriate treatment can be provided in a timely manner.

The closest practical provider to Mrs J is usually found in Sydney or Brisbane. Mrs J's daughter lived in another major Australian town, where she was the head of the Physiotherapy Department at the local hospital. Mrs J preferred to have her surgery at that hospital, where her daughter could both accommodate her and manage her therapy.

Neither the legislation nor the regulations give a decision maker discretion to overlook the closest practical provider requirement, even when it made good sense for the veteran to have treatment in a more distant location. We raised this problem with the Department of Veterans' Affairs, which agreed to recommend an amendment to the relevant regulations and prepared an Act of Grace submission to the minister on behalf of the client.

CASE STUDY production delays

Articles published in journals are normally eligible for inclusion in the Department of Education, Science and Training's Higher Education Research Data Collection process, which forms the basis of research funding for higher education providers.

Production delays in 2004 meant the publication of a particular journal was delayed, resulting in a higher education provider not being able to claim research funding for a journal article. This was because the providers were excluded from consideration in the year the journal article was written and also excluded from consideration in the year it was published because it was written in the earlier year.

In response to our initial enquiries, the department noted that the peak body representing providers, the Australian Vice-Chancellors' Committee, was unwilling for the scope of the annual collections of publications to be changed.

Following further consultations with the Committee, the department subsequently amended its policy to include an 'expanded year of publication definition' that specifies a different basis for assessing the publication date of publications.

SURMOUNTING BARRIERS

One of the more satisfying experiences in ombudsman work is when a person expresses gratitude and says that they could not have dealt effectively with an issue without the office's help. The causes vary—a person simply did not understand the decision or government program, they felt they were not getting through to the agency, or the agency told them that their case had been given a lower priority than other pressing issues.

The *Systems problems* and *Short staffing* case studies provide two examples of where the Ombudsman's office helped complainants to obtain payment of a financial benefit that had been delayed, in one case by a systems problem and in the other by a staffing problem. Other examples of complainants expressing gratitude for ombudsman assistance are provided in the 'Looking at the Agencies—Immigration' section in Chapter 7.

CASE STUDY

systems problems

Ms L complained to our office when she was advised that approximately \$12,000 in childcare benefit arrears could not be paid to her children's childcare centre for some time because of the limitations of an agency's computer systems. After we became involved in the matter, the agency overcame the systems problems and paid the arrears. The owner of the childcare centre was paid quickly, rather than having to wait until late in 2006 for payment.

CASE STUDY

short staffing

Centrelink told Mr M that it could not process his Newstart allowance claim for some time because it was short-staffed in the lead-up to Christmas. After we started to investigate Mr M's complaint, Centrelink arranged for staff to work overtime so that the backlog of claims could be processed. Mr M stated that he did not think that this would have happened without the intervention of our office.

research project—whistling while they work

All Australian parliaments have enacted legislation to provide protection for whistleblowers and internal witnesses to corruption, misconduct and maladministration. The legislation has different titles—Whistleblowers Protection Act (in Queensland, South Australia and Victoria), Protected Disclosures Act (New South Wales), and Public Interest Disclosure Act (Australian Capital Territory, Tasmania and Western Australia). The Commonwealth *Public Service Act 1999* (s 16) also contains a provision on ‘protection for whistleblowers’.

The Commonwealth Ombudsman’s office is collaborating in a three-year, national research project into the management and protection of internal witnesses and whistleblowers in the Australian public sector. The project—*Whistling while they work: internal witness management in the Australian public sector*—is being led by Griffith University and is jointly funded by the Australian Research Council, six participating universities and fourteen industry partners, including the Commonwealth Ombudsman.

The project aims to identify best-practice strategies for preventing, reducing and addressing reprisals and other whistleblowing-related conflicts in the workplace, by drawing from the experiences and perceptions of internal witnesses and managers.

Representatives of the Commonwealth Ombudsman are on the project steering committee and research team. In 2005–06, the Ombudsman and the Merit Protection Commissioner sent a joint letter to the heads of approximately 140 Australian Government agencies inviting participation in the project’s first survey into agency practices and procedures. A survey of agency employees was commenced, involving 30 selected government agencies and approximately 6,000 employees. The project is expected to generate several major reports and papers, with the first to be finalised in 2007.

For more information visit <http://www.griffith.edu.au/centre/slr/whistleblowing>.

problem areas in government decision making

9

A feature of the Ombudsman's previous two annual reports has been a chapter of the same title, looking at general problem areas that were identified during the investigation of individual complaints. This is an exercise, in a sense, in joining the dots. A problem faced by a person in one area of government can be common to several agencies.

Some recent projects in the Ombudsman's office that are described in other chapters—the adoption of a new complaints management system and a new work practice manual, and the creation of the Public Contact Team—were designed to harness the ability of the office to identify general problems and cross-agency issues.

Among the problem areas discussed in previous annual reports were record keeping; the accuracy and quality of agency advice, especially oral advice; the need for 'hardship' provisions and 'safety net discretions' in complex statutory entitlement schemes; oversight of decisions made under non-statutory schemes; unexpected problems that can arise in automated decision-making schemes; and people falling through the cracks (or over the edge) of government programs.

This year we look at a different selection of general administrative problems. The problems were not necessarily caused by government agencies, or even a consequence of sloppy administration.

Mostly they stemmed from the sheer complexity of legislation and administrative schemes, especially when applied to the different circumstances of thousands of government clients. The changing face of government, as programs and structures evolve to deal with new social challenges, also give rise to unexpected problems. Sometimes government agencies are slow to adapt to unanticipated issues, do not communicate effectively with clients, or fail to recognise the administrative burden that government requirements can impose on people.

'The problems ... mostly stemmed from the sheer complexity of legislation and administrative schemes ...'

The diversity of problems and causes illustrates the challenge faced by government, and taken up by the Ombudsman's office, in identifying the problems that people encounter in their dealings with government.

ADMINISTRATIVE IRRITANTS

Many of the problems that people experience with government are not major in themselves, but cause irritation as they can add to the stress of daily life and often seem avoidable. Examples are delay in being served at a government counter or in having a telephone call answered; being sent the wrong form by a government agency; calling an agency and being told that the contact person has now left or has changed; or receiving a government letter that is not easy to understand, has a harsh tone or is outdated because of some other development. Problems of this kind will possibly increase over time, because of the frequency and variety of ways that people now interact with government, the growth in size of government agencies and the pressures on people's time.

We do not always investigate these irritations, because they usually pass or can be taken up directly with an agency. However, complaint letters and telephone calls to the office are sprinkled with administrative irritations that arise during people's interaction with government. Government agencies should always try to reduce or eliminate administrative burdens when planning and delivering services. Following are some examples of where agencies have considered this.

In March 2006, we published a report into the Australian Taxation Office's (ATO) administration of

the Superannuation Co-contribution Scheme. We recognised and praised the ATO's attempts to reduce the administrative burden on taxpayers who benefit from this scheme. The ATO does not require an application process, and instead automatically assesses entitlement to the co-contribution when a taxpayer, who makes a contribution and satisfies all the eligibility criteria, lodges their tax return.

Although this minimisation of interaction between the ATO and the taxpayer advantages taxpayers, it increases the burden on the agency to ensure that taxpayer expectations are adequately managed through publicity campaigns. Our report on the co-contribution scheme, based on complaints we had received, suggested that the ATO may need to explore new ways of encouraging taxpayers to clarify their understanding and seek additional information where necessary.

In an example of a different kind, the ATO contacted our office before implementing a strategy to contact small business debtors at home in the early evening, when other attempted contact had been unsuccessful. The ATO recognised that this method of contact may increase complaints, and therefore briefed our office on the reasons behind the strategy so that we could respond to any contacts from this group. The planning that went into this strategy seems to have been successful in averting too many complaints.

Centrelink has also recognised the potential to reduce the impact of its administrative processes on customers. Many people transfer from another Centrelink payment on their age pension qualification date (63 years for women and 65 years for men). From April 2006, Centrelink implemented new procedures to streamline the transfer process for these people.

A transferee is sent a Transfer to Age Pension Review form, pre-populated with the information Centrelink held about them before their age pension qualification date. Information is provided that explains the advantages and disadvantages of transferring to the age pension and the taxation implications of the different payment. This reduces the administrative burden on the claimant, and allows them to make an informed choice about transferring or remaining on their previous payment (where possible). It also gives them an opportunity

to check that the information Centrelink holds about them is accurate and to provide any additional information about their circumstances.

COMPLEXITY

Many of the complaints we receive stem from the complexity of legislation and government programs. Complexity can adversely affect people in different ways:

- a person might not understand what they have to do to obtain a government benefit
- advice given by an agency can be misunderstood, or not answer a person's unique or specific query
- a person might structure their affairs on a mistaken understanding of how a program applies to them
- someone can 'fall through the cracks' between government programs that do not interact seamlessly
- through confusion and inactivity, someone might fail to take a necessary action and be penalised for not doing so.

Many adverse consequences cannot be reversed, either because the damage has already occurred, or there is no discretion in the law to overturn the result. Nor does it seem likely that there will be any reduction in this complexity over time and a return to an era of fewer and simpler rules.

The Ombudsman's office carries out its complaint investigation role against this backdrop of complexity. The challenge is to develop government systems with an eye to this inevitable complexity and to build in ways of responding to the problems that people unexpectedly encounter. We mentioned different ways of doing this in previous annual reports. They include agencies paying administrative compensation to unwitting victims of administrative error; writing safety net discretions into statutory schemes to deal with the unanticipated consequences of laws; and providing simple remedies, such as an apology, when things go wrong.

Another important response is for agencies to have effective systems for internal review and complaint handling. On the one hand, this can enable a person

to seek relief and assistance from an agency at an early stage and by an informal and flexible process. On the other hand, internal complaint handling can provide an agency with an early opportunity to learn of problems that are arising in the administration of its programs.

These points are illustrated in the following discussion of the important role that complaint handling can play in two areas of growing complexity in government—the administration of taxation laws, and airport management and security vetting.

Administration of the tax legislation

In March 2006, the Ombudsman made a submission to the Joint Committee of Public Accounts and Audit (JCPAA) regarding the administration of the tax legislation. Since the role of the Taxation Ombudsman was vested in our office in 1995, we have received approximately 22,000 complaints about the ATO. Coupled with our own motion investigations, this has given us some insight into the difficulties that taxpayers experience with the existing system.

Many of the tax complaints we receive relate to the complexity of the legislation. Because modern commercial activities and financial transactions are complex, there has to be some degree of complexity in the tax law. In our submission to the JCPAA we argued that this places an additional responsibility on the ATO to ensure that the underpinning administrative processes are as simple as possible. Further, it is important that effective review and complaint mechanisms are available to aggrieved taxpayers and that the ATO recognises its responsibility to educate taxpayers to navigate this complexity.

‘Many of the tax complaints we receive relate to the complexity of the legislation.’

We found that the ATO offers several review options that work well for most taxpayers. Similarly, an accessible internal complaints system complements our role and reflects the ATO’s commitment to complaint resolution. The ATO has also been proactive in making documents such as

the Compliance Program and tax rulings available on its internet site to assist in strengthening understanding of the legislation and supporting policies. This framework means that sometimes our role is to explain the law, rather than actively investigate a complaint.

Complaint management in airports

During the year, we noted an increase in complaints about aspects of airport administration. Two factors seem to lie behind this trend. One is the larger number of organisations, government and non-government, that have a role in providing services at airports and managing the flow of passengers and goods. A great range of activities take place at airports, and some government functions are outsourced to private sector organisations. The other factor is the heightened security measures at airports that bring passengers into contact with uniformed and non-uniformed public servants and private contractors. Security vetting can also be a cause of frustration for passengers, particularly if they are delayed or miss a flight.

The Ombudsman decided to respond to this increase in complaints about airport administration by conducting an own motion investigation into the accessibility of complaint channels available to passengers. Among the issues that warranted investigation were whether the complaint mechanisms of individual agencies were adequate, whether those mechanisms were sufficiently integrated with each other, and whether there was a danger that people with genuine problems would fall between the boundary lines of different complaint schemes.

Our initial survey of complaints suggested that passengers could find it difficult to complain about the conduct of an official at an airport. Some passengers had difficulty in identifying the organisation for which an official was working or the particular official involved. The similar appearance of some uniforms, combined with the stresses experienced by passengers, could lead to misidentification.

Even if a passenger were able to identify the official and their organisation, the appropriate complaint channel was not always apparent. There was little information posted in airports to make

passengers aware of their right to complain or the manner in which a complaint should be made. Given these issues, a passenger may not always complain to the correct authority in the first instance.

A further issue of concern was that the government agencies involved in airport administration did not appear to work as collaboratively as they might. For example, complaints incorrectly received by one department were not necessarily forwarded to the correct agency, increasing the risk of complaints being overlooked.

In investigating this issue, we focused on bringing together the agencies involved in airport administration and encouraging them to work towards a common approach in addressing the problems faced by dissatisfied customers. We promoted the development of a simple, accessible complaint-handling mechanism across all agencies or, failing that, complementary, seamless processes for transferring misdirected complaints. The project also provides an opportunity to test whether the complaint-handling mechanisms used by agencies meet a common benchmark, such as the new Australian Standard on complaint handling (AS ISO 10002–2006).

‘... we focused on bringing together the agencies involved ... and encouraging them to work towards a common approach ...’

We invited representatives from the various agencies involved with airport administration to attend a workshop and discuss an issues paper prepared by our office. From those discussions we developed an interim report that will be sent to relevant agencies for comment early in 2006–07. The report will be published once comments are received from the agencies.

ADMINISTRATIVE DRIFT

A common cause of complaint to the Ombudsman across all areas of jurisdiction is agency delay in making a decision or resolving a matter. The Ombudsman has taken up this issue in reports and submissions to parliamentary committees, drawing

attention to the problem of delay in areas such as Defence investigations, FOI processing, immigration detention management, and determination of veterans’ claims. However, the problem of delay is more widespread, and occurs in most areas of administration.

The label ‘administrative drift’ appropriately describes what occurs, because delay often results from a matter drifting far beyond anyone’s expectation. Some of the reasons are familiar and pervasive—a file being given a lower priority than other matters or being put aside in the ‘too hard’ basket to be looked at later; responsibility for a decision passing from one officer to another; or one aspect of a case being reconsidered or referred for advice before a final decision on the whole case is made.

‘... the problem of delay is more widespread, and occurs in most areas of administration.’

As those examples show, delay can stem from many different causes. It sometimes arises from a short-term resource deficit in an agency, but more commonly it results from the lack of a binding process or clear strategy within agencies to ensure that delay does not occur. The strategies that can be used to prevent delay can be as varied as the causes themselves. However, the more important point is that each agency should have one or more strategies to deal with the kinds of delays that occur in its administrative processes. In short, there should be a clear agency policy on avoiding administrative drift. The following examples from recent experience in the Ombudsman’s office illustrate a few different strategies that have been successfully used in different areas of government.

One effective means of avoiding delay can be a system of internal and external complaint handling. Experience suggests that any complaint from a member of the public about delay in their case, made either to the agency itself or to the Ombudsman, usually has some impact in triggering the agency to take action to resolve the matter or hurry it along.

Another effective, though indirect, means for controlling delay is to hold regular meetings to

consider all cases that have been unresolved for a prescribed period of time. This can occur within agencies, but equally can occur between an agency and an oversight body such as the Ombudsman. For example, a series of meetings between the Ombudsman's office and the Department of Veterans' Affairs (DVA) to discuss unresolved complaints to the Ombudsman resulted, over ten months, in the number of DVA cases open for more than six months dropping (despite an increase in DVA complaints over that period).

A different strategy again is to have an early assessment procedure for cases that run the risk of being delayed. We were recently informed by the Department of Defence of a new procedure it had adopted to reduce delay in resolving Redress of Grievance (ROG) cases (which had been targeted in a joint report by the department and the Defence Force Ombudsman as a major problem). Now, the commanding officer to whom a ROG is submitted must, within five days, submit a written plan to the department's Fairness and Resolution Branch in Canberra, setting out the issues and explaining how they are to be handled.

We adopted a similar process this year for early assessment and case management of complaints, to handle the 30,000 or more approaches and complaints that come to the Ombudsman's office each year. Matters reaching the office fall into five different categories. Staff in the Public Contact Team handle simpler matters, described as category one matters; an investigation officer generally handles category two matters; and an executive level officer, a senior assistant ombudsman or a deputy ombudsman supervises more complex matters (categories three to five). An investigation plan is prepared for any case designated as category three or above. There is a two-monthly reconsideration of every case opened for more than six months.

Periodic review of unresolved cases can be brought about in other ways too. A new function conferred by statute on the Ombudsman's office in 2005 is to review the case of any person who has been in immigration detention for two years or more (cumulatively), and to do a further review each six months if the person remains in detention. When this function commenced in July 2005, 149 people had been in detention for more than two years,

with the longest period of detention being more than seven years. At 30 June 2006, 66 people had been in a detention facility for more than two years, while 30 people had been housed in alternative detention arrangements. Many factors lie behind that change, but as a generalisation it can be said that the mechanism of an automatic two-year review has been instrumental in bringing many unresolved cases of detention to a conclusion. In some instances a person was granted a visa of some kind, while in other instances action was taken for a person's removal from Australia.

In discharging this reporting function, the Ombudsman's office has focused on whether the Department of Immigration and Multicultural Affairs (DIMA) is taking effective action to resolve a person's detention. The stumbling block can vary from case to case—for example, identifying a person or obtaining travel documents from another country. Unexplained inactivity or ineffective action by DIMA to resolve a person's detention has been a key factor taken into account by the Ombudsman in deciding whether to recommend to the minister that a person be granted a visa to be released from detention or be placed in community-based detention.

It should be noted that some statutes seek to pre-empt delay by prescribing a time period for making a decision. An example is the *Freedom of Information Act 1982*, which provides that an FOI request must be decided within 28 days, and internal review of an FOI denial must be completed within 30 days. Failure to comply with either time limit is deemed a refusal, which can be the subject of a review application. The FOI time limits have not been entirely successful in preventing delay, but they provide a clear statutory benchmark for applicants, agencies and the Ombudsman.

UNHELPFUL LEGALISM

Australian Government administration is bound by a large and growing volume of complex legislation. Lawyers and legal considerations will therefore have a role in resolving many disputed issues. Given that all administrators have a duty to act lawfully, they will often need legal guidance.

On the other hand, there is a growing risk that in the complex legal environment of government, legal

approaches will overshadow the important role of administrative discretion and judgment in finding a practical resolution to problems. Although lawyers can make a positive contribution to administrative decision making, this does not mean that the more lawyers involved, the better the decision-making process.

The Ombudsman's office has often had cause to criticise unnecessary or unhelpful legalism by agencies. When agency lawyers become closely involved in deciding how to respond to the Ombudsman's office, there is a greater chance that jurisdictional and technical issues will be raised. Such issues include the scope of the Ombudsman's jurisdiction to investigate, the relevance of the *Privacy Act 1988* to disclosure of information to the Ombudsman's office, the legal obstacles that would confront the agency in varying the decision about which a complaint has been made, or the broader ramifications for the agency of varying that decision. Those issues all have a role to play, but when they become the focus of discussion between the Ombudsman's office and an agency, more time can be spent discussing how to address a complaint than the complaint itself. The attention given to finer points and procedural issues can be at the expense of the whole picture and a discussion of outcomes and solutions.

'The Ombudsman's office has often had cause to criticise unnecessary or unhelpful legalism by agencies.'

There is a danger of a trend towards unhelpful legalism. There has been a steady increase in the number of lawyers in and outside government; all aspects of government are regulated to a greater extent by laws of increasing complexity; and legal considerations are intertwined with other social trends, such as an emphasis on risk management and human rights protection.

It is not easy to reduce the emphasis that agencies (and society generally) put on legal solutions and approaches. In a system based on the rule of law, there is no alternative to acknowledging and dealing with relevant legal issues raised in complaints or by agencies.

Nevertheless, our experience is that there is much to be gained by a readiness to stand back from any problem and to put legal issues to one side while discussion proceeds on other aspects of the problem. Sometimes, for example, a person's complaint about the correctness of a decision might in fact stem from some other dissatisfaction with an agency. Or there may be an acceptable way of working around the problem, or finding a remedy that will satisfy the complainant (such as an apology, a conciliation meeting, or payment of administrative compensation).

We have also found that some agencies are more likely than others to emphasise legal issues and limitations. Conversely, some agencies have been prepared to change their style of response to the Ombudsman's office when we have been critical of a trend towards legalism in the agency. This experience suggests that there is scope for agencies to adjust the emphasis they put on legal considerations in deciding how to resolve problems encountered by members of the public.

Similar concerns have at times been expressed by the Ombudsman's office to lawyers who have complained, either personally or on behalf of clients. Sometimes we find that lawyers' advocacy of complaints can be unduly strident or too focused on legal niceties. This can impede rather than assist the sensible and effective resolution of a complaint.

OTHER ISSUES

Documentary proof of an issue

A person's entitlement to a benefit or concession will often depend on whether they can satisfy an agency that they meet eligibility criteria. To assist applicants, the agency will sometimes specify what evidence will satisfy the criteria. While this can be useful guidance, there is a risk over time that agency officials will accept proof only in that manner, when in fact there is scope for flexibility.

Some complaints we received during the year arose from agencies requiring specific documents to be lodged in order to prove an issue. In some cases the agency was inflexible and would not accept alternative documents that proved the issue to an equal standard. In other cases, the agency insisted on a specific document being provided, even though

it was impossible for the person to provide the document and it had not been required on previous occasions in relation to the same issue. Some people caught in this situation have been unable, without the intervention of the Ombudsman's office, to persuade the agency to accept alternative evidence.

Thoroughness of internal review

Most agencies offer a person dissatisfied with a decision of the agency an opportunity to have the decision reviewed by a more senior officer. It is important that the internal review process provide a genuine opportunity to correct any errors in the original decision. Some complaints this year illustrated that this is not always the case.

In one complaint investigation, we found factual errors in a decision that had not been picked up during an internal review process that confirmed the decision. The errors were apparent on the file and had not been clarified even though there had been subsequent discussion of the case between the agency and the applicant for review.

In another case, an agency had refused to consider fresh evidence or information during the internal review process. The justification given by the agency was that it regarded internal review primarily as a means of ensuring quality and consistency in agency decision making. The agency changed its approach after we pointed out that this was contrary to accepted notions of internal review (as, for example, spelt out in the Administrative Review Council publication, *Internal Review of Agency Decision Making*, Report No 44, 2000).

Though agencies have considerable latitude in defining the scope and procedure for internal

review, an agency should clearly spell out in advance any departure from accepted notions. A person seeking internal review should do so with a proper understanding of what they can expect.

Intelligibility of letters

The intelligibility and adequacy of government letters is a frequent complaint issue. Some of the problems we have encountered are described in the 'Looking at the Agencies—Centrelink' section of Chapter 7, where we report on issues we have taken up with Centrelink in the context of its Letters Improvement Project. Generally, the problems we note in government correspondence fall mainly into three categories.

- There are deficiencies in the explanation provided to a person about how a decision was reached. For example, a letter may not adequately explain the reason for suspending a payment or the information that was included in an assessment. Unless the person seeks further information, they will not be in a position to evaluate whether the decision was correctly based, or an application for review should be made.
- Information about review rights is not communicated consistently in written correspondence. Review rights are given more prominence in some letters, but in others the information is included in the text on the back of a letter and is more easily overlooked.
- Standard text is sometimes not tailored to the circumstances of the recipient. Standard text can be advantageous in maintaining the consistency and quality of correspondence, but it should not do so at the expense of accuracy and relevance.

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occupational health and safety

OCCUPATIONAL HEALTH AND SAFETY POLICIES

The Ombudsman's office updated its occupational health and safety (OH&S) policy and OH&S guidelines during the year. Other guidelines were also updated during the year, including those on injury management (non-compensable and compensable).

In August 2005, the Ombudsman signed a statement of commitment 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.

OCCUPATIONAL HEALTH AND SAFETY COMMITTEE AND REPRESENTATIVES

All of the Ombudsman's offices have a health and safety representative onsite and deal with OH&S matters either through the OH&S Committee or, where appropriate, through staff meetings. Health and safety representative vacancies were filled in accordance with the office's OH&S Agreement.

All new employees are made aware of the importance and responsibilities of both staff and management for health and safety in the workplace. New employees are encouraged to have workplace assessments conducted shortly after commencement.

There were no reportable incidents during the year.

HEALTH AND SAFETY MEASURES

During 2005–06, the office:

- met obligations for Comcare premiums
- managed compensation cases in accordance with approved guidelines
- arranged health assessments, where necessary
- conducted individual workplace assessments
- facilitated eye examinations, where necessary
- made first-aid facilities and supplies available, and provided first-aid training to first-aid officers (refresher and senior first aid for new officers)
- targeted individual health awareness through health management initiatives such as providing flu shots to employees free of charge, disseminating a quarterly bulletin on specific OH&S issues, and conducting workshops on health and wellbeing and mental health first aid.

To promote a supportive working environment, the office provided staff with access to an employee assistance program, including a confidential counselling service to assist with workplace problems and the management of any work-related or personal stress.

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 at 30 June 2006.

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 (DFO), the Immigration Ombudsman, the Postal Industry Ombudsman (PIO) 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, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

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

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 DFO can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide not to investigate complaints that are 'stale' or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where he considers investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as he thinks fit. The powers of the Ombudsman are similar to those of a royal commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, he may report that view to the agency and may recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report 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. 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 (ATO). The Ombudsman has a specialist team, headed by the Special Tax Adviser, to investigate complaints about the ATO.

Immigration Ombudsman

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration and Multicultural Affairs about the circumstances of any person who has been in immigration detention for two years or more. At the request of the government, the Ombudsman has been reviewing a substantial number of cases where it appears that a citizen or person lawfully entitled to be in Australia may have been detained or removed from Australia.

Postal Industry Ombudsman

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman. The PIO will deal with complaints about postal service delivery by

Australia Post and 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.

Investigations of the Australian Federal Police

The Ombudsman has specific functions in relation to complaints about the Australian Federal Police (AFP) under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). Complaints about the AFP usually focus on its practices and procedures or the conduct of individual AFP members. Complaints about its practices and procedures are dealt with in a similar way to complaints made under the Ombudsman Act. The Ombudsman may conduct an investigation on his own initiative.

Where the conduct of an AFP appointee is in question, the AFP Professional Standards and Internal Investigation division normally undertakes the initial investigation. Sometimes the internal investigation division is not involved; for example, when the complaint is about the actions of a member of the division. The Ombudsman examines reports of all AFP investigations, whether the originating complaint was made to the Ombudsman or to the AFP, and decides whether further action is necessary. If action is required, the case may be referred back to the AFP for further investigation. Alternatively, the Ombudsman can decide to investigate the matter independently.

Following an investigation by either the Ombudsman or the AFP, the Ombudsman can recommend remedial action to the AFP

Commissioner. Recommendations may include that a member be charged with a criminal offence or a breach of discipline, or some other course of action.

The *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*, which passed through Parliament on 23 June 2006, repeals the Complaints Act. When the amending legislation commences operation, complaints to the Ombudsman about the AFP will be investigated under the Ombudsman Act. The legislation will permit the Ombudsman to be designated as the Law Enforcement Ombudsman in dealing with matters relating to the AFP.

The Ombudsman's interception and surveillance devices audit

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP and the Australian Crime Commission (ACC) to ascertain whether the agencies have complied with specified record-keeping requirements of the Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP and the ACC.

Audit of compliance powers

Until 2006, the Ombudsman had responsibility for auditing the use of compliance powers in the *Workplace Relations Act 1996* by members of the Building Industry Taskforce. That framework has been replaced by the *Building and Construction Industry Improvement Act 2005*.

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 memorandum of understanding between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT Ombudsman is set out in a

separate annual report made to the ACT Government pursuant to the *Ombudsman Act 1989* (ACT).

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

CATEGORIES OF DOCUMENTS HELD BY THE OMBUDSMAN

The Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

FOI access and contact

General enquiries and requests for access to documents or other matters relating to FOI may be made in writing, by telephone or in person at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. For the cost of a local call, people can contact the Ombudsman's office by calling 1300 362 072. (See contacts in the 'References' section of this report.)

Pursuant to s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsmen, all Senior Assistant Ombudsmen, and some Executive Level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant as detailed below.

FOI REQUESTS TO THE OMBUDSMAN'S OFFICE

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (24 in 2005–06 and 15 in 2004–05), mostly for documents related to investigations. Following are some observations about how those requests are handled:

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:
 - documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
 - records of telephone conversations involving the complainant
 - most database entries relating to the complainant.
- In the course of investigation, we may provide an agency response to a complainant so that he or she can better understand the agency's position. It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the documents'

content and context, in the light of their experience in dealing with requests for similar documents.

A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a subsequent complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

The Ombudsman's office has raised with government, in the context of a current review of the Ombudsman Act, whether the office should be subject to the FOI Act. Some other ombudsman offices in Australia are exempt from the FOI Act in their jurisdiction. The explanation given is that it can be unsuitable to apply the Act to an office that has the function of investigating complaints against other government agencies, including complaints about FOI matters. Many of the documents held by the Ombudsman's office will have come either from the complainant or the agency under investigation, or be internal working documents of the Ombudsman's office that contain interim expressions of opinion about other agencies that should not be disclosed publicly unless that agency has first been given an opportunity to comment on the opinion, consistent with natural justice and s 8(5) of the Ombudsman Act.

papers and presentations by staff

Airo-Farulla, G. 2005, 'Of wheat and cheats: the scope of ADJRA Review', paper presented to 2005 Australian Institute of Administrative Law National Administrative Law Forum, National Convention Centre, Canberra.

—2006, 'Hypothetically just?', Panel Member, Ideas Festival, Southbank, Brisbane.

—2006, 'Reasonableness, rationality, proportionality', paper presented to Symposium on Australian Administrative Law: Fundamentals, Principles and Doctrines, Monash University, Melbourne.

Brent, R. 2006, 'Observations on and common faults in administration enquiries', presentations with Inspector-General of the Australian Defence Force to Defence personnel, Darwin and Canberra.

—2006, 'Public Service culture and its impact on government lawyers', presentation to Australian Corporate Lawyers Association Government Lawyers: Your Role in Governance Conference, Canberra.

Brown, V. 2005, 'The meaning of integrity', presentation to Australian Federal Police Integrity Investigations Program, Canberra.

—2005, 'The role of our office and key elements of good complaint handling', presentation to Insolvency and Trustee Service Australia, Canberra.

Browne, D. 2005, 'The Ombudsman and the Public Service', paper presented to the National Ombudsman Commission of Indonesia Regional Seminar, Surabaya, Indonesia.

—2005, 'FOI and the Ombudsman', paper presented to Australian Taxation Office Freedom of Information Practitioners Forum, Canberra.

—2006, 'The Taxation Ombudsman', presentation to Mornington Accountants Group, Mornington, Victoria.

Cantle, G. 2005, 'Our role in Australian Federal Police complaints', presentation to Australian National University Criminal Practice Workshop, Canberra.

Colley, M. 2006, 'The role of the Ombudsman's office', presentation to Department of Employment and Workplace Relations customer service officers, Canberra.

Ducker, L. and Wheeler, L. 2006, 'The Postal Industry Ombudsman', presentation to the National Board Meeting of the Post Office Agents Association Ltd, Melbourne.

Durkin, M. 2006, 'The role of the Ombudsman's office', presentation to information sessions for Department of Immigration and Multicultural Affairs staff, Adelaide.

Emmel, K. 2006, 'The role of the Ombudsman's office', presentation to community organisations as part of a joint Law Week outreach activity with other oversight agencies, Berri.

Fleming, H. 2005, 'Feedback to Centrelink customer compensation staff on handling of Compensation for Detriment caused by Defective Administration claims', presentation to Centrelink's national legal services staff, Canberra.

Joske, C. 2005 and 2006, 'The role of the Ombudsman in dealing with complaints against the AFP', presentation to Australian Federal Police Confidant Network Training Course, Canberra.

—2005, 'The role of the Ombudsman', paper presented to Integrity Investigations Program, Canberra.

Law Enforcement Team, 2005 and 2006, 'The Commonwealth Ombudsman's role in inspecting law enforcement records', presentations to several Australian Federal Police seminars .

Masri, G. 2005, 'Commonwealth Ombudsman—immigration overview', presentation to Department of Immigration and Multicultural Affairs staff, Canberra.

McMillan, J. 2005, 'Commentary on executive power', roundtable on inherent executive power, Melbourne University.

—2005, 'Whistleblower protection ten years on: consistencies, inconsistencies and regulatory dilemmas', presentation to Australian and New Zealand School of Government Whistleblower Symposium, Canberra.

—2005, 'Recent developments in administrative law', presentation to AMPLA, Resources and Energy Law Association Conference, Sydney.

—2005, 'Graduation address—dealing with complaints', Australian National University Graduation Ceremony, Canberra.

—2005, 'Reflections on leadership', after dinner speech to Australian Federal Police course on leadership, Canberra.

—2005, 'FOI and privacy through an ombudsman's lens', presentation to Freedom of Information Practitioners Forum, Canberra.

—2005, 'Using administrative law without going to court', presentation to ACT Law Society Administrative Law Afternoon, Canberra.

—2005, 'Public law developments', presentation to the Forum of Commonwealth Agencies, Sydney.

—2005, 'Reflections on Rau and Alvarez: lessons for public law', presentation to Australian Institute of Administrative Law Seminar, Adelaide.

—2005, 'The Ombudsman, immigration and beyond', paper presented to Institute of Public Administration Australia Seminar, Canberra

—2005, 'Current Issues and Problems—through the lens of the Defence Force Ombudsman', presentation to Defence Legal Day, Canberra.

—2005, 'Breakfast with the watchdog', presentation to Australian Corporate Lawyers Association, Canberra.

—2005, 'Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity system', presentation to the launch of the National Integrity Systems Assessment report, Sydney.

—2005, 'Freedom of information and whistleblower legislation—an Australian perspective', presentation to Asian Ombudsman Association Conference, Hong Kong.

—2006, 'Connecting government and the public: tension points', address to the Forum of Commonwealth Agencies Connecting Government Conference, Terrigal.

—2006, 'Administrative tribunals in Australia—future directions', presentation to International Tribunals Workshop, Australian National University, Canberra.

—2006, 'The Immigration Ombudsman role—lessons for public law', presentation to Australian Institute of Administrative Law seminar, Melbourne.

- 2006, 'Administrative law complaint mechanisms and their potential for overuse', presentation to Australian Institute of Administrative Law, National Administrative Law Forum, Surfers Paradise.
- 2006, 'Open government—reality or rhetoric?', presentation to Institute of Public Administration Australia Seminar, Canberra.
- 2006, 'The problems people have with government', presentation to Australian Government Solicitor Administrative Law Forum, Canberra.
- 2006, 'Persistent complainants to ombudsman offices', presentation to conference on Access to Justice, Monash University Prato Campus, Italy.

Mutch, D. 2006, 'Commonwealth and Immigration Ombudsman overview', Department of Immigration and Multicultural Affairs ACT Regional Office, Canberra.

Robertson, D. 2005 and 2006, 'The role of the Defence Force Ombudsman', presentation to graduating students at the Royal Military College Duntroon, Canberra, and to graduating students at the Australian Defence Force Academy, Canberra.

Senior Executive Team, 2005 and 2006, presentations by various Senior Executive members to the Australian Public Service Commission Orientation Program for new Public Service Senior Executive Service officers, Canberra.

Thom, V. 2006, presentation to Victorian federal members of parliament on the role of the Ombudsman's office, Melbourne.

Table A1—Approaches and complaints received and finalised about Australian Government agencies, 2005–06, *Ombudsman Act 1976* (including freedom of information).

Table A2—Australian Federal Police complaint issues finalised, 2005–06, *Complaints (Australian Federal Police) Act 1981*.

Table A3—Australian Federal Police method of handling complaint issues finalised, 2005–06, *Complaints (Australian Federal Police) Act 1981*.

EXPLANATIONS OF TERMS USED IN APPENDIX 4 TABLES

Advised to pursue elsewhere—complainant advised to pursue complaint directly with agency, court or tribunal, industry or subject specialist, member of parliament or minister

AFP investigation—AFP investigation of complaints against AFP members and review by the Ombudsman

AFP workplace resolution—complaints managed by the AFP in the workplace and reviewed by the Ombudsman

Approach/complaint not pursued—withdrawn by complainant, or written complaint requested but not received

Approaches/complaints finalised—approaches/complaints finalised in 2005–06, including some complaints carried over from previous years

Approaches/complaints received—approaches/complaints received in 2005–06

Category 1 approaches—resolved without investigation; outcomes include decisions not to investigate and referrals to appropriate agency or authority

Category 2 approaches—approaches that cannot be resolved at category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency

Category 3 approaches—agency contacted and investigation conducted

Category 4 approaches—further investigation conducted, as the complaint/approach was not able to be resolved in category 3

Conciliated—complaint conciliated through the AFP's workplace-resolution process and reviewed by the Ombudsman

Incapable of determination—sufficient evidence was not available to support a clear conclusion

Issues—approaches/complaints can contain a number of issues, each requiring a separate decision as to whether to investigate; each issue may result in a separate outcome

Ombudsman decision not to investigate—the Ombudsman may decide not to investigate where a person has not tried to resolve their problem directly with the relevant agency or there is a more appropriate avenue of review available

Ombudsman investigation (Table A3)—investigation, following consideration by the AFP, asking more questions and reviewing the agency's files, policies and procedures

Ombudsman investigation not warranted—investigation of the approach/complaint judged to be unnecessary for one of the following reasons: over 12 months old, frivolous or not in good faith, insufficient interest, related to commercial activity, or 'not warranted' having regard to all the circumstances; this includes approaches/complaints that were considered by the AFP and reviewed by the Ombudsman where further investigation was not warranted

Out of jurisdiction—complaint not within the Ombudsman's legal powers

Remedies—complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

Special investigation—investigations conducted under section 46 of the Complaints Act may be conducted solely by the Ombudsman or jointly with the AFP

Substantiated—complaint issue was found to be true

Unsubstantiated—there were no grounds for the complaint issue.

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2005–06, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

Agency	Received		Finalised				Remedies										
	Out of jurisdiction	In jurisdiction	Total received	Not investigated			Investigated		Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total remedies
				Category 1	Category 2	Category 3	Category 4	Total									
Agriculture, Fisheries and Forestry																	
Department of Agriculture, Fisheries and Forestry	2	17	19	10	5	2	1	18				2					2
Australian Fisheries Management Authority		6	6	1	2	1		4				1					1
Australian Quarantine and Inspection Service	1	30	31	11	8	5	6	30	2		2	6	1	1	1	1	11
Australian Wine and Brandy Corporation		1	1														
Attorney-General's																	
Attorney-General's Department	3	30	33	10	9	4	8	31	1		1	2	2	1			6
Administrative Appeals Tribunal		32	32	21	7	1	2	31	1		1	3					5
Australian Crime Commission	1	8	9	2	4	3	1	10									
Australian Transaction Reports and Analysis Centre (AUSTRAC)	1	2	3	2	1			3									
CrimTrac		1	1		1			1									
Australian Customs Service	6	115	121	66	28	12	10	116	2	3	8	1	2	1			16
Director of Public Prosecutions	1	10	11	5	2	1	1	9									1
Family Court of Australia	10	88	98	63	22	9	1	95	1		6	1					8
Federal Court of Australia		17	17	7	4	5	1	17			6						7
Federal Magistrates Court	1	7	8	2	3	1	2	8			1						1
High Court of Australia	2	11	13	6	5			11									
Insolvency and Trustee Service Australia	5	71	76	33	14	12	18	77	5	3	10	2	2				25
National Native Title Tribunal		4	4	2	1			3									
Office of Film and Literature Classification		3	3	2			1	3			1						1
Office of the Privacy Commissioner	2	44	46	14	18	8	5	45	1		4	1					6
Commonwealth Parliament																	
Department of Parliamentary Services							1	1									
Department of the Senate	1		1		1			1									
Communications, Information Technology and the Arts																	
Department of Communications, Information Technology and the Arts	1	13	14	5	2	3	1	11	1		2				1		4
Australian Broadcasting Corporation	2	14	16	13	2			15									
Australian Communications and Media Authority	3	30	33	15	5	4	10	34	1	1	7	1	2				12
Australian Film Commission		2	2			2		2									1
Australian Film, Television and Radio School		1	1		1			1									

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2005–06, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

Agency	Received		Finalised					Remedies									
	Out of jurisdiction	In jurisdiction	Total received	Not investigated			Investigated		Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total remedies
				Category 1	Category 2	Category 3	Category 4	Total									
National Archives of Australia	3	3	6	3	2	1	1	6	1				1			1	3
Australian Sports Commission		1	1			1	1	3									
Australia Council for the Arts		1	1		1			1									
Australian Postal Corporation	24	1,303	1,327	517	162	389	212	1,280	92	112	40	24	254	126	15	98	761
National Gallery of Australia		1	1	1				1									
Special Broadcasting Service Corporation	1	1	1		1			1									
Telstra Corporation	21	210	231	161	54	11	6	232	3	1		7				1	12
Defence																	
Department of Defence	17	121	138	53	39	26	20	138	7	5	4	18		1			35
Australian Defence Force Academy	1	2	3	2		1		3									
Royal Australian Air Force	3	77	80	28	19	16	16	79	4	2	2	3	3	1	1	1	16
Australian Army	10	159	169	65	35	40	24	164	11	2	3	19	1	2	1	39	
Defence Force Retirement and Death Benefits Authority		1	1		1				1								
Defence Housing Authority	2	27	29	15	5	6	6	32	2	1		3	1	1	3	11	
Defence Service Homes		2	2			1		1									
Department of Veterans' Affairs	23	253	276	112	42	66	46	266	8	4	3	32	4	3	12	66	
Royal Australian Navy	4	50	54	17	12	17	11	57	5	1	3	5	1			15	
Education, Science and Training																	
Department of Education, Science and Training		32	32	15	11	5	2	33	1	2		2	1	2	1	9	
Australian Nuclear Science and Technology Organisation	1	1	2	2				2									
Australian National Training Authority		1	1	1				1									
Australian National University		9	9	4	1	1	2	8					1			1	
Commonwealth Scientific and Industrial Research Organisation		2	2	1	1			2									
Employment and Workplace Relations																	
Department of Employment and Workplace Relations	24	394	418	226	70	56	59	411	10	5	10	48	10	3	14	100	
Australian Industrial Registry		5	5	2	1		2	5				1					
Comcare	4	85	89	39	22	10	19	90	5	7		12	5	3	2	34	
Office of the Employment Advocate		10	10	2	4	3	2	11	2			1					
Environment and Heritage																	
Department of the Environment and Heritage	1	10	11	6	1	1	2	10	1						1		2
Australian Heritage Council		2	2	2				2									
Great Barrier Reef Marine Park Authority		3	3	1		1		2									
Bureau of Meteorology		2	2		1			1									

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2005–06, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

Agency	Received			Finalised				Remedies										
	Out of jurisdiction	In jurisdiction	Total received	Not investigated			Investigated		Category 4	Total	Action expedited	Apology or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total remedies
				Category 1	Category 2	Category 3	Category 4											
Families, Community Services and Indigenous Affairs																		
Department of Families, Community Services and Indigenous Affairs	2	30	32		17	7	4	6	34	1			3				1	5
Aboriginal Hostels Limited		1	1			1			1									
Indigenous Land Corporation		2	2			1		1	2									
Office of Indigenous Policy Coordination	1	13	14		5	1	10	1	17			1	1					2
Office of the Registrar of Aboriginal Corporations	2	6	8		6	2			8									
Social Security Appeals Tribunal	2	21	23		13	7	2		22									
Tiwi Land Council		1	1				1		1			1						1
Torres Strait Regional Authority		1	1				1		1									
Finance and Administration																		
Department of Finance and Administration	1	10	11		3	5	1	1	10									
Australian Electoral Commission	2	20	22		9	6	2	3	20				1					1
Commissioner for Superannuation (ComSuper)	7	34	41		17	11	6	7	41				3		1	2		6
Department of Human Services		1	1		1				1									
– Centrelink	238	7,095	7,333		4,707	635	1,143	853	7,338	384	155	141	11	831	220	38	254	2,034
– Commonwealth Rehabilitation Service	1	16	17		8	8	1	2	19					1				1
– Child Support Agency	36	1,891	1,927		898	270	403	363	1,934	101	70	44	5	470	54	38	86	868
– Health Services Australia		6	6		3	2		1	6					2				2
– Medicare Australia	7	149	156		80	23	25	27	155	6	5	3	2	20	5	2	9	52
Foreign Affairs and Trade																		
Department of Foreign Affairs and Trade	4	136	140		67	19	29	24	139	4	3	6	24	2	1	4		44
Australian Agency for International Development (AusAID)		5	5		2	3		1	6									
Australian Trade Commission (Austrade)		9	9		8	1			9									
Health and Ageing																		
Department of Health and Ageing	6	132	138		60	36	21	13	130	5	1	1	7	1	1	2		18
Office of Hearing Services		1	1		1		1		2									
Food Standards Australia and New Zealand		3	3		1	2			3									
National Health and Medical Research Council		1	1		1				1									

TABLE A1 APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT AUSTRALIAN GOVERNMENT AGENCIES, 2005–06, *OMBUDSMAN ACT 1976* (INCLUDING FREEDOM OF INFORMATION)

Agency	Received		Finalised				Remedies															
	Out of jurisdiction	In jurisdiction	Total received	Not investigated			Investigated	Category 1	Category 2	Category 3	Category 4	Total	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total remedies	
				Category 1	Category 2	Category 3	Category 4															
Immigration and Multicultural Affairs																						
Department of Immigration and Multicultural Affairs	50	1,250	1,300	403	290	248	236	1,177	67	38	27	175	17	28	50	402						
Migration Agents Registration Authority		13	13	6	2	1	6	15	1	1	1	1			2	6						
Migration Review Tribunal		26	26	9	8	6	4	27	4	1	1	1	4			11						
Refugee Review Tribunal	1	3	4	1	2	1	1	5							1	1						
Industry, Tourism and Resources																						
Department of Industry, Tourism and Resources		5	5		1	2	1	4														
IP Australia		11	11	3	2	3	2	10	1	1		3	1	1		7						
Industry Research and Development Board		1	1					1	1													
Prime Minister and Cabinet																						
Department of the Prime Minister and Cabinet	2	8	10	7	1	2		10	1			1				2						
Australian Public Service Commission	2	8	10	7	2		1	10														
Governor-General and Commander-in-Chief		3	3	1	1	1		3														
Transport and Regional Services																						
Department of Transport and Regional Services	2	51	53	17	12	9	10	48	5			6				11						
Airservices Australia	1	6	7	5	2			7														
Civil Aviation Safety Authority	5	45	50	23	12	12	4	51	2	3	2	10			1	18						
National Capital Authority		2	2	1	1		2	4							1	1						
Treasury																						
The Treasury	1	7	8	5	3			8														
Australian Bureau of Statistics		60	60	43	7	7	3	60	2	1		7	2	2		14						
Australian Competition and Consumer Commission	3	31	34	15	10	1	8	34				1										
Australian Prudential Regulation Authority	2	44	46	25	9	5	6	45	2			5	1			8						
Australian Securities and Investments Commission	5	183	188	63	58	33	42	196	5	3	6	19	9	2	10	54						
Australian Taxation Office	72	1,451	1,523	823	454	155	204	1,636	49	36	15	131	38	10	35	314						
Royal Australian Mint		1	1		1			1														
National Competition Council		1	1																			
Reserve Bank of Australia		2	2	1	1			2														
Superannuation Complaints Tribunal		11	11	3	4	1	2	10	2	1		1				4						
ACT Government Agencies																						
Australian Federal Police	28	484	512	248	114	99	61	522	6	6	4	1	10	8	1	4	40					
Approaches about out-of-jurisdiction agencies/requests for information	32	769	801					723														
	10,147		10,147					10,129														
TOTAL	10,843	17,384	28,227	9,181	2,668	2,961	2,396	28,058	808	479	324	44	2,202	513	163	610	5,143					

Note: Table A1 includes total number of approaches and complaints received and finalised about ACT Government agencies and AFP ACT Policing. Detailed information is in the ACT Ombudsman Annual Report 2005–2006 (see www.ombudsman.act.gov.au).

TABLE A2 AUSTRALIAN FEDERAL POLICE COMPLAINT ISSUES FINALISED, 2005–06, *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981*

Complaints	Received	801
	Finalised	723
Outcome of issues finalised	Conciliated	319
	Incapable of determination	13
	Substantiated	9
	Unsubstantiated	52
	Ombudsman investigation not warranted	295
	Advised to pursue elsewhere	31
	Approach not pursued	60
	Out of jurisdiction	61
	Total issues finalised	840

TABLE A3 AUSTRALIAN FEDERAL POLICE METHOD OF HANDLING COMPLAINT ISSUES FINALISED, 2005–06, *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981*

Method of handling complaint issues finalised	Out of jurisdiction	55
	Ombudsman decision not to investigate	143
	Ombudsman investigation	152
	AFP workplace resolution	402
	AFP investigation	87
	Special investigation	1
	Total issues finalised	840

Note: The office reviews and audits its statistical data. Minor adjustments to statistics used in this report may occur as a result of such reviews.

consultancy services

The Ombudsman's 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 advertisement, panel arrangements or selective tendering.

Table A4 provides details of consultancy services let by the office during 2005–06 with a contract value (GST inclusive) of \$10,000 or more.

(1) Explanation of selection process drawn from the *Commonwealth Procurement Guidelines* (January 2005):

Open tender—procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

Select tender—procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

Direct sourcing—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—arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. Tenders are sought from suppliers that have

prequalified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a predetermined length of time, usually at a prearranged 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 2005–06. The office's advertising strategies were designed and conceived in-house. Recruitment and tender notices were placed in newspapers at a cost of \$36,098; and advertisements to publicise the office's services were placed in newspapers and journals at a cost of \$3,215. All notices and advertisements were placed through hma Blaze.

Market research was conducted by ACNielsen to measure the level of community awareness and knowledge of the Ombudsman's roles and function in regional and rural Australia. This contract is reported in Table A4—Consultancy services, 2005–06.

TABLE A4 CONSULTANCY SERVICES, 2005–06

Consultant name	Description	Contract price	Selection process (1)	Justification (2)
Mr Murray Neil Comrie ¹	Conduct of an inquiry to investigate, examine and report on matters relating to the immigration detention or removal of persons who may have been entitled to be in Australia.	\$268,556	Direct sourcing	B
Crystal Approach Pty Ltd	IT service improvement review	\$14,080	Direct sourcing	C
Information Management Systems ²	Scoping study of current records and information management practices	\$23,782	Select tender	B
McPherson Consulting Pty Ltd	Services in relation to an own motion investigation into the complaint-handling process of the Migration Agents Registration Authority	\$27,500	Direct sourcing	B
ACNielsen (Holdings) Pty Ltd	Market research services	\$64,350	Select tender	C
Mr William Severino	Provision of investigation services	\$18,000	Direct sourcing	B
Total		\$416,268		

¹ Mr Comrie's contract was transferred from Department of Immigration and Multicultural Affairs on 20 July 2005. Costs reported are only those that were incurred by the Commonwealth Ombudsman from the date of transfer.

² Contract price exceeded by \$2,437 due to additional travel and request for additional documentation.



INDEPENDENT AUDIT REPORT

To the Prime Minister

Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Commonwealth Ombudsman Office for the year ended 30 June 2006. The Commonwealth Ombudsman is responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Commonwealth Ombudsman Office's annual report.

Scope

The financial statements and Commonwealth Ombudsman's responsibility

The financial statements comprise:

- Statement by the Commonwealth Ombudsman and Chief Finance Officer;
- Income Statement, Balance Sheet and Statement of Cash Flows;
- Statement of Changes in Equity;
- Schedules of Commitments and Contingencies;
- Notes to and forming part of the Financial Statements

of the Commonwealth Ombudsman Office for the year ended 30 June 2006.

The Commonwealth Ombudsman is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Commonwealth Ombudsman Office, and that comply with the Finance Minister's Orders made under the *Financial Management*

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BARTON ACT
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and Accountability Act 1997, Accounting Standards and other mandatory financial reporting requirements in Australia. The Commonwealth Ombudsman is also responsible for the maintenance of adequate accounting records and internal control that is designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit Approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgment, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, the audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal control over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal control.

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Commonwealth Ombudsman Office's financial position, and of its financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Commonwealth Ombudsman

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

Audit Opinion

In my opinion, the financial statements of the Commonwealth Ombudsman Office:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Commonwealth Ombudsman Office's financial position as at 30 June 2006 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable Accounting Standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office




Michael J. Watson
Group Executive Director
Delegate of the Auditor-General
Canberra
8 September 2006

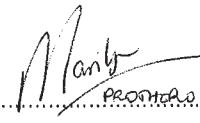
COMMONWEALTH OMBUDSMAN OFFICE

STATEMENT BY THE COMMONWEALTH OMBUDSMAN AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2006 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed.....
Professor John McMillan
Commonwealth Ombudsman

8 September 2006

Signed.....
Marilyn Prothero CPA
Chief Finance Officer

8 September 2006

financial statements

COMMONWEALTH OMBUDSMAN OFFICE

INCOME STATEMENT

for the year ended 30 June 2006

	Notes	2006 \$	2005 \$
INCOME			
Revenue			
Revenues from government	4A	17,035,000	11,463,000
Goods and services	4B	1,349,356	1,277,959
Total Revenue		<u>18,384,356</u>	<u>12,740,959</u>
Gains			
Net gains from disposal of assets	4C	(64,685)	(231)
Other gains	4D	19,000	16,675
Total gains		<u>(45,685)</u>	<u>16,444</u>
TOTAL INCOME		<u>18,338,671</u>	<u>12,757,403</u>
EXPENSES			
Employees	5A	11,587,946	8,076,134
Suppliers	5B	5,107,194	3,840,371
Depreciation and amortisation	5C	622,857	328,715
Write-down and impairment of assets	5D	—	120,430
TOTAL EXPENSES		<u>17,317,997</u>	<u>12,365,650</u>
OPERATING RESULT		<u>1,020,674</u>	<u>391,753</u>

The above statement should be read in conjunction with the accompanying notes.

COMMONWEALTH OMBUDSMAN OFFICE

BALANCE SHEET

as at 30 June 2006

	Notes	2006 \$	2005 \$
ASSETS			
Financial assets			
Cash	6A	332,850	2,157,387
Receivables	6B	4,313,090	139,487
Total financial assets		4,645,940	2,296,874
Non-financial assets			
Infrastructure, plant and equipment	7A	1,680,580	1,364,450
Intangibles	7C	425,597	388,232
Other non-financial assets	7D	168,267	31,064
Total non-financial assets		2,274,444	1,783,746
TOTAL ASSETS		6,920,384	4,080,620
LIABILITIES			
Payables			
Suppliers	8A	656,091	542,316
Other payables	8B	433,447	515,985
Total payables		1,089,538	1,058,301
Provisions			
Employees	9A	2,715,948	2,134,228
Other	9B	306,049	188,916
Total provisions		3,021,997	2,323,144
Total liabilities		4,111,535	3,381,445
NET ASSETS		2,808,849	699,175
EQUITY			
Contributed equity		1,937,000	848,000
Reserves		215,252	215,252
Accumulated profit/(deficit)		656,597	(364,077)
TOTAL EQUITY		2,808,849	699,175
Current liabilities		3,418,658	2,918,779
Non-current liabilities		692,877	462,666
Current assets		4,814,207	2,327,938
Non-current assets		2,106,177	1,752,682

The above statement should be read in conjunction with the accompanying notes.

financial statements

COMMONWEALTH OMBUDSMAN OFFICE

STATEMENT OF CASH FLOWS

for the year ended 30 June 2006

	Notes	2006 \$	2005 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations		14,035,000	11,837,000
Goods and services		1,527,688	1,297,254
GST received from ATO		<u>333,221</u>	<u>358,748</u>
Total cash received		15,895,909	13,493,002
Cash used			
Employees		(11,006,226)	(8,271,837)
Suppliers		<u>(5,673,183)</u>	<u>(4,415,271)</u>
Total cash used		(16,679,409)	(12,687,108)
Net cash from/(used by) operating activities	10	<u>(783,500)</u>	<u>805,894</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		<u>5</u>	<u>4,090</u>
Total cash received		5	4,090
Cash used			
Purchase of property, plant and equipment		(823,849)	(828,447)
Purchase of intangibles		<u>(217,193)</u>	<u>(301,389)</u>
Total cash used		<u>(1,041,042)</u>	<u>(1,129,836)</u>
Net cash from/(used by) investing activities		<u>(1,041,037)</u>	<u>(1,125,746)</u>
Net increase in cash held		(1,824,537)	(319,852)
Cash at the beginning of the reporting period		<u>2,157,387</u>	<u>2,477,239</u>
Cash at the end of the reporting period	6A	<u>332,850</u>	<u>2,157,387</u>

The above statement should be read in conjunction with the accompanying notes.

COMMONWEALTH OMBUDSMAN OFFICE

STATEMENT OF CHANGES IN EQUITY

for the year ended 30 June 2006

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity/Capital		Total Equity	
	2006	2005	2006	2005	2006	2005	2006	2005
	\$	\$	\$	\$	\$	\$	\$	\$
Opening Balance	(364,077)	(755,830)	215,252	116,930	848,000	848,000	699,175	209,100
Adjustment for errors	–	–	–	–	–	–	–	–
Adjustment for changes in Accounting policies	–	–	–	–	–	–	–	–
Adjusted Opening Balance	(364,077)	(755,830)	215,252	116,930	848,000	848,000	699,175	209,100
Income and Expense								
Revaluation adjustment	–	–	–	98,322	–	–	–	98,322
Subtotal income and expenses recognised directly in equity	–	–	–	98,322	–	–	–	98,322
Net Operating Result	1,020,674	391,753	–	–	–	–	1,020,674	391,753
Total income and expenses	1,020,674	391,753	–	98,322	–	–	1,020,674	490,075
Transactions with Owners								
Contributions by Owners								
Appropriation (equity injection)	–	–	–	–	1,089,000	–	1,089,000	–
Sub-total Transactions with Owners	–	–	–	–	1,089,000	–	1,089,000	–
Transfers between equity components	–	–	–	–	–	–	–	–
Closing balance at 30 June	656,597	(364,077)	215,252	215,252	1,937,000	848,000	2,808,849	699,175

The above statement should be read in conjunction with the accompanying notes.

financial statements

COMMONWEALTH OMBUDSMAN OFFICE

SCHEDULE OF COMMITMENTS

as at 30 June 2006

	2006 \$	2005 \$
BY TYPE		
CAPITAL COMMITMENTS	—	—
Total capital commitments	—	—
OTHER COMMITMENTS		
Operating leases	5,538,491	3,784,492
Total other commitments	5,538,491	3,784,492
COMMITMENTS RECEIVABLE	(102,000)	(161,342)
Net commitments by type	5,436,491	3,623,150
BY MATURITY		
All net commitments		
One year or less	1,152,267	703,281
From one to five years	3,972,844	2,248,408
Over five years	311,380	671,461
Net commitments	5,436,491	3,623,150
Operating lease commitments		
One year or less	1,254,267	864,623
From one year to five years	3,972,844	2,248,408
Over five years	311,380	671,461
Total operating lease commitments	5,538,491	3,784,492

NB: Commitments are GST inclusive where relevant.

Operating leases included are effectively non-cancellable and comprise:

- leases for office accommodation;
- agreements for the provision of motor vehicles to senior executive officers; and
- leases for computer equipment.

The operating leases are adjusted periodically by the Consumer Price Index (CPI). The commitments above do not include an estimate of the future impact of CPI adjustments due to the impracticality of reliably estimating the impact and the immateriality of the likely impact.

Similarly, the annual lease expense has not been 'straight-lined' due to the impracticality of projecting CPI adjustments, and because of the immateriality of the likely impact.

The above schedule should be read in conjunction with the accompanying notes.

COMMONWEALTH OMBUDSMAN OFFICE**SCHEDULE OF CONTINGENCIES***as at 30 June 2006*

	2006 \$	2005 \$
CONTINGENT LIABILITIES	—	—
CONTINGENT ASSETS	—	—
Net contingent liabilities	—	—

The Ombudsman has no contingent liabilities.

The Commonwealth Ombudsman Office has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable, and all are considered remote. There are no existing or likely claims of which the Ombudsman is aware.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies

1.1 Ombudsman Objectives

The Commonwealth Ombudsman Office is an Australian Public Service Organisation. The Commonwealth Ombudsman Office seeks to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the Ombudsman contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Ombudsman is structured to meet one outcome:

Outcome 1: Administrative action by Australian government agencies is fair and accountable.

The Ombudsman activities contributing towards these outcomes are classified as departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Ombudsman in its own right. The Ombudsman has no administered activities.

Departmental activities are identified under two headings for Outcome 1: Output 1 is Review of administrative action and Output 2 is Review of statutory compliance in specified areas.

The continued existence of the Ombudsman in its present form, and with its present programs, is dependent on Government policy and legislation and on continuing appropriations by Parliament for the Ombudsman's administration and programs.

1.2 Basis of Preparation of the Financial Statements

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general-purpose financial report.

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO's, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2005)*);
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Board; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report to be prepared under Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.2 Basis of Preparation of the Financial Statements (Cont'd)

The Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets which, as noted, are at fair value or amortised cost. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets 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, revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The Ombudsman has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2006 or in the comparative financial year.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates or other judgements have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Statement of Compliance

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AEIFRS).

Australian Accounting Standards require the Ombudsman to disclose Australian Accounting Standards that have not been applied, or standards that have been issued but are not yet effective.

The AASB has issued amendments to existing standards. These amendments are denoted by year and then number, for example 2005–1 indicates amendment 1 issued in 2005.

The following table illustrates standards and amendments that will become effective for the Ombudsman in the future. The nature of the impending change within the table, has been out of necessity abbreviated and users should consult the full version available on the AASB's website to identify the full impact of the change. The expected impact on the financial report of adoption of these standards is based on the Ombudsman's initial assessment at this date, but may change. The Ombudsman intends to adopt all of the standards upon their application date.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.4 Statement of Compliance (cont'd)

Standard affected	Application date*	Nature of impending change	Impact expected on financial report
AASB 139	1 Jan 2006	Amends hedging requirements for foreign currency risk of a highly probable intra-group transaction.	No expected impact.
AASB 139, AASB 132, AASB 1, AASB 1023 and AASB 1038	1 Jan 2006	Amends AASB 139, AASB 1023 and AASB 1038 to restrict the option to fair value through profit or loss and makes consequential amendments to AASB 1 and AASB 132.	No expected impact.
AASB 1 and AASB 139	1 Jan 2006	Amends AASB 1 to allow an entity to determine whether an arrangement is, or contains, a lease.	No expected impact.
AASB 3	1 Jan 2006	Amends AASB 139 to scope out a contractual right to receive reimbursement (in accordance with AASB 137) in the form of cash.	No expected impact.
AASB 4, AASB 1023, AASB 139 and AASB 132	1 Jan 2006	Amends the scope to exclude business combinations involving entities or businesses under common control.	No expected impact.
AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 and AASB 1038	1 Jan 2007	Amended standards in regards to financial guarantee contracts.	No expected impact.
AASB 121	31 Dec 2006	Amended requirements subsequent to the issuing of AASB 7.	No expected impact.
AASB7 Financial Instruments: Disclosures	1 Jan 2007	Changes in requirements for net investments in foreign subsidiaries depending on denominated currency.	No expected impact.
		Revise the disclosure requirements for financial instruments from AASB132 requirements.	No expected impact.

* Application date is for annual reporting periods beginning on or after the date shown.

1.5 Revenue

Revenues from Government

Amounts appropriated for departmental outputs for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations received are recognised at their nominal amounts.

Other 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.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.5 Revenue (Cont'd)

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Services 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.

Other Gains

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in Contributed Equity in that year.

Restructuring of Administered Arrangements

Net assets received from or relinquished to another Commonwealth agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2005–2006, no amounts were returned to the Official Public Account.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.8 Employee Benefits

As required by the Finance Minister's Orders, the Ombudsman has early adopted AASB 119 Employee Benefits as issued in December 2004.

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Ombudsman is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Ombudsman's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the estimated future cash flows to be made in respect of all employees at 30 June 2006. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and redundancy

Provision is also made for separation and redundancy payments in circumstances where the Ombudsman has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

Superannuation

Staff of the Ombudsman are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or the Australian Government Employee Superannuation Trust (AGEST). The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap and AGEST are defined contribution schemes.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.8 Employee Benefits (Cont'd)

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Ombudsman makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Ombudsman's employees.

From 1 July 2005, new employees are eligible to join the PSSap scheme.

The liability for superannuation recognised at 30 June represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' leasehold improvements and rent-free holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.12 Financial Risk Management

The Ombudsman's activities expose it to normal commercial financial risk. As a result of the nature of the Ombudsman's business and internal and Australian Government policies, dealing with the management of financial risk, the Ombudsman's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.13 Derecognition of Financial Assets and Liabilities

As prescribed in the Finance Minister's Orders, the Ombudsman has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged or cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

1.14 Impairment of Financial Assets

As prescribed in the Finance Minister's Orders, the Ombudsman has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

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 profit and loss.

Financial Assets held at Cost

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, 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.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.14 Impairment of Financial Assets (Cont'd)

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 profit and loss, is transferred from equity to the profit and loss.

Comparative Year

The above policies were not applied for the comparative year. For receivables, amounts were recognised and carried at original invoice amount less a provision for doubtful debts based on an estimate made when collection of the full amount was no longer probable. Bad debts were written off as incurred.

Other financial assets carried at cost which were not held to generate net cash inflows, were assessed for indicators of impairment. Where such indicators were found to exist, the recoverable amount of the assets was estimated and compared to the assets carrying amount and, if less, reduced to the carrying amount. The reduction was shown as an impairment loss.

1.15 Trade Creditors

Trade creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.16 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Assets are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable, a liability or asset is recognised. A liability or asset is recognised when its existence is confirmed by a future event, settlement becomes probable (virtually certain for assets) or reliable measurement becomes possible.

1.17 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.18 Property, Plant and Equipment (PP&E)

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 Ombudsman where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Ombudsman's leasehold improvements with a corresponding provision for the 'makegood' taken up.

Revaluations

Basis

Land, buildings, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value. Valuations undertaken in each year are as at 30 June.

Fair values for each class of asset are determined as shown below:

Asset Class	Fair Value measured at:
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market Selling Price

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially differ with 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 profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss 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.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.18 Property, Plant and Equipment (PP&E) (Cont'd)

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Ombudsman using, in most cases, the straight line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease taking into consideration options available at the end of lease.

Depreciation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2006	2005
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 9 years	3 to 8 years

All assets were assessed for impairment at 30 June 2006. 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 Ombudsman were deprived of the asset, its *value in use* is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

1.19 Intangibles

The Ombudsman's intangibles comprise purchased software. These assets are carried at cost.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the software is 1 to 8 years (2004–05: 5 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2006.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 1 – Summary of Significant Accounting Policies (Cont'd)

1.20 Taxation

The Ombudsman is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

1.21 Reporting of Administered Activities

The Ombudsman has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2006 or in the comparative financial year.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

	2006 \$	2005 \$
Note 2 – The Impact of the Transition to AEIFRS from Previous AGAAP		
Reconciliation of total equity as presented under previous AGAAP to that under AEIFRS		
Total equity under previous AGAAP	772,204	253,775
Adjustments to retained earnings:		
'Makegood assets'	115,887	144,241
Provision for 'Makegood'	(188,916)	(188,916)
Total equity translated to AEIFRS	<u>669,175</u>	<u>209,100</u>
Reconciliation of surplus as presented under previous AGAAP to AEIFRS		
Prior year surplus as previously reported	420,107	
Adjustments:		
Depreciation	(28,354)	
Prior year surplus translated to AEIFRS	<u>391,753</u>	

The cash flow statement presented under previous AGAAP is equivalent to that prepared under AEIFRS.

AEIFRS requires the recording of assets reflecting future estimation restoration costs. Amounts for 'makegood' provisions in existing accommodation leases (operating), and the related assets, have been taken up accordingly.

The operating result has been adjusted due to the additional depreciation that arises on the recognition of additional 'makegood' assets.

Note 3 – Events Occurring after the Balance Sheet Date

No significant events occurred after balance date.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

	2006 \$	2005 \$
Note 4 – Income		
<u>Revenues</u>		
<u>Note 4A – Revenues from Government</u>		
Appropriations for outputs	17,035,000	11,463,000
Total revenues from government	17,035,000	11,463,000
<u>Note 4B – Goods and Services</u>		
Goods	–	–
Services	1,349,356	1,277,959
Total sales of goods and services	1,349,356	1,277,959
Provision of goods to:		
Related entities	–	–
External entities	–	–
Total sales of goods	–	–
Rendering of services to:		
Related entities	471,564	455,197
External entities	877,792	822,762
Total rendering of services	1,349,356	1,277,959
<u>Gains</u>		
<u>Note 4C – Net Gain/(Loss) From Sales of Assets</u>		
Infrastructure, plant and equipment		
Proceeds from disposal	5	4,090
Net book value of assets disposed	(64,690)	(4,321)
Net gain/(loss) from disposal of infrastructure, plant and equipment	(64,685)	(231)

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

	2006 \$	2005 \$
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Note 4 – Income (Cont'd)

Note 4D – Other Gains

Resources received free of charge	19,000	16,675
Total other gains	19,000	16,675

Note 5 – Operating Expenses

Note 5A – Employee Expenses

Wages and salary	9,466,015	6,767,922
Superannuation	1,702,145	1,159,027
Leave and other entitlements	158,892	(19,172)
Other employee expenses	260,894	168,357
Total employee expenses	11,587,946	8,076,134

Note 5B – Suppliers

Provision of goods from related entities	–	–
Provision of goods from external entities	489,521	363,407
Provision of services from related entities	883,697	502,243
Provision of services from external entities	2,575,246	2,173,351
Operating lease rentals ¹	1,091,514	765,998
Workers' compensation premiums	67,216	35,372
Total supplier expenses	5,107,194	3,840,371

¹ These comprise minimum lease payments only.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

	2006	2005
	\$	\$

Note 5 – Operating Expenses (Cont'd)

Note 5C – Depreciation and Amortisation

Depreciation

Other infrastructure, plant and equipment	444,090	226,624
Total depreciation	444,090	226,624

Amortisation

Intangibles – Computer Software	178,767	102,091
Total depreciation and amortisation	622,857	328,715

The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable assets are as follows:

Leasehold improvements	219,062	134,662
Plant and equipment	225,028	91,962
Computer software	178,767	102,091
Total depreciation and amortisation	622,857	328,715

No depreciation or amortisation was allocated to the carrying amounts of other assets.

Note 5D – Write down and impairment of assets

Bad and doubtful debts expense	–	–
Plant and equipment	–	120,430
Total write-down of assets	–	120,430

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 6 – Financial Assets

Note 6A – Cash

	2006 \$	2005 \$
Cash at bank and on hand	332,850	2,157,387
Total cash	332,850	2,157,387

Note 6B – Receivables

Goods and services	98,653	97,888
Net GST receivable from the Australian Taxation Office	125,437	41,599
Appropriation receivable – undrawn	4,089,000	–
Total receivables	4,313,090	139,487

All receivables are current assets. There is no requirement for an allowance for doubtful debts.

All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2005: 30 days)

Appropriations receivable undrawn are appropriations controlled by the Agency but held in the Official Public Account under the Government's just-in-time drawdown arrangements.

Receivables (gross) are aged as follows:

Not Overdue	4,312,517	136,826
Overdue by:		
less than 30 days	–	–
30 to 60 days	–	–
61 to 90 days	–	–
more than 90 days	573	2,661
Total receivables (gross)	4,313,090	139,487

	2006 \$	2005 \$
--	------------	------------

Note 7 – Non-Financial Assets

Note 7A – Infrastructure, Plant and Equipment

Leasehold improvements

At fair value	1,109,640	812,438
Accumulated depreciation	(298,354)	(188,724)
Total leasehold improvements	811,286	623,714

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

	2006 \$	2005 \$
Note 7 – Non-Financial Assets (Cont'd)		
<u>Note 7A – Infrastructure, Plant and Equipment (Cont'd)</u>		
<i>Plant and equipment</i>		
At fair value	1,213,829	866,280
Accumulated depreciation	(344,535)	(125,544)
Total plant and equipment	869,294	740,736
Total Infrastructure, Plant and Equipment	1,680,580	1,364,450

During the year ended 30 June 2005, all material tangible assets were valued by an independent valuer, Hyman Valuations Pty Limited. Other tangible non-financial assets were valued by the Ombudsman. The Ombudsman assessed the fair value of such assets by reference to the written down value of the assets and the current replacement cost.

Formal valuations are generally undertaken every three years. In between formal revaluations the Ombudsman monitors the assets ensuring the fair value of the assets is materially correct. This is conducted annually and assessed as per above.

Note 7B – Analysis of Infrastructure, Plant and Equipment

TABLE A – Reconciliation of the opening and closing balances of property, plant and equipment

Item	Leasehold Improvements \$	Plant and Equipment \$	Total \$
As at 1 July 2005			
Gross book value	812,438	866,280	1,678,718
Accumulated depreciation	(188,724)	(125,544)	(314,268)
Opening Net Book Value	623,714	740,736	1,364,450
Additions:			
by purchase	464,102	359,747	823,849
Net revaluation increment/(decrement)	–	–	–
Depreciation expense	(219,062)	(225,028)	(444,090)
Disposals			
Other disposals	(57,468)	(6,161)	(63,629)
As at 30 June 2006			
Gross book value	1,109,640	1,213,829	2,323,469
Accumulated depreciation	(298,354)	(344,535)	(642,889)
Closing Net Book Value	811,286	869,294	1,680,580

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

	2006 \$	2005 \$
Note 7 – Non-Financial Assets (Cont'd)		
<u>Note 7C – Intangibles</u>		
Computer software:		
Purchased – at cost	946,593	734,635
Accumulated amortisation	(520,996)	(346,403)
Total Intangibles	425,597	388,232

TABLE B – Reconciliation of opening and closing balances of intangibles

Item	Computer software purchased
As at 1 July 2005	\$
Gross book value	734,635
Accumulated amortisation	(346,403)
Opening Net book value	388,232
Additions:	
Purchase/Internally developed from acquisitions of entities or operations (including restructuring)	217,193
	–
Movements:	
Reclassifications	–
Amortisation	(178,767)
Impairments recognised in the operating result	–
Other movements	–
Disposals:	
from disposal of entities or operations (including restructuring)	–
other disposals	(1,061)
As at 30 June 2006	
Gross book value	946,593
Accumulated amortisation	(520,996)
Closing Net Book Value	425,597

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

	2006 \$	2005 \$
--	------------	------------

Note 7 – Non-Financial Assets (Cont'd)

Note 7D – Other Non-Financial Assets

Prepayments	<u>168,267</u>	<u>31,064</u>
-------------	----------------	---------------

All other non-financial assets are current assets.

Note 8 – Payables

Note 8A – Supplier Payables

Trade creditors and accruals	<u>656,091</u>	<u>542,316</u>
------------------------------	----------------	----------------

All supplier payables are current liabilities. Settlement is usually made net 30 days.

Note 8B – Other Payables

Prepaid income	319,967	375,172
Lease incentives	<u>113,480</u>	<u>140,813</u>
Total other payables	<u>433,447</u>	<u>515,985</u>

Other payables are represented by:

Current	345,300	402,505
Non Current	<u>88,147</u>	<u>113,480</u>
Total other payables	<u>433,447</u>	<u>515,985</u>

Note 9 – Provisions

Note 9A – Employee Provisions

Salaries and wages	92,842	33,158
Leave	2,500,427	1,998,340
Superannuation	<u>122,679</u>	<u>102,730</u>
Total employee provisions	<u>2,715,948</u>	<u>2,134,228</u>

Current	2,417,267	1,973,958
Non-current	<u>298,681</u>	<u>160,270</u>
Total employee provisions	<u>2,715,948</u>	<u>2,134,228</u>

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

	2006 \$	2005 \$
--	------------	------------

Note 9 – Provisions (Cont'd)

Note 9B – Other Provisions

Provision for 'makegood'	<u>306,049</u>	<u>188,916</u>
Carrying amount at the beginning of the year	188,916	188,916
Additional provisions made	<u>117,133</u>	<u>–</u>
Carrying amount at the end of the year	<u>306,049</u>	<u>188,916</u>

The Ombudsman currently has eight agreements for the leasing of premises which have provisions requiring the Ombudsman to restore the premises to their original condition at the conclusion of the lease. The Ombudsman has made a provision to reflect the present value of this obligation.

	2006 \$	2005 \$
--	------------	------------

Note 10 – Cash Flow Reconciliation

Reconciliation of cash per Balance Sheet to Statement of Cash Flows

Cash at year end per Statement of Cash Flows	332,850	2,157,387
Cash at year end per Balance Sheet	332,850	2,157,387

Reconciliation of operating result to net cash from operating activities:

Operating result	1,020,674	391,753
Depreciation/amortisation	622,857	328,715
Net loss/(gain) on disposal of assets	64,685	231
Net write down of assets	–	120,430
(Increase)/Decrease in receivables	(3,084,603)	244,654
(Increase)/Decrease in prepayments	(137,203)	5,057
Increase/(Decrease) in employee provisions	581,720	(160,331)
Increase/(Decrease) in supplier payables	113,775	(161,116)
Increase/(Decrease) in other payables	(82,538)	36,501
Increase/(Decrease) in other provisions	<u>117,133</u>	<u>–</u>
<i>Net cash from/(used by) operating activities</i>	<u>(783,500)</u>	<u>805,894</u>

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 11 – Executive Remuneration

The number of executives who received or were due to receive total remuneration of \$130,000 or more:

	2006	2005
	Number	Number
\$130,000 to \$144,999	2	2
\$145,000 to \$159,999	1	–
\$160,000 to \$174,999	1	1
\$175,000 to \$189,999	–	1
\$220,000 to \$234,999	–	1
\$250,000 to \$264,999	1	–
\$265,000 to \$279,999	1	–
\$310,000 to \$324,999	1	1
Total	7	6

The aggregate amount of total remuneration of executives shown above

\$ 1,446,102 \$ 1,185,012

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above

\$ – \$ –

Note 12 – Remuneration of Auditors

Financial statement audit services are provided free of charge to the Ombudsman.

The fair value of the services provided was	17,000	16,675
AEIFRS opening balance sheet	2,000	–
Total	19,000	16,675

No other services were provided by the Auditor-General.

Note 13 – Average Staffing Levels

The average staffing levels for the Ombudsman during the year were:

Number	Number
153	102

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 14 – Financial Instruments

Note 14A – Terms, Conditions and Accounting Policies

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash	6A	Cash is recognised at their nominal amounts. Interest is credited to revenue as it accrues.	The Ombudsman holds bank accounts with a commercial bank. Monies in the Ombudsman's bank accounts are swept into the Official Public Account nightly and interest is earned on the daily balance at rates based on money market call rates. Interest is paid at month end.
Receivables for goods and services	6B	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2005: 30 days).

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COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 14 – Financial Instruments (Cont'd)

Note 14A – Terms, Conditions and Accounting Policies (cont'd)

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Liabilities		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Trade creditors and accruals	8A	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 14 – Financial Instruments (Cont'd)

Note 14B – Interest Rate Risk

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate						Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
				1 year or less		1 to 5 years		> 5 years							
		2006 \$	2005 \$	2006 \$	2005 \$	2006 \$	2005 \$	2006 \$	2005 \$	2006 \$	2005 \$	2006 %	2005 %		
Financial Assets															
Cash at Bank	6A	330,149	2,154,686												
Receivables for goods and services	6B	–	–	–	–	–	–	–	–	2,701	2,701	332,850	2,157,387	0.0	0.0
Appropriation Receivable	6B	–	–	–	–	–	–	–	–	98,653	97,888	98,653	97,888	n/a	n/a
Total		330,149	2,154,686	–	–	–	–	–	–	4,089,000	–	4,089,000	–	n/a	n/a
Total Assets		6,920,384 2,255,275 4,080,620													
Financial Liabilities															
Trade creditors	8A	–	–	–	–	–	–	–	–	656,091	542,316	656,091	542,316	n/a	n/a
Total		–	–	–	–	–	–	–	–	656,091	542,316	656,091	542,316		
Total liabilities		4,111,535 3,381,445													

financial statements

Note 14 – Financial Instruments (Cont'd)

Note 14C – Net Fair Values of Financial Assets and Liabilities

		2006		2005	
	Note	Total carrying amount \$	Aggregate net fair value \$	Total carrying amount \$	Aggregate net fair value \$
Financial Assets					
Cash at Bank	6A	332,850	332,850	2,157,387	2,157,387
Receivables for Goods and Services	6B	98,653	98,653	97,888	97,888
Appropriation Receivable	6B	4,089,000	4,089,000	–	–
Total Financial Assets		<u>4,520,503</u>	<u>4,520,503</u>	<u>2,255,275</u>	<u>2,255,275</u>
Financial Liabilities					
Trade creditors	8A	656,091	656,091	542,316	542,316
Total Financial Liabilities		<u>656,091</u>	<u>656,091</u>	<u>542,316</u>	<u>542,316</u>

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

The net fair values for trade creditors are approximated by their carrying amounts.

Note 14D – Credit Risk Exposures

The Ombudsman's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Ombudsman has no significant exposures to or concentrations of credit risk.

All figures for credit risk do not take into account the value of any collateral or other security.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006**Note 15 – Appropriations**

Note 15A – Acquittal of Authority to Draw cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2006	2005
	\$	\$
Balance carried from previous year	2,147,613	2,807,840
Appropriation for reporting period (Act 1) 2005–2006	11,443,000	11,340,000
Appropriation for reporting period (Act 3) 2005–2006	5,592,000	123,000
Adjustments by the Finance Minister	–	–
Comcover receipts	–	2,316
Advance to the Finance Minister	–	–
Adjustment of appropriation on change of entity function (FMAA s32)	–	–
Refunds credited (FMAA s30)	–	–
Sub-total Annual Appropriation	19,182,613	14,273,156
Appropriations to take account of recoverable GST (FMA s30A)	580,308	508,667
Annotations to 'net appropriations' (FMA s31)	1,357,559	1,179,845
Total appropriation available for payments	21,120,480	15,961,668
Cash payments made during the year (GST inclusive)	17,720,446	13,814,055
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	3,400,034	2,147,613
Represented by:		
Cash at bank and on hand	332,850	2,157,387
Departmental appropriations receivable	3,000,000	–
GST Receivable from the ATO	125,437	41,599
GST payable from Supplies	(67,221)	(51,373)
GST receivable from Customers	8,968	–
Total	3,400,034	2,147,613

There were no savings offered up during the year and there have been no savings offered up in previous years that are still ongoing.

COMMONWEALTH OMBUDSMAN OFFICE

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2006

Note 15 – Appropriations (Cont'd)

Note 15B – Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for other than Ordinary Annual Services Appropriations

Particulars	Operating	
	2006	2005
	\$	\$
Balance carried from previous year	–	–
Appropriation Act (No.2)	40,000	–
Appropriation Act (No.4)	1,049,000	–
Total appropriation available for payments	1,089,000	–
Cash payments made during the year (GST inclusive)	–	–
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	1,089,000	–
Represented by:		
Appropriation receivable	1,089,000	–
Total	1,089,000	–

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 16 – Reporting of Outcomes

Note 16A – Net Cost of Outcome Delivery

	Outcome 1	
	2006 \$	2005 \$
Administered	–	–
Departmental	17,317,997	12,365,650
Total expenses	17,317,997	12,365,650
<i>Costs recovered from provision of goods and services to the non-government sector</i>		
Administered	–	–
Departmental	877,792	822,762
Total costs recovered	877,792	822,762
<i>Other external revenues</i>		
Administered	–	–
<i>Total Administered</i>	–	–
Departmental		
Gains from disposal of assets	(64,685)	(231)
Reversals previous asset write-downs	–	–
Other	–	–
Goods and Services Revenue from Related Entities	471,564	455,197
<i>Total Departmental</i>	406,879	454,966
Total other external revenues	406,879	454,966
Net cost/(contribution) of outcome	16,033,326	11,087,922

Note 16 – Reporting of Outcomes (Contéd)

Note 16B – Major Classes of Departmental Revenues and Expenses by Output

	Outcome 1					
	Output Group 1		Output Group 2		Outcome 1 Total	
	2006	2005	2006	2005	2006	2005
	\$	\$	\$	\$	\$	\$
Departmental expenses						
Employees	9,270,357	6,460,907	2,317,589	1,615,227	11,587,946	8,076,134
Suppliers	4,085,755	3,072,297	1,021,439	768,074	5,107,194	3,840,371
Depreciation and amortisation	498,286	262,972	124,571	65,743	622,857	328,715
Other	–	96,344	–	24,086	–	120,430
Total departmental expenses	13,854,398	9,892,520	3,463,599	2,473,130	17,317,997	12,365,650
Funded by:						
Revenues from government	13,628,000	9,170,400	3,407,000	2,292,600	17,035,000	11,463,000
Sales of goods and services	1,079,485	1,022,367	269,871	255,592	1,349,356	1,277,959
Other non-taxation revenues	–	–	–	–	–	–
Total departmental revenues	14,707,485	10,192,767	3,676,871	2,548,192	18,384,356	12,740,959

Direct costs for Outputs 1 and 2 are allocated primarily on staff numbers.

Indirect costs, such as corporate support expenses, are allocated on staff numbers and square metres occupied. The provision of services by corporate support areas is predominantly driven by staff demands. Some exceptions exist, but testing has shown that other, more complex allocation methods do not produce a materially different result from that produced by this simple allocation method.

COMMONWEALTH OMBUDSMAN OFFICE
NOTES TO AND FORMING PART OF THE
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30 JUNE 2006

Note 17 – Act of Grace Payments, Waivers and Defective Administration Scheme

No Act of Grace payments were made during the reporting period (2005: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997*.



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glossary

AAADM	Automated Assistance in Administrative Decision Making	CDDA	Compensation for Detriment caused by Defective Administration
AAT	Administrative Appeals Tribunal	CDF	Chief of the Defence Force
ACC	Australian Crime Commission	CLERP	Corporations Legislation Economic Reform Program
ACT	Australian Capital Territory	Complaints Act	<i>Complaints (Australian Federal Police) Act 1981</i> (Cth)
ADF	Australian Defence Force	Crimes Act	<i>Crimes Act 1914</i> (Cth)
ADR	alternative dispute resolution	CSA	Child Support Agency
AFC	Air Force Cross	CSHC	Commonwealth Seniors Health Card
AFP	Australian Federal Police	Cth	Commonwealth
AFPPS	Australian Federal Police Protective Service	DEWR	Department of Employment and Workplace Relations
ANAO	Australian National Audit Office	DFAT	Department of Foreign Affairs and Trade
ANU	Australian National University	DFO	Defence Force Ombudsman
ANZOA	Australian and New Zealand Ombudsman Association	DHA	Defence Housing Authority
AO	Officer of the Order of Australia	DHS	Department of Human Services
APOR	Australasia and Pacific Ombudsman Region	DIMA	Department of Immigration and Multicultural Affairs
APS	Australian Public Service	DVA	Department of Veterans' Affairs
ARC	Administrative Review Council	EL	Executive Level
ASIC	Australian Securities and Investments Commission	FaCSIA	Department of Families, Community Services and Indigenous Affairs
ASIO	Australian Security Intelligence Organisation	FBT	family tax benefit
ASIO Act	<i>Australian Security Intelligence Organisation Act 1979</i> (Cth)	FCA	Federal Court of Australia
ATO	Australian Taxation Office	FIS	Financial Information Service
AusAID	Australian Agency for International Development	FOI	freedom of information
AWA	Australian Workplace Agreement	FOI Act	<i>Freedom of Information Act 1982</i> (Cth)
CCC	Customer Contact Centres		

GEERS	General Employee Entitlements and Redundancy Scheme	PCO	Public Contact Officer
GSL	GSL (Australia) Pty Ltd	PCT	Public Contact Team
GST	goods and services tax	PDS	product disclosure statement
Hon.	Honourable	PIO	Postal Industry Ombudsman
IDF	Immigration Detention Facility	PM&C	Department of Prime Minister and Cabinet
IGADF	Inspector-General of the Australian Defence Force	PNG	Papua New Guinea
IGIS	Inspector-General of Intelligence and Security	Postal Act	<i>Australian Postal Corporation Act 1989</i> (Cth)
IOI	International Ombudsman Institute	Prof.	Professor
IPP	Information Privacy Principle	Qld	Queensland
IT	information technology	RAAF	Royal Australian Air Force
ITSA	Insolvency and Trustee Service Australia	ROG	Redress of Grievance
JCPAA	Joint Committee of Public Accounts and Audit	s	section
LEIC	Law Enforcement Integrity Commissioner	SA	South Australia
LIC	low-income card	SES	Senior Executive Service
MARA	Migration Agents Registration Authority	Surveillance Act	<i>Surveillance Devices Act 2004</i> (Cth)
Migration Act	<i>Migration Act 1958</i> (Cth)	TAS	Tasmania
MP	Member of Parliament	TI	Telecommunications interception
MRCS	Military Rehabilitation and Compensation Scheme	TI Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)
MRT	Migration Review Tribunal	TIO	Telecommunications Industry Ombudsman
MTCN	money transfer control number	TRA	Trades Recognition Australia
NOC	National Ombudsman Commission of Indonesia	VIC	Victoria
NSW	New South Wales	WA	Western Australia
NT	Northern Territory		
OH&S	occupational health and safety		
Ombudsman Act	<i>Ombudsman Act 1976</i> (Cth)		

compliance index

This is a guide to the report's compliance with the Requirements for Annual Reports as provided by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

Letter of transmittal iii

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Correction of material errors in previous annual report

No material errors have been identified in the Commonwealth Ombudsman Annual Report 2004–05.

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