

**OMBUDSMAN FOR THE NORTHERN TERRITORY OF AUSTRALIA**

**Thirtieth Annual Report 2007-08**

The Honourable Paul Henderson, MLA  
Chief Minister  
Parliament House  
DARWIN NT 0801

Dear Chief Minister

In accordance with the provisions of Section 28(1) of the *Ombudsman (Northern Territory) Act 1978*, the Annual Report on the Office of the Ombudsman for the year ending 30 June 2008 is submitted to you for tabling in the Legislative Assembly.

Yours sincerely



Carolyn Richards  
Ombudsman

October 2008

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## STATEMENT OF ACCOUNTABLE OFFICER

I advise in respect of our duties as Accountable Officers, and to the best of my knowledge and belief:

- (a) proper records of all transactions affecting the Office were kept and employees under my control observed the provisions of the *Financial Management Act*, the *Financial Management Regulations* and Treasurer's Directions;
- (b) procedures within the Office afforded proper internal control, and a current description of these procedures can be found in the *Accounting and Property Manual* which has been prepared in accordance with the *Financial Management Act*;
- (c) no indication of fraud, malpractice, major breach of legislation or delegations, major error in or omission from the accounts and records existed;
- (d) in accordance with Section 15 of the *Financial Management Act* the internal audit capacity available to the Office is adequate and the results of internal audits were reported to me;
- (e) the financial statements included in this Annual Report have been prepared from proper accounts and records and are in accordance with Part 2, Section 5 of the *Treasurer's Directions* where appropriate; and
- (f) all actions have been in compliance with all Employment Instructions issued by the Commissioner for Public Employment.

In addition, I advise that in relation to items (a) and (e) the Chief Executive Officer (CEO) of DCIS has advised that to the best of his knowledge and belief, proper records are kept of transactions undertaken by DCIS on my behalf, and the employees under his control observe the provisions of the *Financial Management Act*, the *Financial Management Regulations* and Treasurer's Directions.

The CEO of DCIS also advises all financial reports prepared by DCIS for this Annual Report, have been prepared from proper accounts and records and are in accordance with Treasurer's Directions Part 2, Section 5 and Part 2, Section 6, where appropriate.



CAROLYN RICHARDS  
Ombudsman  
October 2008

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## 1. INTRODUCTION AND OVERVIEW

### OMBUDSMAN'S FOREWORD

#### THIRTY YEARS ANNIVERSARY

It has been thirty years since the institution of the Ombudsman in the Northern Territory. The creation of the office commenced with the beginning of self government for the Northern Territory on 1 July 1978.

My predecessors since 1978 have been:

- Mr Harry Giese – July - December 1978
- Mr Russell Watts – 1978 - 1984
- Dr Kenneth Rhodes – 1984 - 1989
- Mr Robert Eadie – 1989 - 1991
- Mr Ian Knight – 1991 - 1994
- Mr Peter Boyce 1995 - 2005

Reading the records of the Ombudsman and the Annual Reports since 1979 confirm that “nothing is new under Heaven”. The issues and dilemmas that challenged previous Ombudsman are not dissimilar to now.

The main issue remaining unresolved is:-

Achieving a balance between accountability of Northern Territory Police for the use of their coercive powers and the need for police independence in operational discretion.

- What differs today is the more complex environment of law enforcement and the increased possibility of abuse of citizens rights arising from developments in technology. Government has responded to achieving this balance by legislation to protect citizen's rights. The Ombudsman now has functions of monitoring and inspecting police records of how they use surveillance devices and telecommunications interception powers. This is in addition to the role long performed by the Ombudsman of “monitoring” complaints about police conduct. “Monitoring” does not, as commonly supposed, mean investigating the conduct of Police, or directing the NT Police investigation of police conduct by police. Monitoring is confined to reviewing the results of an investigation that is carried out by NT Police into the allegations of a member of the public. That review power has, since 1978, been carried out by a review of documents such as transcripts of interviews and reports by the officer who investigates an allegation of police misconduct.
- The Ethical and Professional Standards Command of NT Police investigates all complaints. The more serious ones result in a report of the investigation being delivered to a committee called the Joint Review Committee (JRC). This

committee is made up of the Commander of the NT Police Ethical and Professional Standards Command and the Deputy Ombudsman. The JRC prepares a report which sets out their opinion about whether or not the complaint is substantiated; whether or not the evidence obtained by the police investigating the conduct of their own officers would be probative enough to support disciplinary or criminal action being taken against any police officer; or whether evidence likely to be strong enough to support a successful prosecution for disciplinary action or is not capable of resolution either way.

- Over the last eighteen months the Ombudsman has been given the task of inspecting records of NT Police to report on compliance with the various checks and balances enacted to protect the rights of citizens when surveillance devices are used and when telephone communications are intercepted. A report to the Minister was tabled in the Legislative Assembly on 18 August 2008 which outlined the extent to which NT Police were not complying with the requirements of the *Surveillance Devices Act*. The report was not the subject of any debate or questions.
- The Attorney General as a member of the Standing Committee of Attorneys General (SCAG) has agreed to establish a working group, The Law Enforcement Accountability and Oversight Working Group to identify gaps in the ability of oversight bodies to effectively deal with law enforcement oversight matters crossing jurisdictional lines and to identify ways in which to address these gaps. This initiative followed a recommendation to SCAG in June 2004 by Ombudsman and Privacy Commissioners in the following terms:

*Where law enforcement powers exercised by a person or agency are increased or varied, statutory provision must be made to ensure that the person or agency is subject to a level of accountability commensurate with these new or varied powers.*

*Those accountability mechanisms must be developed concurrently with the development of the powers and with the involvement of Ombudsman, Privacy Commissioners and other accountability bodies.*

It is of concern to me that NT Police have asked the Minister and the Cabinet to approve a provision to be inserted in the *Ombudsman (Northern Territory) Act* amendments which would remove a person's right to have access to the records of the investigation of a complaint about police conduct made by that person. The request is that such records be exempt from disclosure without the need to explain the reason they are considered to fall within the exemptions under the *Information Act*. The proposal is contrary to accountability, transparency in government and the rights of those who may have a grievance about police conduct. The effect of the granting of a blanket exemption would mean, in the context of the current investigation of Police by Police that at the end of an investigation the person who made the complaint would not be able to find out what was investigated and with what outcome.

The tension between accountability and discretion of police, and external independent monitoring of coercive powers which of necessity are exercised more secretly and covertly by police is a question that has occupied my predecessors and myself for many years. When the Public Interest Disclosure Bill (Whistleblowers) and the

Ombudsman (Northern Territory) Bill are debated I commend to the Legislative Assembly the recommendation made to SCAG recited above.

## Summary

The year under report has included the following matters of interest:

- Substantial progress was made on upgrading the Ombudsman's case management complaints system.
- Total number of approaches increased by 18% compared to 2006/07, including a 35% increase in the number of enquiries received.
- Around 40% of complaints were finalised because an adequate explanation was provided by the agency (only 20% in 2006/07). I infer from this that agencies have responded to the work done by this office in 2006/07 with the agencies to encourage and guide them to set up or improve their own internal complaint systems.
- There was a significant reduction in the number of serious complaints against police requiring oversight by the Joint Review Committee - reduced from 28% in 2006/07 to 6% this financial year.
- Total visits to the Ombudsman's website increased by 50%, from 22,517 to 34,868.
- The time taken to finalise complaints within 90 days slipped back from 90% to 74%.
- Little activity to increase public awareness of the Ombudsman's service occurred.
- All staff received training in how to manage difficult or hostile behaviour to avoid escalation and risk of harm both physical and mental.
- Litigation about the jurisdiction of the Ombudsman to investigate administrative actions by a health service provider has been resolved. The litigation has highlighted the inherent conflict when one person is appointed as the Ombudsman and the Commissioner for Health and Community Services Complaints. Apart from the conflict issue the workload involved with both the Ombudsman and the Health and Community Services Complaints Commission has risen dramatically since 1998 and I recommend that the Government give consideration to establishing the Health and Community Services Complaints Commission as a separate working unit from the Ombudsman.

Finally I record my personal appreciation for the work, support and commitment provided by staff of the Ombudsman's office during the year. Statistics in this report show that they have performed extremely well under trying and stressful conditions. This Office continues to make substantial improvements in productivity and this is attributed to the high quality and dedication of staff.



CAROLYN RICHARDS  
OMBUDSMAN

## 2. ABOUT THE OFFICE OF THE OMBUDSMAN

### FUNCTIONS OF THE OMBUDSMAN

The functions of the Ombudsman are:

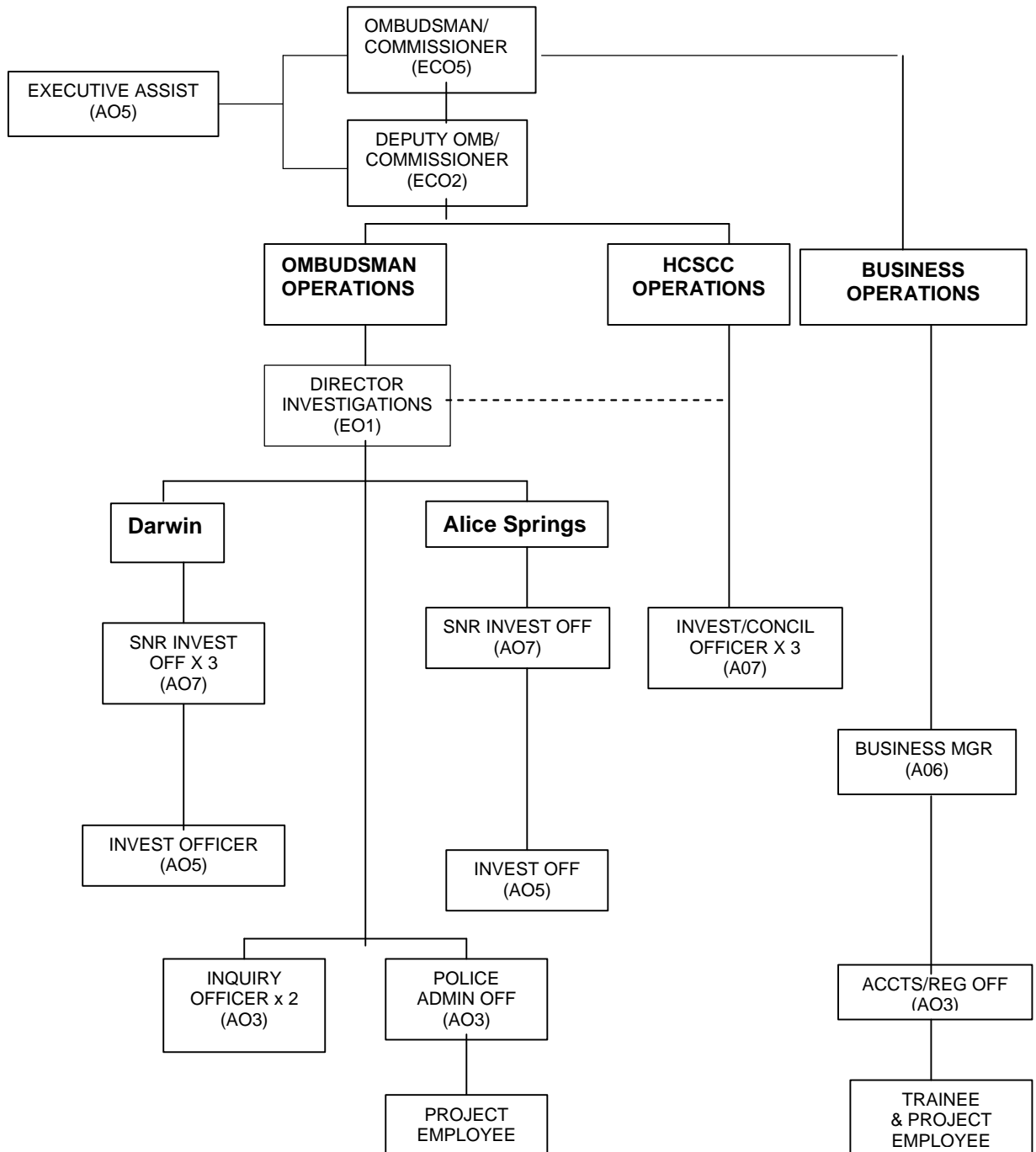
1. To investigate any administrative action by, in, or on behalf of, any Northern Territory Government Agency or Local Government Council to which the *Ombudsman (Northern Territory) Act* applies.
2. To arrange investigation, by the Ethical and Professional Standards Command of the Northern Territory Police, of any action taken, or refusal to take action, by a member of the Police Force of the Northern Territory, whether or not that action was an administrative action, where that action was, or was purported to be, for, or in connection with, or incidental to, the exercise or performance of that member's powers or functions as a member of the Northern Territory Police Force.
3. To monitor and receive reports of investigations into the conduct of Members of the Northern Territory Police Force carried out by Ethical and Professional Standards Command of the Northern Territory Police.
4. To inspect records of the Northern Territory Police and report to the Legislative Assembly through the Minister on compliance with use of surveillance devices under the *Surveillance Devices Act 2007*. To monitor and report to the Minister on compliance with the *Telecommunications (Interception) Northern Territory Act* and the Commonwealth *Telecommunications (Interception and Access) Act* by law enforcement agencies within the Northern Territory.
5. Pursuant to a co-location agreement with the Commonwealth Ombudsman, to provide administrative support to a representative of the Commonwealth Ombudsman's Office who is co-located within the Office of the Ombudsman in both Darwin and Alice Springs. The Alice Springs Office acts as the representative of the Anti-Discrimination Commission.
6. To act as a member of the Northern Territory Law Reform Committee.
7. Pursuant to Section 9 of the *Health and Community Services Complaints Act* the Ombudsman is also appointed as the Commissioner for Health and Community Services Complaints. The Commission reports separately to the Legislative Assembly.

### OMBUDSMAN SERVICE STANDARDS

The Ombudsman aims for its services to be of the highest quality, open to scrutiny and accountable. As such, the Office has developed a service charter (or Standards) against which it can be judged. These can be found at appendix D.



## ORGANISATIONAL STRUCTURE



**Note:**

The organisation chart includes reference to the Health and Community Services Complaints Commission (HCSCC) to illustrate the relationship between relevant positions in the Ombudsman’s Office, and to show the shared human resources included under the expenses of the Office of the Ombudsman. The Director Investigations is also responsible for overseeing HCSCC investigations.

## STAFFING

**Table 1:** Ombudsman's establishment

Position Level	Ombudsman	HCSCC	Total
Ombudsman ECO5 <sup>1</sup>	1		1
Deputy Ombudsman ECO2 <sup>2</sup>	1		1
Executive Level 1	1		1
Administrative Officer 7	4	3 <sup>3</sup>	7
Administrative Officer 6	1		1
Administrative Officer 5	3		3
Administrative Officer 3	4		4
Trainee	1		1
Project Employee – AO1	2		2
<b>Total</b>	<b>18</b>	<b>3</b>	<b>21</b>

**Table 2:** Establishment – By gender and position level

Position Level	Female	Male	Total
Ombudsman ECO5 <sup>4</sup>	1		1
Deputy Ombudsman ECO2 <sup>5</sup>		1	1
Executive Level 1	1		1
Administrative Officer 7	5	1	6
Administrative Officer 6	1		1
Administrative Officer 5	3	1	4
Administrative Officer 3	4		4
Trainee	1		1
Project employee – AO1	2		2
<b>Total</b>	<b>18</b>	<b>3</b>	<b>21</b>

<sup>1</sup> The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints.

<sup>2</sup> The Deputy Ombudsman is also the Deputy Commissioner for Health and Community Services Complaints.

<sup>3</sup> During the course of the year the position of Assessment Officer (AO6) was upgraded to Investigation/Conciliation Officer (AO7)

<sup>4</sup> The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints.

<sup>5</sup> The Deputy Ombudsman is also the Deputy Commissioner for Health and Community Services Complaints.

### 3. PERFORMANCE

#### OVERALL PERFORMANCE

The overall performance of the Ombudsman during 2007/08 is as follows:

<b>Performance Measures</b>	<b>Unit of Measure</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>
Quantity	1. Number of approaches	2000	1613	1962
	2. Number of access and awareness visits	25	28	27
	3. Number of inspections of NT Police Telecommunication Interception records	N/A	1	2
	4. Number of inspections of NT Police Surveillance Devices records	N/A	N/A	1
Quality	1. Percentage of reviews of decisions requested	% 4	% 1	% 1
	2. Percentage of consumer satisfaction feedback	57	60	60
Timeliness	1. Percentage of complaints closed within 90 days.	%	%	%
	a) General	97	90	74
	b) Police (180 days)	64	79	76
	2. Percentage of formal investigations resolved within 180 days	0	0	0 <sup>6</sup>
3. Percentage of statutory inspections and reports conducted within statutory time limits	N/A	100%	100%	

<sup>6</sup> During the year, two investigations were finalised – one took 504 days and the other 307 days.

## ACTIVITY 1: RESOLUTION OF COMPLAINTS

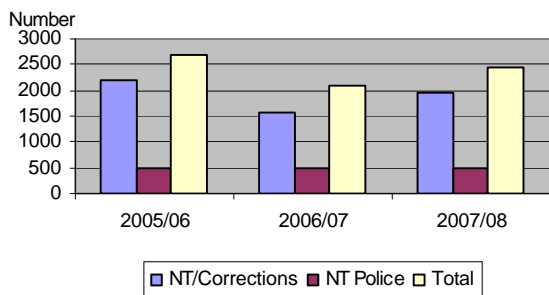
### OUTPUTS

1. Accept inquiries and complaints.
2. Assess complaints in a timely, fair and independent manner.
3. Investigate complaints in a timely, thorough and independent manner.
4. Take appropriate action as a result of investigations.
5. Review investigations conducted by Northern Territory Police of its own members.

### TOTAL APPROACHES

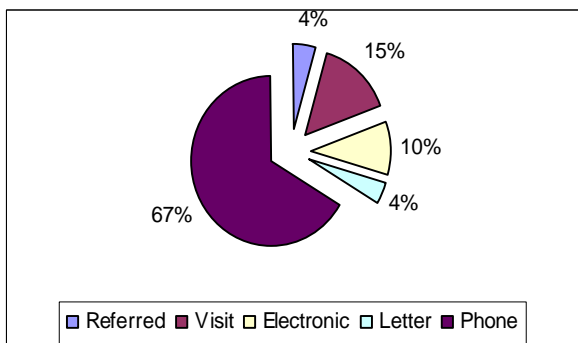
Total approaches to the Office are made up of all inquiries and complaints received in person, by telephone, by email, via the internet or in writing whether related to the "General" area (NT Agencies, Corrections and Local Government) or NT Police.

**Chart 1:** *New approaches for General and NT Police combined*



The total number of approaches has increased by 18% this year from 2081 to 2454. This increase was in the General jurisdiction.

**Chart 2:** *Manner of approach as a percentage.*



67% of all approaches to the Ombudsman were made by telephone and 15% in person.

90% of all complaints from prisoners were via the telephone.

The majority of complaints referred are from Police (90%).

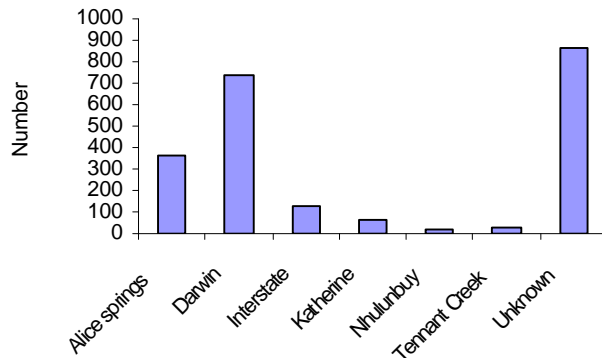
**Table 2: Comparison between approaches received over past three years**

Approaches	2005/06	2006/07	2007/08
Inquiries	1787	1307	1793
Complaints	883	774	661 <sup>7</sup>
<b>Total Approaches</b>	<b>2670</b>	<b>2081</b>	<b>2454</b>
Inquiries to complaint	670	468	492
<b>Net Approaches</b>	<b>2000</b>	<b>1613</b>	<b>1962</b>

Compared to last year there has been a 35% increase in the number of inquiries received while the number of new complaints dealt with has decreased by 45%.

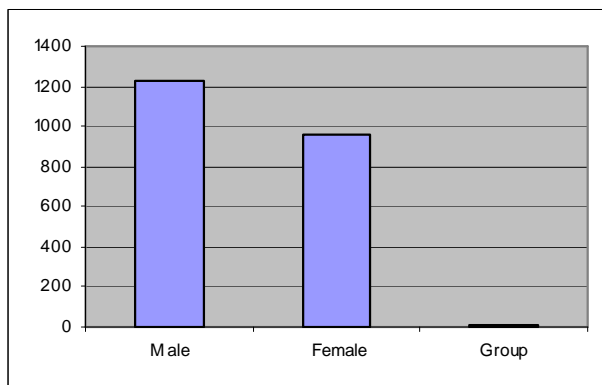
Of the net approaches to the Office, 12% were dealt with as formal complaints under the Act. In the previous year 29% of net approaches were dealt with on that basis.

**Chart 3: Geographic source of complaint**



The majority of complainants came from the Darwin area (34%), followed by Alice Springs (17%). The large number of unknown (39%) is because of the number of complaints received that are out of jurisdiction and in these cases the location of the person is not requested.

**Chart 4: Gender breakdown**



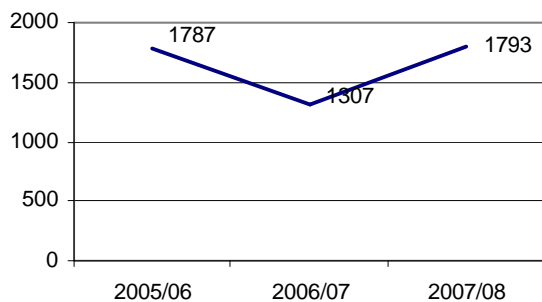
Overall the male:female ratio is 56:44. however within the Corrections area the ration is 93:7. This high ratio of male complainants within the prison system has a significant impact on the overall ratio.

<sup>7</sup> Within this figure are 254 complaints which were referred back to the agency for direct resolution with the complainant. Once referred back, the Ombudsman took no further action in relation to the complaint and it was closed.

## INQUIRIES ONLY

All inquiries received by the Ombudsman are recorded on a separate data base and the statistics that follow have been extracted from that data base.

**Chart 5: All Inquiries – 3 year comparison**



There was a 35% increase in the number of inquiries received in 2007/08 when compared to 2006/07.

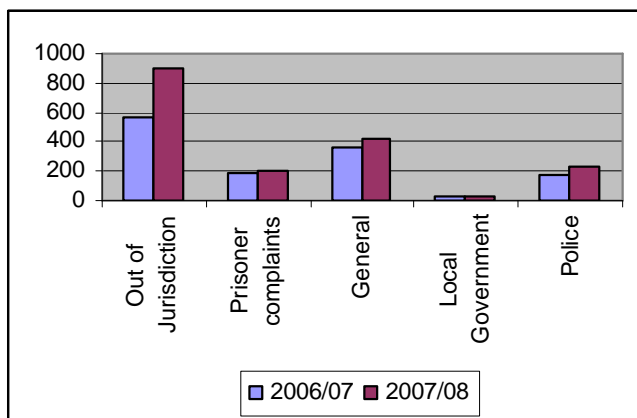
The major increase was associated with enquiries that were out of jurisdiction (60%).

During the financial year, 1793 inquiries were recorded. Of these, 238 became complaints and have been included in the complaint statistics. The remainder of inquiries can be summarised as follows:

**Table 3: Summary of Net Inquiries**

Jurisdiction	All Inquiries	Developed to Complaints	Net Inquiries
Out of Jurisdiction	905	2	903
Corrections - Prisoner complaints	207	115	92
General	416	247	169
Local Government	34	22	12
Police - against police officers	231	106	125
<b>Total:</b>	<b>1793</b>	<b>238</b>	<b>1301</b>

**Chart 6: Inquiries by jurisdiction**

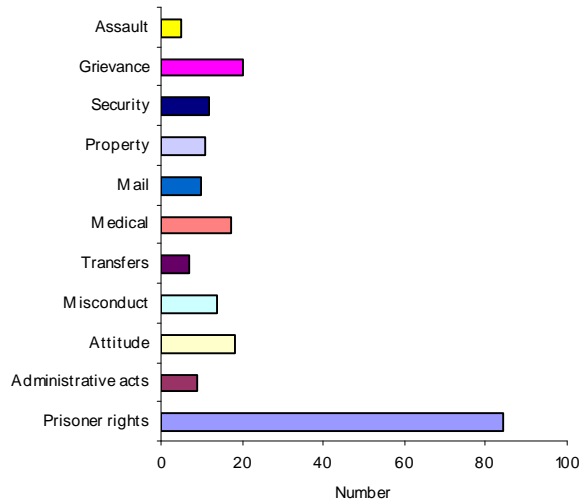


50% of the net inquiries received by the Ombudsman were out of jurisdiction (52% in 2006/07). In these cases the inquiry was referred elsewhere, relevant information provided and the inquiry closed.

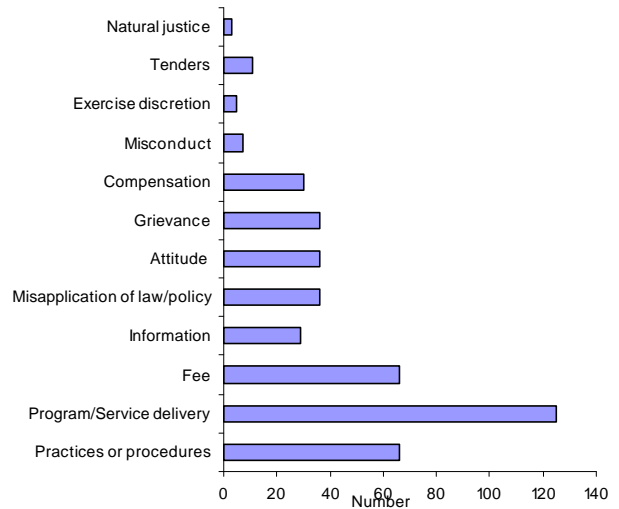
The “General” area which consists of NT Government agencies received 23% of the net inquiries with complaints against police accounting for 13%.

The primary issue identified in an inquiry is recorded and these are depicted in Charts 7 to 9 below for each of the jurisdictions.

**Chart 7: Inquiry Issues – Correctional Services**



**Chart 8: Inquiry Issues - General/ Local Government**



**Chart 9: Inquiry Issues – Police**

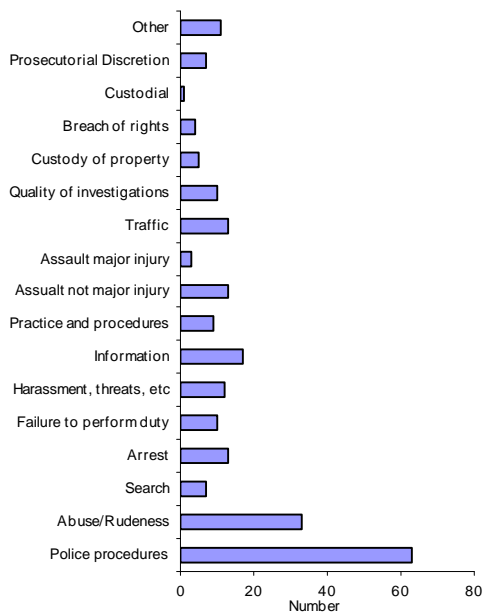


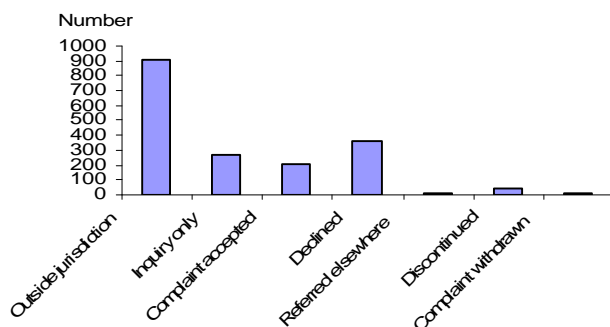
Chart 7: The primary issue of complaint for prisoners related to their rights or lack of them (41%).

Chart 8: In the General/Local Government area the complaints about deficiencies in the delivery of services amounted to 28%.

Chart 9: Complaints about police, the main issue was police procedures (31%).

The outcome of each inquiry is recorded and these are depicted in Chart 10 below.

**Chart 10: Inquiry Outcomes**



A large proportion of inquiries could not have a recorded outcome as they were out of jurisdiction (50%).

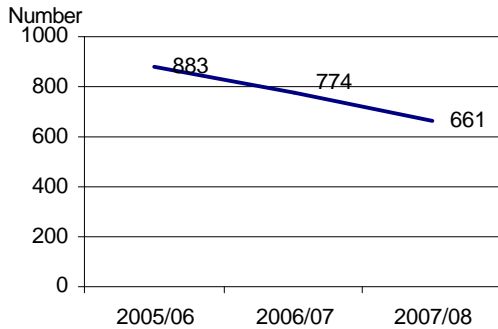
Of the remainder, 15% were inquiries only (ie seeking advice or information) and a further 20% were declined in the majority of cases so that the person could approach the agency with the complaint in the first instant.

## COMPLAINTS ONLY

### OVERVIEW OF ALL COMPLAINTS

All complaints received and accepted by the Ombudsman are recorded on a separate data base and the statistics that follow have been extracted from that data base.

**Chart 11: All Complaints – 3 year comparison**



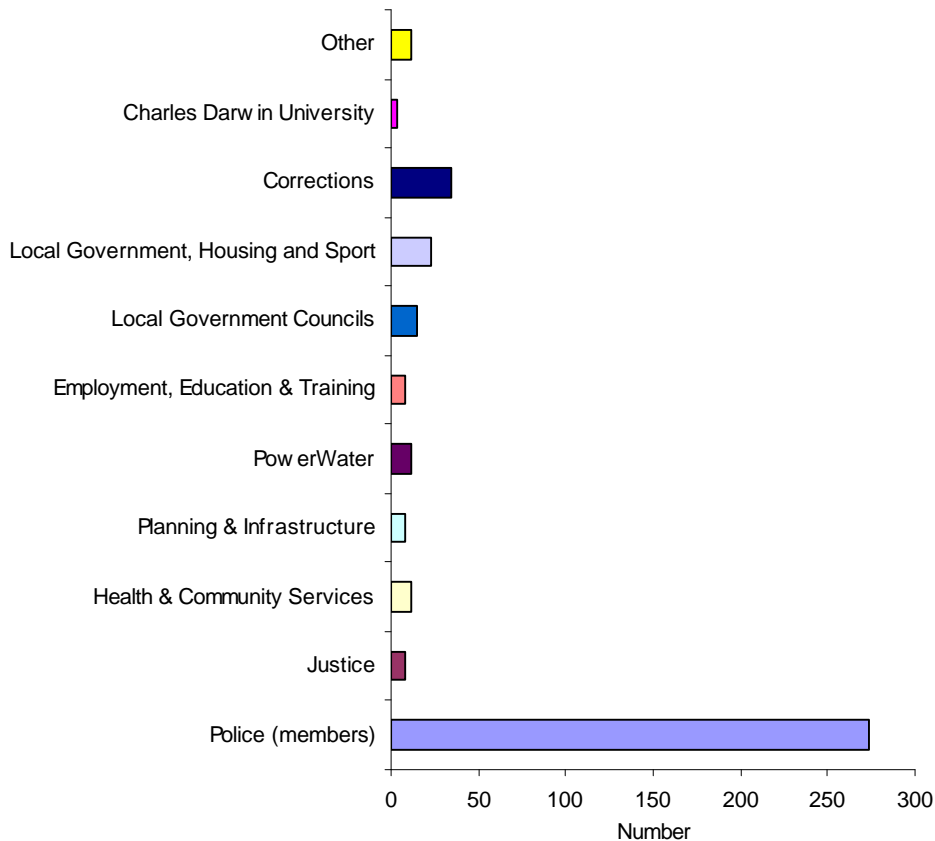
There has been a 15% reduction in the number of complaints received when compared to 2006/07, even though initial approaches increased by 18%.

The reasons for this are:

- The excellent work being done by the inquiry officers in resolving approaches expeditiously; and
- Improved complaint handling services at the point of service within agencies.

Chart 12 provides a breakdown of the 407 complaints that were handled by the Ombudsman. It can be seen that complaints against NT Police members accounted for 67% (69% in 2006/07), while 8% related to complaints from prisoners (7% in 2006/07).

**Chart 12: Agencies subject to complaints**





Agencies included in the Other category are Batchelor Institute of Indigenous Tertiary Education (1), Business Economic and Regional Development (2), Development Consent Authority (1), Natural Resources, Environment and the Arts (1), Police, Fire and Emergency Services (1), Port Authority (2), Territory Insurance Office (2) and Treasury (1).

A detailed breakdown of all the complaints actioned by the Ombudsman can be found at Appendix B pages 79 to 82.

The analysis which follows relates to the 407 complaints accepted by the Ombudsman and is reported on under the following headings:

- Northern Territory Agencies (103) (excluding NT Police and Corrections); and
- NT Police – complaints against police officers (274) actioned by NT Police Ethical and Professional Standards Command
- NT Correctional Services

## NORTHERN TERRITORY AGENCIES (EXCLUDING NT POLICE)

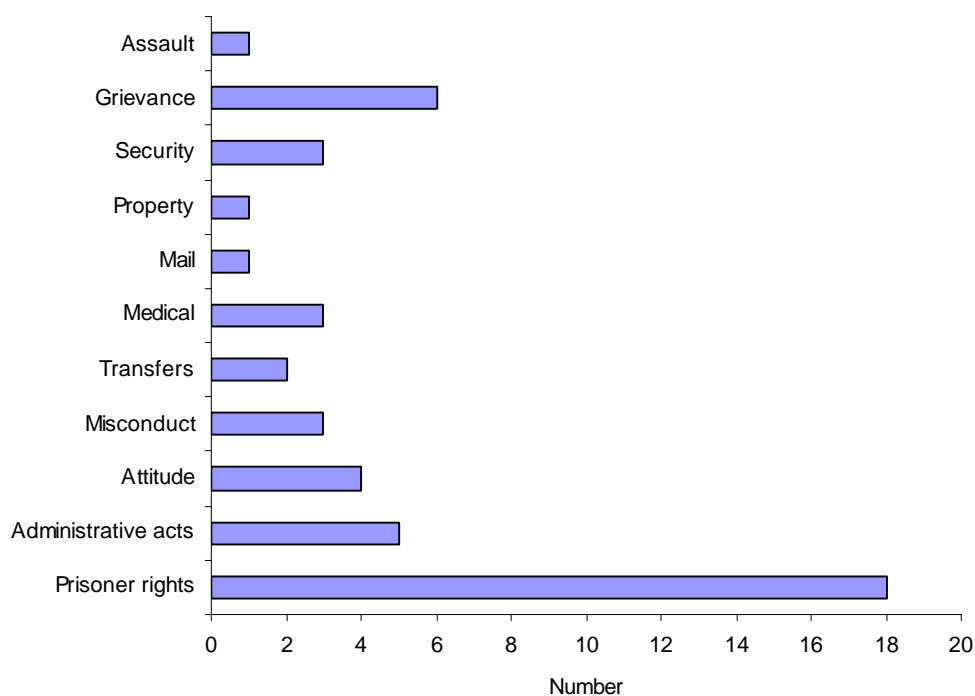
### ISSUES COMPLAINED ABOUT

Different issues are identified for complaints against Correctional Services and those for the remainder of Northern Territory agencies, including local government. A summary of each follows.

#### Correctional Services

There were 30 complaints actioned by the Ombudsman in respect of Correctional Services, raising 47 issues of complaint.

**Chart 13: Issues in Correctional Services complaints**



**Table 4: Corrections issues most complained about – 3 year comparison**

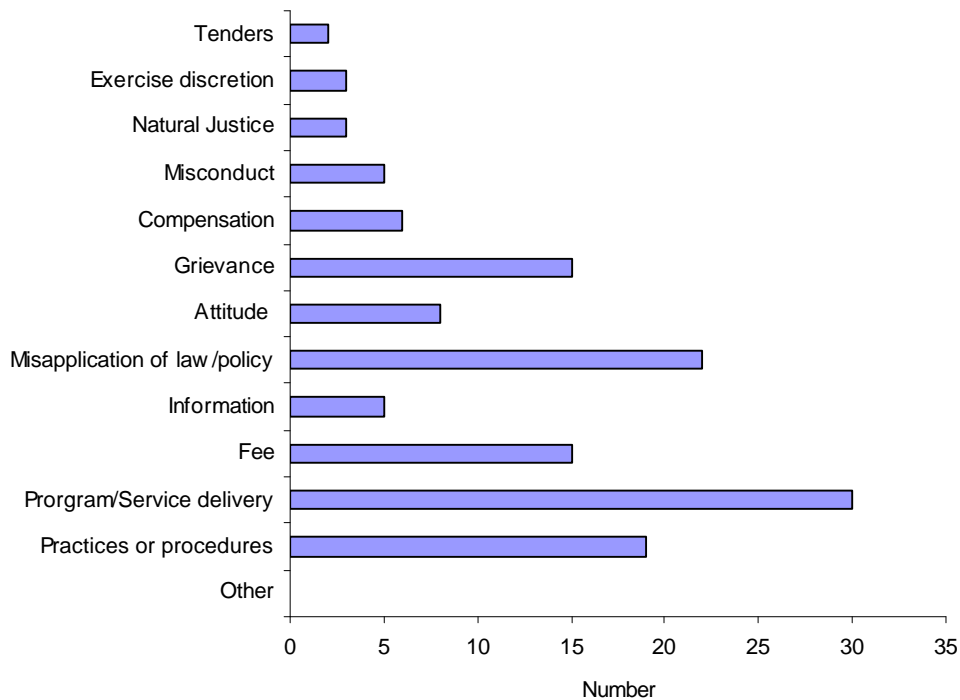
Issues	2005/06 %	2006/07 %	2007/08 %
Prisoner rights	31	32	38
Administrative acts	15	18	11
Attitude	7	16	9
Medical	8	2	6
Misconduct	7	7	6
Grievance	7	9	13

Issues about prisoners' rights remain the major concern (38%) followed by administrative acts or omissions (11%). Of some concern is the increase in complaints relating to the grievance process within the prison system.

## NT Agencies (excluding Correctional Services and NT Police Members)

There were 103 complaints actioned by the Ombudsman in respect of NT agencies, excluding NT Correctional Services and NT Police, raising 133 issues of complaint.

**Chart 14:** *Issues in NT Agency complaints (excluding Correctional Services and NT Police Members)*



**Table 5:** *General and Local Government issues most complained about – 3 year comparison*

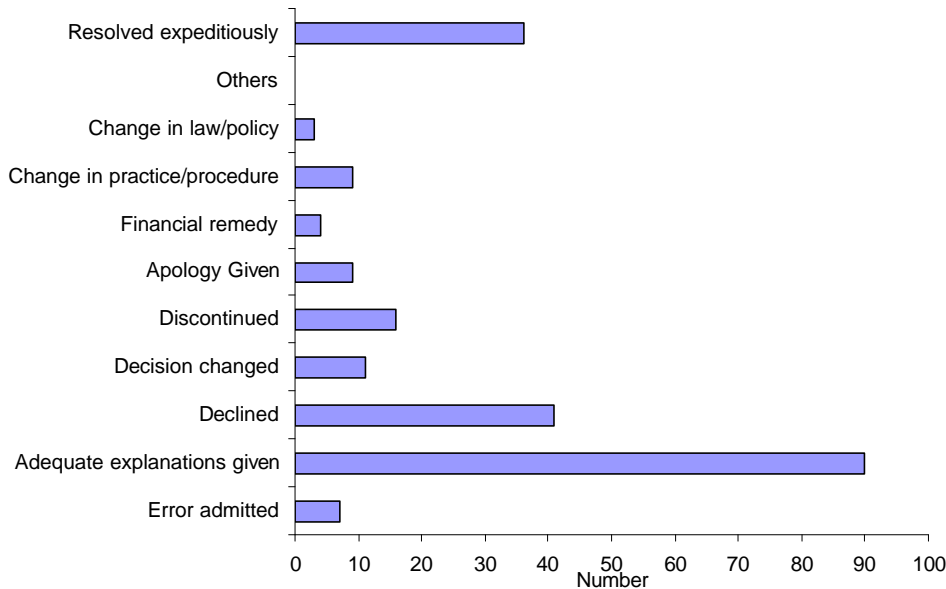
Issue	2005/06 %	2006/07 %	2007/08 %
Practices & procedures	30	15	14
Service Delivery	17	19	23
Fees	9	15	11
Grievance	10	11	11
Misapplication of law/policy	10	14	17
Attitude	7	5	6

Issues about practices and procedures continue to reduce (30% to 15%) while those associated with service delivery and misapplication of law/policy continues to rise.

## OUTCOMES OF FINALISED COMPLAINTS

Chart 15 identifies the outcomes achieved from the issues of complaint finalised in 2006/07 for all complaints actioned by the Ombudsman other than NT Police member complaints.

**Chart 15: Outcomes achieved from finalised complaints (Excluding NT Police)**

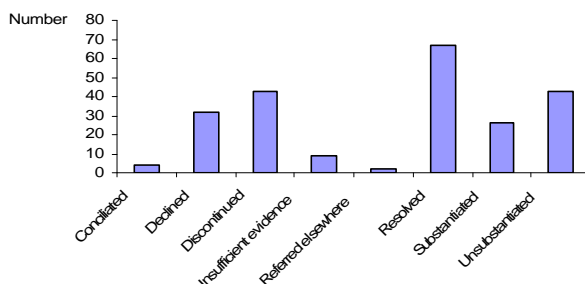


Of significance is the fact that:

- 40% of complaints were finalised because an adequate explanation was provided (22% in 2006/07).
- 18% of cases were declined for continuing investigation after obtaining preliminary information (18% in 2006/07). Reasons for declining included, the matter was trivial or vexatious, investigating the matter further was unnecessary or unjustified as no worthwhile purpose or outcome could be achieved, the matter was more than 12 months old or there was a remedy available before a court, tribunal, or other process more suitable.
- 16% of complaints were resolved expeditiously between the complainant and agency with the assistance of the Ombudsman (13% in 2006/07).
- 4% (in 2006/07) of cases resulted in a change in practice or procedure, the same as in 2006/07.

## Extent to which outcome favoured the complainant

**Chart 16: Issue determinations**



This Chart sets out the practical outcome of complaints and reflects the Case Officer's assessment as to whether the issues associated with each complaint were substantiated or not. One important observation is that the majority of complaints received by the Ombudsman are resolved by other than formal investigation processes.

## CASE STUDIES

### Correctional Services

#### Special Visits

A “protection” prisoner complained that prison authorities had refused to grant his request for a one-hour special contact visit to see his relatives because they were scheduled to travel interstate the following week and wished to see them before they left Darwin. He also claimed that he was being discriminated against because other prisoners were allowed a full hour contact visit while his request was denied. He telephoned my office and spoke to a number of officers about this matter, demanding that this office contact the prison and arrange for a full one-hour special contact visit with his relatives. Meanwhile, one of his relatives had also contacted my office about the matter.

Informal inquiries commenced with the prison authorities to see, what if anything, could be done to assist with a special visit, given the circumstances, but within existing prison operational policy and guidelines.

According to the policy on prisoner visits, prisoners on “protection” are allowed one one-hour visit per week on a Monday and are subject to a different visiting regime for their safety and well being. However, the Superintendent has the discretion to grant a prisoner a special visit due to exceptional circumstances, outside of the normal regime and is also authorised to restrict visits when considered necessary to ensure the security and good order of the prison. Visits determined by the Superintendent are normally scheduled to minimise impact on prisoners’ core activities and in accordance with the prison’s operational requirements and availability of personal resources, etc.

Following contact, the Superintendent arranged for the complainant to have a one-hour non special contact visit with his relatives outside of the normal scheduled visiting day. However, the complainant was still dissatisfied with this and contacted my office again, demanding he be allowed further special one-hour contact visit with his relatives before they could leave Darwin.

I informed the complainant that the Superintendent’s decision, in exercising a decision to partially grant his request for a special visit on the unscheduled day, needed to be recognised as being a reasonable one in the circumstances, albeit it was not to his entire satisfaction. I also explained to him that I do not have the power (nor is it my role) to compel the Superintendent to grant his request for further one-hour contact visits, without having sufficient grounds to do.

However, he continued to reject this view and advised that he would be seeking legal advice about this matter. Notwithstanding, I later heard that the complainant had held a one-hour normal contact visit with his family on the scheduled day, being the Monday.

In regard to his broad allegation of being discriminated against by prison authorities, to assist him, my office telephoned the Anti-Discrimination Commission (ADC), which is the appropriate agency equipped to consider specific issues of discrimination, (without disclosing his identity), to ask if they could consider his complaint of discrimination with the intention of a possible assisted referral.

However, the ADC advised that the broad allegation did not fall within the attributes of “prohibited conduct” as defined in section 19 of the *Anti Discrimination Act* and this advice was conveyed to him when he later telephoned my office. Nevertheless, he advised that he had also later contacted the ADC of his own accord about this issue and was advised that they were unable to assist him. I forwarded him an extract of section 19 of the Act containing examples of prohibited conduct for his information. Since there was nothing more my office could do for him in this particular matter I took no further action.

### A case of prisoner being kept like a mushroom

A prisoner complained to me after being frustrated with efforts to obtain information from his prisoner file. While prisoners have reduced rights to other citizens in some respects, their rights to access personal information held by government departments are the same as any other citizen's rights, as enshrined in the Northern Territory *Information Act*.

Any person may make an application under that Act to access personal information held by a government department. As the legislation imposes a number of administrative requirements which can be burdensome to both the applicant and the department, the Department of Justice introduced a simplified procedure for prisoners wishing to access certain documents on their prison files; this procedure being known as the Administrative Access Scheme (AAS). It allows for the quick release of specified information without the need for detailed administrative checks.

The complainant complained that he received no response to his AAS application which he sent in the self-addressed envelope to the Correctional Services Information Coordinator. His attempts over two months to find out what had happened were fruitless. He claimed that nobody could tell him who the Prison Information Officer was and that when he enquired about making a formal application under the *Information Act* he was told that the prison did not deal with the *Information Act* forms anymore.

He reapplied under the AAS and shortly afterward received a letter from the Correctional Services Information Officer. Initially the letter advised that his application had been rejected, however, on the next page it advised it had been approved. No documents were forthcoming.

Eventually he was supplied with an application form to obtain personal information under the *Information Act* but not the fee waiver application form that the form indicated was required if he wished to apply for a waiver of the application fee, nor the self addressed envelope to the Department of Justice Information Coordinator. He submitted the application to the Correctional Services Information Officer who replied with advice that he needed to be more specific in his request. The letter indicated that his application would be rejected if he did not state whether the documents he wanted were letters, emails, faxes, etc. The complainant could not work out if his application was being treated as an AAS request or a request under the *Information Act*.

At this point he contacted my office to seek help in obtaining the information he was after. I accepted the complaint with the objective of identifying whether there were any systemic issues with respect to responses to prisoner requests for personal information. Enquiries were made with the Correctional Centre, Correctional Services Information Officer and the Department of Justice Information Coordinator. The Information Commissioner was also alerted to the complaint and provided significant input.

Enquiries revealed that the Department of Justice had recently made some changes to procedures for processing applications under the AAS and *Information Act* which appeared not to be widely known within Correctional Services. The Correctional Services Information Officer had taken on the role of "gatekeeper" for applications under both processes, forwarding those that needed to be assessed under the *Information Act* to the Department of Justice Information Coordinator and processing those that could be dealt with under the AAS. For this reason, all applications by prisoners for personal information were to be sent to the Correctional Services Information Officer.

Enquiries indicated that there was a need for more information to be made available to both prisoners and prison officers regarding prisoner access to personal information. With respect to prison officers, their only training with respect to prisoner rights and their responsibilities under the *Information Act* occurred at induction. Correctional Services advised that refresher training in both the *Information Act* and the AAS would be introduced.

Correctional Services also advised that it was policy not to charge prisoners application fees for applications under the *Information Act* and advised it would delete reference to the fee waiver form on the application form. It acknowledged that the application form was not always available to prisoners and undertook to ensure that supplies were checked more regularly.

With respect to information available to prisoners, the *Information Act* is accessible in every block, however, this is a complex piece of legislation. There was no information on the AAS. I proposed that a brochure be developed that set out in easy to understand terms these two ways that a prisoner can access personal information. Correctional Services advised that a brochure had existed but was not in use and agreed to update and distribute it to all accommodation blocks.

Enquires also found that the complainant's first application had been recorded as being mailed to the Correctional Services Information Officer, who had no record of having received it. The reason for its disappearance could not be ascertained. His other applications had been received and processed.

The Information Commissioner took an active interest in the matter and is working with the Department of Justice to improve understanding and knowledge of the freedom of information functions of the *Information Act* by all Correctional Services officers.

### Dietary Dilemma

A complainant alleged that the prison Superintendent of the Correctional Centre had cancelled a medical direction for a low fat, nil processed, meat diet which the visiting prison doctor had given him. He had been on that diet for ten months when the kitchen advised him that all the diet meals were being taken off the menu. Following a Request to Attend Superintendent's Parade (RASP) about the matter, he was advised that the Prison Superintendent had revoked all compliance with medical directions for diet meals following a complaint from the chef of the kitchen to the effect that there were too many special case meals being prepared. The complainant was concerned for his health and wanted to know what right the Superintendent had to overturn or revoke compliance with medical directions.

The complaint was referred to the Professional Standards Unit (PSU) of Northern Territory Correctional Services (NTCS) for response. PSU advised that the complainant had referred his complaint to the Ombudsman before the prison authorities had the opportunity to consider the RASP. They further added that the medical request was that the complainant "*have a lunchtime meal that does not include processed meat. He would prefer salads with beans, tuna or eggs*". This medical request did not highlight a medical condition nor were there any records available to indicate that the complainant had a medical condition.

Inquiries showed that just a short time before the complaint arose, the contracted primary care provider that provides the medical service to the Correctional Centre had reviewed the medical diets in the prison at the request of NTCS because some of them were causing confusion and were open to ambiguity.

After consultation with a dietician and on the recommendation of the prison's primary care provider, the complainant's diet and that of other prisoners having similar health problem, were changed to "low fat prison diet", which is considered a balanced diet supplying adequate nutrition to meet their needs.

This office found that the actions of the prison in reviewing the complainant's diet, whilst unannounced, were not unreasonable. This office was satisfied that the complainant had, as a result of the review, received the benefit of expert opinions (doctor and dietician) and that the new diet addressed his medical and nutritional requirements. The complainant was satisfied with the outcome when notified.

## NT Agencies (excluding Correctional services and NT Police)

### Serial abandonment (Alice Springs Town Council)

I received a complaint about action the complainant believed should have been taken by a Council to remove a vehicle and trailer which she alleged was consistently parked in a dangerous and or inconvenient position in her street. The neighbour's general behaviour and parking of his vehicle was an ongoing source of grievance to the residents of the street but the complainant said she was told in numerous telephone complaints directly to the Council that it was a police matter and the Council could do nothing about the vehicle. Police, on the other hand, told her it was a Council matter.

The complaint was put to the Manager of the Ranger Unit at the Council who was very familiar with the issue. He said the Council had actually taken various forms of enforcement action against the neighbour over a long period of time. The Manager said that, in this instance, a notice had just been served on the vehicle's owner advising that the vehicle would be impounded as an abandoned vehicle if it was not moved by the following Thursday. I was duly informed that the vehicle had been moved by its owner. Although this solved the issue for the time being, I made enquiries with the Manager about the Council's powers and complaint handling policies for future reference because, in light of the history of the matter, it seemed likely that the issue would arise again. The Manager outlined his powers in such cases:

- The neighbour is (like anyone else) entitled to park on the street as long as the park is legal and does not amount to abandoning the vehicle.
- The Council can remove a registered vehicle parked for more than seven days in the same place on a road where parking is permitted because that is part of the definition in the *Traffic Regulations* of an "abandoned vehicle". An unregistered vehicle on the road for any length of time is also an "abandoned vehicle". It is the Council which has the power to remove the vehicle but they must give warning to the owner of the vehicle first.
- If the vehicle or trailer load is overloaded the Council can, and do, ring MVR to inspect it and I was told that infringement tickets for this purpose have been issued against the neighbour by MVR in the past.
- Whilst the *Traffic Regulations* (s64) do allow both police and the Council to move a vehicle which is parked in such a way that it causes "danger obstruction or inconvenience to drivers", in practice, this particular section is rarely used by the Council because of the expert evidence required to prove the elements of "danger, obstruction or inconvenience" if the matter is challenged in court.
- Parking of the vehicle opposite a person's driveway is not an obstruction which can be prosecuted unless the person literally has no ingress or egress to and from his or her driveway.

I was also told that Council was now planning to paint double yellow lines on some parts of the street, meaning that the areas available for the problem neighbour (and any other person for that matter) to park his vehicle and trailer would be limited to stretches which give less trouble to other road users. Whilst the penalty for an infringement would still be an infringement notice, both police and Council Rangers could then issue these tickets and it would save enforcement resources in terms of having to prove, for court purposes, whether it represented a danger to other road users. The abandoned vehicle provisions of the *Traffic Regulations* would still apply and may still need to be used periodically. The Council was proposing to contact the complainant and other residents of the street to get their input into the plans.

The Manager explained his complaint taking procedures and took on board some suggestions which my office made. The Manager's general recollections of his advice to the complainant (that the Council could do nothing further about the vehicle and the complainant should go to the police instead) did vary from the complainant's recollections. I felt, however, that there was nothing to be gained in investigating this further, particularly in light of the positive action taken and proposed by the Council.



### **Why me! (PowerWater)**

A complainant owned one side of a residential duplex and as such was a unit holder under a Property Unit Plan registered on the title to the property. The owner of the other duplex was an absentee landlord. The power supply to each duplex unit was separately metered. However, there was only one meter for the whole property for water and so PWC billed the proprietors of the Property Unit Plan for quarterly water and sewerage.

PWC advised the complainant that the water account was in arrears and that it was going to apply a water supply restriction device to the property (this device restricts flow of water to minimal levels but does not cut the supply off). The complainant (who paid his half share of the water bill on time each quarter) protested that, as he had paid his share of the bill, he should not be penalised for the failure of the other unit holder to pay their share. However PWC refused to alter its decision.

The complainant came to my office. He said that he had been able to contact the other owner who told him that he had very recently paid his share, on line. He also complained that the water bill for the whole duplex is sent to him (the complainant), at his address. He objected to this because he believed that he was not solely responsible for the whole bill.

Informal enquiries revealed that PWC sent the accounts to the complainant because he was listed on their data base as the contact person for bills and correspondence. Initially PWC told my office it could not trace the payments which the other member of the property unit plan allegedly made online, however, it offered to hold action to restrict the water flow to the property for two weeks to allow time to resolve the matter. The next day PWC confirmed that the online payments had in fact been received and this therefore resolved the first complaint.

In further discussions with PWC it agreed to remove the complainant's name from the property unit plan's contact details and it also initiated consultation with the plan members over a delivery address for bills and correspondence.

The complainant was satisfied with the outcome and the case was closed.

### **Just a Memory (Department of Planning and Infrastructure – Building Advisory Services)**

The complainant had renovations done to his house in Alice Springs about 20 years ago. The complainant advised that he had applied for a copy of the Certificate of Occupancy for his house from the Building Advisory Services (BAS) of the Department of Planning and Infrastructure (DPI) in Alice Springs. The Certificate is issued after a building certifier inspects and approves each stage of a building project as being compliant with the Northern Territory Building Code.

The complainant was selling his house. The sale of the house was (like all other house sales) subject to production of the Certificate and, if he was unable to provide one, the sale would not go through. The Certificate is held on the file for the house at Building Advisory Services. He was told by the Department that there was no Certificate on the file and was very surprised at this.

The builder at the time was his father-in-law. When the renovations were done, the building certifying was done by officers of the then Department of Lands and Planning (as it was known at that time). Since 1993 this work has been done by private certifiers following legislative changes. The complainant and his father-in-law both recalled a series of inspections by departmental inspectors at the time and, on each occasion, they were told the work was compliant. They assumed, in good faith, that the paperwork would be completed and filed by the inspectors; however, they did not follow this up at the time by obtaining a copy of it.

After being told there was no Certificate on file, the complainant made enquiries and found that it was going to cost him as much as \$4000 to have a Certificate issued by a building certifier.

The complainant's own enquiries indicated that the Senior Inspector, who had since passed away, had been notorious for not completing paperwork. He believed that since he and the builder had been verbally assured that the Certificate would be issued, then responsibility lay with the department and its successor, the Department of Planning and Infrastructure (as it is now known). The complainant sought

to have the department conduct the certification or pay for all or part of a certification by a private certifier.

I undertook preliminary enquiries to attempt to resolve the matter expeditiously. I was advised by BAS that it is the responsibility of the builder to ensure the issuing of the Certificate of Completion. I nevertheless felt that if an officer of the department had neglected their duties and had not completed the forms, which he should have done, then the department must also consider its role in its outcome.

BAS had a qualified certifier go through the department's files for any information which could throw light on what might have happened back in 1985-88.

Currently, inspections are performed in response to calls from the builder or owner that works are at an appropriate stage, or completed, and that an inspection is required by the Plumbing Inspector or the Building Inspector. In either case the inspector would visit the site and, following the inspection, issue the owner or builder with the original copy of the inspection record (hand written) and a carbon copy of the sheet is put on the building file.

The inspections required for the extensions in question should have included a series of plumbing inspections (3) and building inspections (4). However, there was a record of only one plumbing inspection and one building inspection.

The Building Inspector could not issue a final building inspection record unless he had a copy of the Plumbing and Drainage Certificate as evidence that all plumbing and drainage works have been done in accordance with the building code. The 1983 Act required that once the final building inspection was completed the Building Controller must issue a Certificate of Completion (now called a Certificate of Occupancy), with the original copy issued to the owner and a duplicate placed on file. There was, however, no Plumbing and Drainage Certificate on file. The building record and Drainage Plans Application Register are independent records and both show the absence of any final building and plumbing inspections.

In summary, an examination of the building file and the Drainage Plans Application Register suggested that the Building Branch was in no position to issue a Certificate of Completion. The inspection records on file relate to the early stages of the extension works (footings) and there is an absence of any intermediary inspection which one would expect to see. The complaint suggested that the failure of the Branch to issue a Certificate of Completion was an administrative error at the final stage. However, notwithstanding the evidence of the complainant and his father-in-law, the review showed an absence of a sequence of plumbing and building inspections well before the final inspection stage.

Whilst the complainant was disappointed with this outcome, the department's explanation was reasonable and the remaining records reliable, even if incomplete, as the complainant verified.

#### **Damaging Emails (Territory Insurance Office)**

A complainant contacted my office alleging a Territory Insurance Office (TIO) Officer had allegedly circulated a number of defamatory emails about the complainant (using TIO's email system and under TIO's banner) to a number of people and organisations with whom the complainant had a professional relationship in the NT and had continued doing so despite the officer being warned by TIO to stop. The complainant was dissatisfied with TIO's investigation of the matter; its failure to take adequate disciplinary action against the officer and its failure to make the officer apologise. As an outcome, the complainant wanted TIO to remove the defamatory emails from circulation and make the officer apologise for circulating the emails. This matter posed some jurisdictional issues for me.

I advised the complainant that the specific issue of defamation was not within the Ombudsman's jurisdiction to determine. (It is understood that the complainant had also instituted legal proceedings against TIO). Inquiries were conducted with TIO to determine my jurisdiction and level of interest in the matter, which included discussions and a review of relevant documentation on TIO's investigation and subsequent action taken in regard to the matter.

In regard to the issue of jurisdiction and the specific actions of the TIO officer concerned and the subsequent disciplinary action taken, it was understood that the officer was not an NT Public Sector recruit and not bound by the NTPS Code of Conduct or by the *Public Sector Employment and Management Act*. However, the officer was bound by TIO's own Code of Conduct and Employment Guidelines.

I advised the complainant that, even if the TIO officer concerned was deemed to be an NTPS employee, then the specific issue of *discipline* of the employee is still outside of my jurisdiction to investigate, pursuant to section 3(1)(g) of the *Ombudsman (Northern Territory) Act*. In short, that section of the Act excludes me from investigating issues about an NTPS agency's employee's terms and conditions of employment and remuneration, including any disciplinary action of the employee by the agency.

TIO provided my office with a copy of a section of its Corporate Instructions and IT Policy which, in summary, provides for limited private email use by its employees, as determined by TIO, provided it does not interfere with official duties. I advised the complainant of this and that the subsequent disciplinary action against the employee was a matter for TIO management to determine and exercise and not one for me to determine, being outside my powers and jurisdiction, under my legislation. During inquiries I noted (and advised the complainant) that, by comparison, the Northern Territory Public Sector Principles and Code of Conduct, published by the Office of the Commissioner for Public Employment, provided for some personal use of official facilities and equipment by NTPS employees, provided permission had been obtained.

In regard to the effectiveness of TIO's Internet Policy, TIO reiterated that it is currently reviewing its Internet Policy as a result of this situation. To assist, I sent TIO a copy of Clause 11 of the NTPS Code of Conduct to consider the wording on the implications of exposure of an agency, to assist in their Internet Policy review.

In regard to TIO's investigation of the complaint I understand that, after the complainant had written to TIO initially about the matter, TIO conducted an investigation and then verbally informed her of the outcome which included a verbal apology from a TIO Manager. However, I noted that the complainant had not received anything in writing, confirming the outcome of that investigation. I was of the view that, while it is sometimes an acceptable practice for an agency to try and resolve a matter as quickly and informally as possible with a complainant, it would also have been prudent for TIO to have followed up its verbal advice to the complainant in writing. I notified TIO of my views which were acknowledged.

During inquiries, TIO also provided my office with a copy of a ministerial briefing to the Minister which contained sufficient background information about TIO's investigation of the matter and the subsequent disciplinary action it had taken. I advised the complainant that, under the Act, I cannot question the personal decision of the Minister although I can review the advice (ministerial briefing) that TIO gave the Minister regarding its handling of the matter. On being satisfied with the standard of the advice contained in TIO's ministerial briefing I concluded that there was nothing more to be achieved for the complainant by further investigating this issue.

In regard to the outcome being sought by the complainant, when I put this to TIO it advised that, following receipt of legal advice, TIO's position was that, since the officer concerned had been formally disciplined, TIO was not obliged to compel the officer to apologise to her, could not withdraw the said emails from circulation and did not endorse the emails sent out under its banner.

As a general observation, I noted that there was some level of risk involved when any employee sends a private email to someone else using an agency's official email system, particularly if its content might be considered contentious and later challenged, such as in this case, where it is being claimed that the email is defamatory. This can potentially expose the agency to some criticism, irrespective of whether it was done inadvertently or otherwise.

After having reviewed and commented on TIO's administrative processes and satisfying myself that action had been taken, adequate processes were in place, and after informing the complainant that there was nothing more that could be done, I declined to pursue the matter further.

### **Listed for defaulting (PowerWater)**

My office received a complaint from a person who had been listed with a Credit Reporting Agency by PWC for defaulting on payment of an overdue account. The complainant advised that PWC had refused to remove the listing from the agency, despite paying the account after it had come to his attention. The listing remained, which impacted on the complainant's credit rating.

Inquiries showed that PWC had listed the complainant with the agency following several unsuccessful attempts to make contact with him over payment of the outstanding account. On approaching PWC to have the listing removed from the agency, the complainant was advised to contact the credit agency as PWC could not remove the listing. However, on contacting the agency, the complainant was advised to contact PWC who apparently could remove the listing.

On the face of it, this appeared to raise some uncertainty about which organisation could actually remove a listed name, as well as the process involved. It also raised the question of whether there was sufficient information available about this process to PWC clients who found themselves in this type of situation.

My office contacted PWC to try and resolve the matter informally and expeditiously, without the need for a formal investigation. Following informal inquiries, I was satisfied with the explanation received in regard to the usual recovery action taken by PWC to contact the complainant prior to listing the complainant's name with the credit agency. There appeared to be no maladministration on PWC's part, in regard to the listing in that particular situation.

PWC advised that if it lists a defaulting client's name in error, then PWC will contact the credit agency to request the listing be removed. However, if PWC lists a person's name after following proper recovery procedures (albeit unsuccessfully) then the client will be advised to contact the credit agency direct to request to have the listing removed, since PWC have no further responsibility in the matter.

I was pleased to note that, following negotiations with PWC, it advised that it would improve the standard of information provided to its clients, particularly on this issue. A clause has been inserted in the customer contract documentation, which will be available on the website, giving information about the impact of defaulting on payment of an account and of a defaulting customer's name being listed with a credit agency. It will also include information on the process involved in applying to have a client's name removed from a listing and the agency responsible for so doing, depending on the particular circumstances.

An example provided to my office appeared to be reasonable, in the circumstances. This initiative should assist clients in raising their awareness of the impact of defaulting on payment of an account, of being listed with the credit agency and of the process involved in applying to have their name removed. I commended PWC for its positive proactive approach to improving its services to its clients and is another good example of where a matter can be resolved informally and expeditiously, resulting in an improvement to an agency's administrative process and benefit to its clients.

### **Alleged Juvenile Assault (Department of Employment, Education, & Training)**

My Office received a complaint from a concerned parent of a school student in the Northern Territory, alleging that a teacher had assaulted the child with an instrument during class. The parent reported it to the school authorities but was dissatisfied with the manner in which the teacher had been dealt with by the school authorities, the standard of the investigation that was conducted into the complaint and with the conclusion that the investigation found no evidence to substantiate the allegation, although the school conceded that the teacher had made some physical contact with the student, but not with an instrument. The parent also stated that the teacher had allegedly refused to verbally apologise for the incident and was not offered the option of having the matter escalated to senior departmental level for attention, when still remaining dissatisfied. As an outcome, the parent only desired a verbal apology from the teacher for the alleged incident and did not wish to report the matter to police.

With the parent's consent, details of the complaint were forwarded to the Department to address in the first instance directly with the parent, along with advice that, if the parent remained dissatisfied, to contact my office for further consideration. However, the parent later contacted my office again to

advise of dissatisfaction with the outcome, and with the written apology the parent had received from the teacher, claiming that:

- the written apology, among other things, was inadequate, insincere and was not addressed to the parent, but to the Principal of the school
- the thrust of the apology was not apologetic in that the teacher appeared to justify the actions by finding fault with the student's behaviour, which had never been brought to the parent's attention
- some of the other students who had witnessed the incident were not interviewed
- a more thorough investigation to ascertain the truth was expected
- a verbal apology from the teacher was still desired.

On reconsidering the matter, my office contacted the Department to discuss options on whether the matter could be resolved informally and expediently, considering that a sincere verbal apology from the teacher was all that the parent desired. The Department and the parent agreed to this approach and, with this in mind, a meeting was held where it was noted that the teacher's first written apology was inadequate and needed prompt remedying, including noting that some aspects of the investigation process might have been better handled and communicated earlier.

In regard to the parent's desired outcome, the parties, after considering the overall situation and also mediation, mutually agreed that, instead, due to the risk of the situation escalating and the unlikelihood of the teacher offering a verbal apology, a more achievable and practical outcome would be for the Department to provide the parent with a proper sincere written apology from the teacher and to write to the parent explaining the details of the investigation conducted, given that the parent had not been provided with anything in writing after the school authorities first investigated the matter. The parent agreed to this approach and the Department then undertook to arrange for this to occur and to provide my office with copies of the documentation when finalised.

The parent later contacted my office and provided a copy of a brief letter she had received from the School Principal, enclosing a written apology signed by the teacher. However, this second apology was not specifically addressed to the parent although it was directed at the parent. The parent also provided a copy of a letter received from the Department, containing an explanation of the process and the outcome of the school's investigation.

The letter, among other things, acknowledged the shortcomings of the first written apology and the conclusion that there was a conflict in the evidence of one student and the teacher which could not be reconciled, although it was established that the teacher had made physical contact with the student, with clear recognition that it should not have occurred and that appropriate disciplinary action had been taken in accordance with departmental policy.

My office then discussed this with the parent to seek her views and to determine whether any further action was warranted, given the situation to date. The parent still questioned the school's alleged failure to interview all of the other students whom the parent claimed had witnessed the incident to obtain their account of events which, it was claimed, might have resulted in a different conclusion. It was noted however that, to interview a student regarding an alleged assault, parental consent would first need to be obtained.

In regard to the second written apology, the parent, in acknowledging that it was still not addressed to her directly, indicated that she was unlikely to gain anything more by pursuing the matter further, having lost some confidence in the school's ability to address the complaint thoroughly and objectively and advised that she did not wish to pursue the matter any further.

In recognising the teacher's first written apology, I was of the view that it was not an appropriate way to make a sincere written apology and that it was disappointing to note that the letter was allowed to be forwarded to the parent in that form. In my view, had the letter been properly scrutinised to remove the unnecessary comments and statements it contained and then reworded to reflect a simple but sincere acknowledgement of the situation and a sincere apology for any misunderstanding, before being given to the parent, it was far more likely to have been accepted by the parent in finalisation of the matter. Instead, it achieved the opposite effect in that the apology was not accepted because it was seen as insincere, unnecessarily defensive and subsequently escalated into a further complaint, taking up valuable resources unnecessarily in having to be further pursued by the parties.

By comparison, I noted that the teacher's second written apology was an improvement on the first one, although it was reasonable to expect the letter to have been addressed directly to the parent and should have been.

To assist the Department, I forwarded a copy of a renowned interstate agency's Fact Sheet on making appropriate "Apologies" containing useful information and guidance on the issue of extending proper apologies by Public Sector agencies which the Department could refer to for guidance, if and when needed, along with details of the agency's website.

A major function of my office is to review and satisfy myself about the adequacy of an agency's administrative processes and systems in place and to make recommendations to strengthen and improve processes, where necessary. Our inquiries did not reach the formal or investigation stage but were conducted informally with the assistance of the Department, based on discussions and exchange of emails on the matter with the Department and the parent and from receipt and review of copies of relevant documentation provided by the parties. At the time, it was not considered necessary to contact the school authorities to discuss or to test aspects of the investigation process. Based on my understanding of the situation at the time, I raised the following issues with the Department:

- Whether mediation could have been considered as an option to resolve the matter in its early stage.
- Whether there was adequate liaison/communication between the school and the Department, over this matter earlier.
- The adequacy of the Department's or school's quality assurance/review process in allowing the first unproductive written apology to be issued, potentially damaging credibility and raising further questions about its ability to deal with such issues thoroughly and objectively.
- Whether a formal complaint process or standard guidelines were followed by the school in addressing the complaint.

However, in so doing, I also recognised that:

- When the parent first complained to the school, the Principal had attempted to address the situation informally.
- The Principal had verbally apologised to the parent on behalf of the teacher.
- The school had taken remedial action to address the situation and taken disciplinary action against the teacher in accordance with policy.
- The deficiencies with the first written apology had been recognised and addressed.
- The Department had provided the parent with a written explanation about the school's investigation process, the conclusion reached and the outcome, although the parent still remained sceptical.
- The teacher had provided a second written apology to the parent, although not ideal, but still an improvement on the first one.

Given that the apology had been apparently accepted by the parent and, given their views on the situation, I decided not to pursue the matter further by testing aspects of the process complained about, which the parent agreed to.

Before closing my file, and to satisfy myself about improving aspects of the agency's administrative processes, I raised my concerns with the Department and sought a response, particularly to the issue of whether the Department had a formal (or informal) Complaints or Grievance Policy and Guidelines in place for the investigation of complaints received against a school or the Department and whether this information was readily accessible to parents or anyone who may wish to lodge a grievance or complaint.

I was pleased to receive a positive reply from the Department, who, in acknowledging the concerns raised, advised that it had recently finalised and implemented a comprehensive Complaints and Grievance System for the public on its internet/intranet website in July this year (and provided me with a copy of it). In acknowledging this positive outcome with the agency and the complainant, who was satisfied with this outcome, I closed the file.

### **Overlooked! (Department of Justice)**

The complainant, who was not a Northern Territory Government employee, applied for a vacancy with the Department of Justice (DOJ). He then heard nothing further for over five weeks so he contacted the regional office of the Department and was advised that interviews had already been held for short-listed applicants and appointments had been finalised. The complainant then complained to my office that the recruitment process had not been followed in a just and fair manner.

My preliminary enquiries revealed that the complainant's application was not considered by the selection panel because of an administrative error. The vacancy in question was a bulk advertising exercise to recruit staff to work in various locations. The Department of Corporate and Information Services (DCIS) provides human resource services, including recruitment services, to the Northern Territory Government. DCIS had, as it was required to do, advertised the vacancy, acknowledged the applications and then sent them to the DOJ human resources officers to compile shortlists and to conduct the interviews. DCIS had sent the applications to DOJ all on one recruitment file. DOJ had then made copies of all applications and placed them on recruitment files created for each geographic region in which recruitment was to occur. The complainant's application was not copied to any of these files and thus his application was effectively removed from further consideration.

Once this complaint was brought to the Department's attention, it wrote to the complainant confirming that the recruitment process had already been finalised, and that it could do nothing for him to reverse the outcome. However, it offered the complainant an apology for the clerical error made, and it nominated a contact person within the department who could provide the complainant with feedback on his application, in case future vacancies arise. The Department also advised me that, to ensure that this error was not made in the future, it would stop conducting bulk recruitment exercises involving various regions. Instead it would advertise vacancies for specific regions separately thereby eliminating the sorting and copying of applications once they are received from DCIS.

### **Late Tender (Department of Corporate and Information Services – Procurement Review Board)**

The complainant alleged that the Department of Corporate and Information Services (the Department) and the Procurement Review Board should have accepted his late tender on the basis that the failure to lodge the tender by the due time and date was due to circumstances beyond his control.

The Ombudsman conducted preliminary inquiries pursuant to section 17A of the *Ombudsman (Northern Territory) Act* into this matter. These inquiries included examining the NT Government procurement policy, the conditions of tendering and contract, the tenders online conditions and the events that resulted in the late lodgement of the tender.

On the basis of the information available the Ombudsman had no reason to doubt that the complainant did attempt to submit the tender electronically, however, for some unknown reason the files were not successfully transmitted.

The Ombudsman did not deem it necessary to enquire into the specific cause of the failure since, based on the information available, the Ombudsman was unable to conclude that the Department (or thereafter the Procurement Review Board) acted unreasonably in the circumstances. The reasons that lead to this conclusion were as follows:

1. The decisions by both agencies were in accordance with procurement policy, including the guidelines regarding situations in which a late tender may be allowed. Thus neither agency can be criticised for failing to adhere to policy.
2. While the failure of transmission was highly unfortunate, it was the Ombudsman's view that the circumstances in which the complainant found himself were, in part, due to his decision not to commence submission until the last minute, which in effect placed complete reliance on the successful and quick electronic transmission of his tender. As such, the Ombudsman could not see any grounds for the Procurement Review Board to depart from the guidelines set out in the Procurement Policy and Conditions of Tender. The only grounds that should have prompted it to depart from those guidelines (i.e. by giving special consideration to the complainant's situation) would be if it was satisfied that the complainant's situation was entirely due to matters beyond the complainant's control. As stated, the Ombudsman did not consider that this was the case.

In conclusion, the Ombudsman was satisfied that the Department and the Procurement Review Board had implemented the Procurement Policy appropriately in this matter. While the reason for the unfortunate failure of the eLodgement system was unknown, the issue of greater relevance was whether the failure to lodge on time was entirely outside the complainant's control. In the Ombudsman's view there were steps the complainant could have taken, and would have been prudent to have taken, to avoid the risk of the eLodgement system failing to work; a risk of which the Department clearly advised tenderers. As a result the Ombudsman was unable to conclude that the decisions of either the Department or the Procurement Review Board were unreasonable.

### **III Will (Motor Vehicle Registry)**

My office received a complaint from the co-executor of a late parent's estate against MVR for transferring a motor vehicle, belonging to the estate, over to the complainant's sibling, who was also co-executor of the estate. The complainant was concerned that MVR had accepted the sibling's statutory declaration claiming to be the legal owner of the vehicle at face value and did not sight the last will and testament for proof of ownership, and did not contact the complainant as the co-executor of the estate to verify ownership of the vehicle before registering the vehicle over to the sibling's name. The vehicle in question was not mentioned in the deceased's will.

On contacting MVR about the matter the complainant was advised that nothing further could be done and to seek legal advice. On remaining dissatisfied the complainant contacted my office to obtain an explanation and have the vehicle registration cancelled. Informal Inquiries commenced with MVR pursuant to Section 17A of the *Ombudsman (Northern Territory) Act*, to obtain an explanation and see if the matter could be resolved informally and expeditiously.

MVR advised that it was general policy for staff not to question the genuineness of a statutory declaration or to make judgements about legal ownership whether under a will or otherwise. In this case, the MVR officer had sighted a certified copy of the deceased's death certificate and a statutory declaration which the sibling had provided stating that the vehicle was gifted by the late parent. As such, the officer had no reason to question the validity of the documentation and transferred the vehicle over.

MVR also advised that the Registrar had the power under the Act to cancel the registration of the vehicle. However, as the ownership of this vehicle was actually now in dispute, MVR had placed a "lock" on the vehicle pursuant to the *Motor Vehicle Act*. The lock prevents any further transaction on the vehicle until MVR is advised that the question of legal ownership of the vehicle has been settled between the parties.

However, MVR acknowledged that its policy covering deceased estate vehicle assets needed review and this would be undertaken in the near future as part of a broader review of MVR policies. A copy of the new policies would be forwarded to my office.

I was satisfied with MVR's explanation and since remedial action was already being taken there was no need to make any formal recommendations to improve the system. After notifying the complainant of the situation, who accepted the explanation, I closed the file

### **House on demand! (Department of Local Government, Housing and Sport)**

A public housing tenant complained that Territory Housing (TH) representatives had, in the course of an inspection, confused her and led her to hand over the keys of the house which she was renting, against a promise of being transferred to another house, when one would be available in an area she had designated. However, she was dissatisfied that TH had not given her another house immediately. She also claimed that she would need access to the house she had been renting in order to carry out maintenance according to a Schedule of Tenant Responsibility which she had received.

Preliminary enquiries revealed that, at the time of the inspection, the complainant was not living on the premises and she had already moved her possessions to another property and had cleaned the



dwelling. She confirmed to the TH officers that it was acceptable for her children and herself to stay with her parents as it could be another 6 months before she would get another dwelling.

The complainant handed over the keys after the officers had explained to her that, as she was still paying rent on a property that she was no longer living in, she could continue to do so and still remain on the wait list for a transfer.

Since the complainant was still unhappy with having to wait another 6 months to get another house, TH agreed to consider her transfer application as a matter of priority. However as the complainant insisted upon only wanting an allocation in a particular area, her wait time would increase as it depends on the availability of houses in the area requested.

The complainant was also given the opportunity to access the property to attend to maintenance. This office considered both actions by TH as reasonable and fair.

#### **Application (Department of Employment, Education & Training)**

The Ombudsman received a complaint against the Department of Employment, Education & Training (DEET) and the Electrical Workers & Contractors Licensing Board (the Board). The substance of the complaint was that DEET and the Board had failed to effectively administer an applicant's electrical apprenticeship or to issue him with an Electrical Worker's Licence in an efficient or timely manner. Inquiries were conducted with DEET, which included reviewing the applicable legislation, policy and information provided to apprentices and employers. (Meanwhile, the complainant's licence was approved by the Board).

Inquiries with DEET and the Board in response to the complaint found that, in the main, the administrative procedures followed in relation to the complainant's dealings with these agencies were in line with legislation and policy. There was some acknowledgement that there should be better co-ordination of the various bodies responsible for Electro-technology apprenticeships, which was one of the complainant's primary issues of complaint. The re-establishment of the Electro-technology Taskforce was, in the Ombudsman's opinion, a reasonable attempt to rectify deficiencies in this area.

There also appeared to be an over-emphasis in the agencies' documentation on the provision of statutory declarations from employers when the legislation was not prescriptive in terms of the form of evidence that could be provided. The Ombudsman raised this issue with DEET and the Board and asked them to consider amending the documentation so that it made it clear that alternative forms of evidence may be acceptable.

Inquiries did not reveal administrative deficiencies with respect to the majority of the complainant's issues. On the information available the Ombudsman was satisfied that DEET provided adequate written and verbal information to people with respect to licensing requirements for apprentices. The Ombudsman was unable to sustain the complaint about undue length of time to process the complainant's application, as it was apparent that the delays were not due to administrative defects.

#### **Signs of the Times (Katherine Town Council)**

I received a complaint from a local business person complaining about the Council's failure to grant approval to erect the complainant's specific free standing signs advertising a local unique tourist attraction, which had been placed near an intersection and which Council later removed due to non compliance with the By-laws and Signs Code. The complainant claimed that tourists were having difficulty locating the tourist attraction and the business was suffering as a result.

The complainant was unhappy with Council and wanted Council approval to pay for the erection of the Australian Standards compliant signs, to be financially compensated for loss of potential income for the business, for increased advertising materials and for Council to be investigated for unethical behaviour in respect to treatment of the business.

Preliminary inquiries pursuant to section 17A of the *Ombudsman (Northern Territory) Act* were conducted into the matter which included discussion with Council and receipt and review of relevant documentation, legislation, By-laws, Signs Code, etc. In summary, Council had advised the

complainant that the reason for not approving the signs was because it did not comply with Council's By-law 86 - *Signs, Hoardings and Advertising* and Section 10(b) of the Signs Code - *General Council Policy Relating to Signs On or Over a Public Place*. The complainant was also advised that Council currently had no current plans to adopt Australian Standard signage in Katherine.

Council informed the complainant that they could, as an alternative solution, install signs on the new Tourist Information Bays constructed (with some more due for completion) just outside of town, to the north, south and west. However, the complainant was dissatisfied with this proposal believing it would not resolve the difficulties tourists were apparently having in locating the tourist attraction.

In regard to the issue of the complainant's signs, Katherine Town Council By-law 86(3A) states: "*If a sign, boarding or advertisement that is not in compliance with the signs code or with a permit granted under the signs code is in or on a public place, the person responsible for authorising the erection or placement of the sign, hoarding or advertisement commits an offence.*" By-law 86(6) and 86(6A) authorises Council to take action to remove a non compliant sign if, after giving notice to the person who erected the sign to remove it, fails to do so.

Section 10(b) of the Signs Code - *Freestanding Advertising Signs Located on Road*, in providing for technical and other requirements for signs on or over a public place, states that the sign must be located directly outside the premises in question and not across the road or on a median strip. Council advised that other signs placed on the intersection (away from their property) were in contravention of this section of the Signs Code.

Relevant background information from the Council pertaining to the adoption of the Signs Code was also reviewed. I noted that the Signs Code was approved and adopted by resolution at an Ordinary Council Meeting in 1997. A subsequent amendment was made to Council By-law 86 and Signs Code in 2002. Some of the documentation I have reviewed demonstrates that the administrative and legal formalities were followed during the developmental stages, i.e. through Council, the Department of Local Government, a Solicitors Firm, Parliamentary Counsel, Department of the Chief Minister, before being finally considered, approved and adopted at a Council meeting in 2002 in Katherine.

It was also noted that the complainant's concerns had also been raised at the following levels:

- A deputation of elected members in March 2006.
- Representations made to elected members. (The complainant's correspondence was forwarded to each elected member).
- A Rural Consultative Meeting held in November 2006.
- Industry bodies. (Representation was made to Council on the complainant's behalf by the Katherine Chamber of Commerce and Katherine Regional Tourism Association).

In addition, the complainant could also consider raising the matter at the following additional levels for further consideration by:

- Making a submission to Council's Plan of Management.
- Petitioning Council under the *Local Government Act*.
- Writing to the Minister for Local Government.
- Lodging an appeal to the Local Government Tribunal under Part 10 of the *Local Government Act*.

Following inquiries, I informed the complainant that although I recognised the concerns and efforts, I was unable to determine that Council had acted unreasonably or unethically by not approving the additional non compliant signs in the locations desired. I also informed the complainant that I did not have the power to force Council to take a particular course of action or pay compensation nor compel Council to accept the complainant's suggestion that Council adopt the Australian Standard Signs for use in Katherine.

Notwithstanding that I was unable to assist the complainant further, I provided him with information about an appeal to the Tribunal and offered to facilitate a further meeting with Council's CEO to still meet to discuss the issues. After notifying the complainant that I did not believe that any further investigation of this matter was warranted, as it would not achieve anything more meaningful, I closed my file.

### **White Lies or Only White Lies (Department of Planning and Infrastructure)**

I received a complaint concerning the direction by the former Department of Lands, Planning and Environment in 2002 to construct a new road and entrance point to the property 'Mary River Park' which the complainant had purchased in the late nineties but had recently sold. The property housed tourist accommodation, including cabins and a caravan park, and became a popular destination due to its location on the road to Kakadu. In 2002 he claimed to have noticed that double white lines had been painted on the road cutting off access to his property.

Upon contacting the former Department he was advised that the entrance was deemed to be illegal and dangerous. He stated that prior to the line markings he had not been given any advice from the relevant Department that his entrance was in anyway deficient. He further stated that he was instructed by an officer from the former Department that he would have to construct a new entrance at his own expense, which he did at an approximate cost of \$250,000.

He believed that he should never have been given the instruction to construct a new entrance as there was nothing unsafe or illegal about the old entrance, and also that when purchasing the property in the late nineties his conveyancer and lawyer were advised by the Department that the road and entrance in question were satisfactory. He also complained that Departmental staff did very little to assist him at the time and put a lot of pressure on him to finish the work within a certain time frame which caused him emotional and financial stress.

Inquiries commenced with the Department of Planning and Infrastructure, (as it is now known) which included discussions with key officers and receipt of a detailed response to the issues raised.

In summarising the outcome of my inquiries, I found that, due to the absence of corroborative evidence supporting the complainant's assertion that the Department provided his conveyancer and lawyer with either incorrect advice or advice that there were no issues with the road and access point to the property, I could not substantiate this complaint.

I also found that on the evidence available now, the actions taken by the former Department of Lands, Planning and Environment with respect to his matter, in general, appeared to be reasonable. The fact that DPI was denying any wrongdoing on its behalf, combined with the lack of supporting evidence in regards to the issues of complaints, meant that I was unable to support a recommendation that DPI consider financial assistance or compensation to the complainant in any form.

After notifying the complainant of my findings and since nothing further was heard about the matter, I declined to pursue that matter any further.

### **Tell me what your decision is (Darwin City Council)**

The complainant owned a dog and lived in an urban location. The local Council had been investigating a series of complaints from her neighbour about alleged nuisance barking by the complainant's dog, over a period of about 3 years.

The Council had twice asked the complainant to show cause why her dog should not have been de-registered. She had responded to both letters but had not been notified of the final decision by Council. This delay in making a decision about her dog's registration resulted in prolonged anxiety and frustration for her and her family.

The complainant also claimed that the Council's processes for dealing with dog complaints were not open and accountable. The complainant also said that she had not received a formal response from the Council to an earlier complaint she had made directly to council about a staff member who was allegedly rude in the course of one of her visits.

Preliminary inquiries by my office revealed that interventions by the Council aimed at finding a solution to the nuisance barking complaint included regular visits by the Council's officers with advice and assistance offered to try to limit the impact of its barking on the neighbours. There was also a conciliation attempt through the Community Justice Centre and ultimately private dog training lessons at

the complainant's expense. As the situation did not improve enough, Council asked the complainant to 'show cause' why her dog should not be deregistered, but a subsequent application to the Council by the complainant for a copy of documents under the *Information Act* diverted the Council's attention, and a decision at that time about deregistration was not made.

Some months later, after more complaints from the neighbour, the Council sent a second 'show cause' letter and, again, although the complainant did respond to this request, she received no advice about the outcome of the matter. Council explained that the delay in making a decision on that occasion was because of the complexity of the complaint over a long period of time and the desire to ensure that the matter was properly considered for the sake of all parties.

The Council have a procedure for handling dog complaints which I looked at. It was noted that the procedure does not contain a time limit for assessing 'show cause' responses from dog owners.

The Council acknowledged the shortcomings and advised me that it was reviewing its dog complaints procedures. The new draft By-laws would be finalised after a period of community and stakeholder consultation, in which the complainant could participate. This Office found that Council did provide a formal response to complainant regarding her complaint about staff rudeness. Council ultimately decided, during the course of my enquiries, that the complainant's dog would not be de-registered and I closed my file.

### **Dealing with Unreasonable Conduct**

From time to time my staff have to put up with serial complainants contacting my office and displaying unreasonable behaviour. This conduct includes visiting or constantly telephoning my office many times a day over a period of time to lodge various (and sometimes repeated) complaints against the same or a number of other agencies and by speaking and presenting to my staff in a rude, offensive, abusive and aggressive manner. On each occasion my staff follows up each matter on its merit and conveys the outcome to the complainants by telephone, in writing or in person.

These unreasonable complainants refuse to accept the outcome and instead take out their frustration on staff, who commendably, still take the complaints seriously and treat these complainants with respect and dignity. However, there are times when measures need to be taken to address such behaviour. I have a responsibility for the safety and well being of my staff by limiting contact from such complainants, but without preventing them from accessing my services, as they still might have a valid complaint. The following are two such examples of unreasonable conduct.

#### **Example 1**

Mr A telephoned and visited my offices on many occasions, over a period of time, complaining about a range of issues he had with a number of agencies. In so doing, he exhibited unreasonable behaviour and conduct described above, to the point that it posed a risk to the safety and well being of my staff and making it necessary to consider a number of options to deal with the problem. His aggressive, insulting, abusive behaviour continued despite repeated requests from my staff that he stop. It was deemed necessary to warn him in writing that police would be contacted if he persisted in making abusive, threatening and nuisance phone calls to my office. He subsequently complained that he required hospitalisation after being notified that Police would be called. Since the telephone calls and his abusive, threatening and annoying behaviour continued towards my staff, Police were called to attend his residence and warn him to desist.

My staff subsequently documented 87 calls from Mr A in one day, tying up the valuable resources of my Office and also the Health and Community Services Complaints Commission lines and continuing to abuse and be aggressive to staff. I wrote to him advising that he would be reported if he continued to ring and his abuse was being documented. I wrote to him outlining the details of the telephone calls made, his behaviour and the actions taken to protect my staff from stress as a result of his unreasonable conduct.

Surprisingly, after receiving this letter, he telephoned my office and apologised for the nuisance phone calls he had made on that day. However, later that same day he visited my Regional Office to complain about the content of my letter. One of my officers stated that she had a good rapport with the

complainant and was prepared to take calls or visits from him directly. However, I wrote to him advising that if he wished to make any future complaints about other matters he could telephone my regional office to make an appointment and, if unattended, the complaints must be made in writing to me.

Notwithstanding, this action did not stop the unreasonable conduct and the complainant continued making racist comments towards one staff member and continued ringing my Office and abusing staff constantly. A further letter was sent retracting authority for him to ring or attend an office at any time. He was advised to only put complaints in writing and was sent numerous templates to assist him to do so.

I also advised him to contact the local Advocacy Service, if he required assistance in drafting complaint letters and provided their contact details. In setting these parameters, I did not wish to discourage him from lodging genuine complaints about fresh administrative actions. However, I would not be reconsidering the issue of action taken to deter him from excessively telephoning my office again nor answering any letters from him on that topic.

I informed him that his unreasonable conduct would not be tolerated as I had a duty as an employer to protect my staff from its consequences and an obligation not to allow public resources to be expended on unwarranted phone calls. I also advised him that if he wished to protest about my decision he could raise the matter with his Local MP or the Chief Minister. The complainant subsequently did complain to the Members of Parliament and others. Unfortunately his behaviour towards these offices also resulted in him being advised not to attend or ring them.

### **Example 2**

When my staff were explaining the outcome of inquiries conducted into Ms B's complaint recently, she refused to accept it and became angry, rude, aggressive and abusive towards staff; berating them and refusing to listen to them. Ms B, on remaining dissatisfied with the explanation, then demanded to see me immediately.

My officers rightly informed her that they were authorised and adequately equipped to attend to her matter as I was out of the office at the time. However, she refused to accept this and continued to be rude, aggressive and abusive towards staff, and continued to demand to see me. When a senior officer attended to assist by offering to sit down with her and listen to her concerns calmly, she rudely told the officer to shut up, stating that she did not want to speak to her.

As the aggressive behaviour continued towards my staff they informed her that if she did not stop, she may have to leave or police may be called to attend as her behaviour was unacceptable. The complainant left the office shortly after, advising that she was going to the Chief Minister's Office.

My office later received a letter from a local Member of Parliament, on behalf of the complainant, advising of the same issues that Ms B had already raised with my office and other agencies during her previous visit. After replying to the MP, I closed the file.

## NORTHERN TERRITORY POLICE

During the course of the financial year the Ombudsman received 274 complaints against police (322 in 2006/07) resulting in a 14% decrease in the number of complaints received.

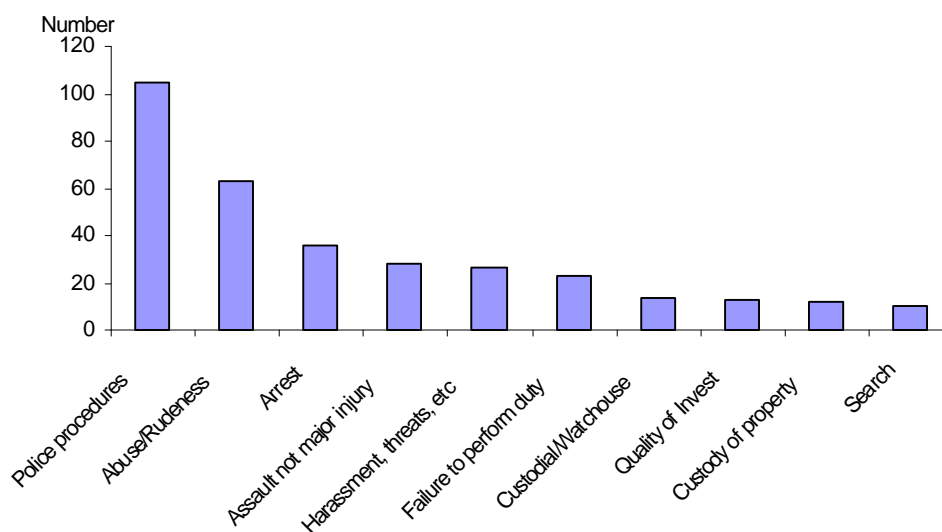
As can be seen from the figures below, the improvement in the average time taken to close complaints against police has been maintained when compared to last financial year.

- 2005/06 – 64% closed within 180 days
- 2006/07 – 79% closed within 180 days
- 2007/08 – 76% closed within 180 days

### ISSUES COMPLAINED ABOUT

Information is recorded about the issues described in every complaint received about police. The ten issues most complained about are depicted in the Chart below.

**Chart 17: Issues Raised in Complaints (Police)**



**Table 6: Police issues most complained about – 3 year comparison**

Issues	2005/06 %	2006/07 %	2007/08 %
Policy and procedures	28	29	28
Abuse and rudeness	17	18	17
Arrest	11	10	10

The three major issues complained about have not changed over the past three years nor have they as a percentage of total issues complained about.

## HOW COMPLAINTS WERE FINALISED

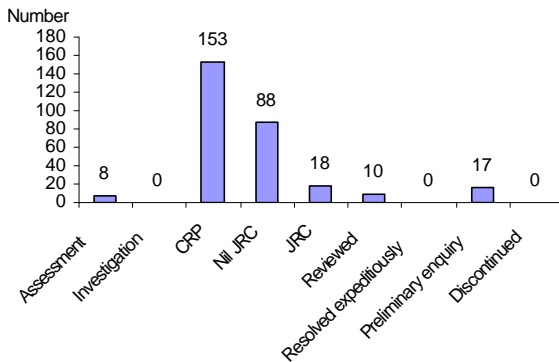
In all, 294 complaints were finalised in 2007/08.

Complaints against police are dealt with in various ways depending upon the severity of the allegation and the seriousness of the conduct complained about. Chart 18 provides a summary of the way complaints against police were finalised.

An explanation of the acronyms used in the Chart follows:

- **JRC** – The Joint Review Committee (JRC) is established pursuant to the ‘*Guidelines Between Commissioner of Police & Ombudsman For The Handling Of Complaints Against Police*’ and is charged with the oversight of the investigations into the more serious complaints against police. The JRC comprises the Commander of the Ethical and Professional Standards Command (EPSC) as a representative of the Commissioner of Police and the Deputy Ombudsman as a representative of the Ombudsman. These complaints are initially investigated by the EPSC and their report together with all documents are reviewed by the Ombudsman’s Office and a joint report on the outcome of the investigation is then signed off by the JRC and provided to the complainant and the Commissioner of Police. The complainant may seek a review of the JRC decision by the Ombudsman.
- **Nil JRC** – These are complaints that, by agreement with the Ombudsman’s Office, are investigated by the EPSC without oversight by the JRC. The outcome of the EPSC investigation is provided direct to the complainant and a copy is provided to the Ombudsman. The complainant may seek a review of the Nil-JRC report by the Ombudsman and, if that occurs, all the evidence and documents obtained by the EPSC are provided to the Ombudsman.
- **Complaints Resolution Process (CRP)** – These are complaints where, by agreement with the Ombudsman’s Office, after considering details of the complaint, the complaint is conciliated directly between the Police Force and the complainant and an agreement is signed between the parties once concluded.
- **Investigation** – A matter investigated solely by the Office of the Ombudsman.
- **Reviewed** – These are matters that have been finalised under either the Minor Complaints Resolution Process, the Nil JRC process or the JRC process which are then referred by the complainant for personal review by the Ombudsman.
- **Preliminary Enquiries** – These are complaints where the Ombudsman’s Office undertakes initial inquiries into the matters complained about to assist in determining the substance of the complaint. Where it is found that there is no substance to the complaint no further action is taken.
- **Resolved Expeditiously** – These are complaints which are resolved quickly by the Ombudsman’s Office direct with the complainant through the provision of information or advice.

**Chart 18: Finalised complaints (Police)**



Of the 294 complaints finalised, 88% were referred to police to investigate and respond to the complainant directly (83% in 2006/07). Of these, 52% were resolved through the Complaints Resolution Process (CRP) and 30% through the Nil JRC process. Only 6% of complaints were finalised through the Joint Review Committee (JRC) process (17% in 2005/06).

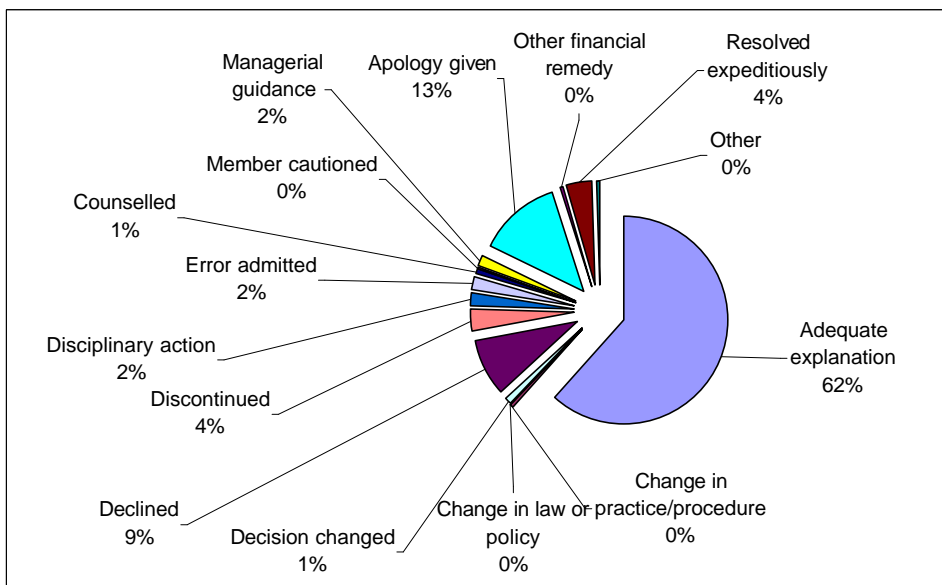
I am particularly pleased that:

- there has been a significant reduction in the number of complaints requiring oversight by the JRC. Reduced from 28% in 2005/06 to 6% this financial year.
- of the 294 complaints finalised, over half (52%) were resolved by utilising the CRP process (41% in 2006/07).
- 9% of complaints were finalised without the need to be referred to Police to investigate or respond to. They were either found to have no substance, were discontinued or were resolved expeditiously.

**OUTCOMES OF FINALISED COMPLAINTS**

Chart 19 shows the outcome of complaints. As can be seen the most frequent outcome (62%) was to provide an adequate explanation to the complainant. This was followed by the issuing of an apology by police (13%).

**Chart 19: Outcomes achieved from finalised complaints**





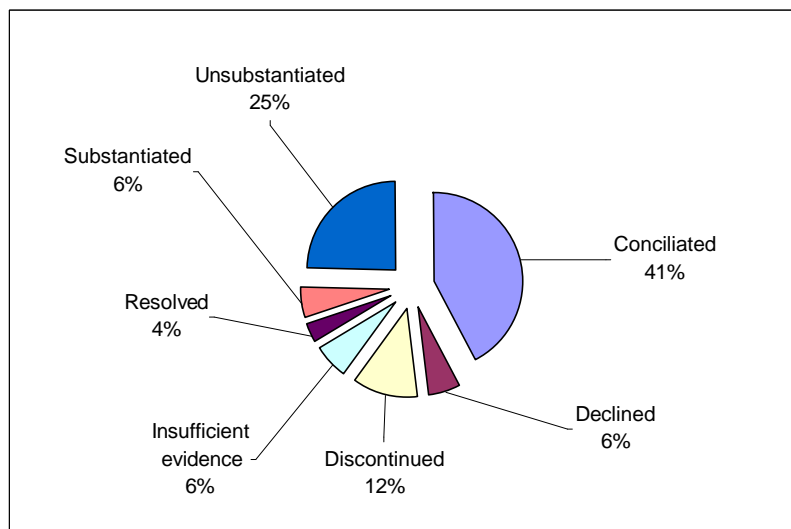
Action was directly taken against members of the NT Police as follows:

- Managerial guidance (2%)
- Counselling (1%)
- Discipline (2%)

### Extent to which outcome favoured the complainant

Chart 20 sets out the practical outcome of complaints and reflects the Case Officer's assessment as to whether the issues associated with each complaint were substantiated or not.

**Chart 20: Issue determinations (Police)**



32% of the issues of complaint were not substantiated (41% in 2006/07). 41% were conciliated (28% in 2006/07).

6% of issues could not be determined one way or the other because there was insufficient evidence to make such a decision.

## CASE STUDIES - POLICE

### Am I under arrest or not?

In the early hours of an August day, the complainant and friends were in the Alice Springs CBD. The group interacted with Police regarding their behaviour, with the complainant's friends adhering to the request of Police that the group had had enough to drink, and should think about going home. All parties except the complainant left the CBD in a taxi.

The complainant went to a club and was approached by Police due to his behaviour, at the time he was dancing in the venue. A Constable requested that the complainant go outside and have a discussion. This officer later provided several differing versions about what then occurred. The complainant stated that he ran from the venue and was pursued by Police, that he was apprehended with the use of OC, physical force and handcuffed. The complaint to this Office was that the complainant was wrongfully arrested and that excessive force was used during his arrest. The complainant was charged by Police and later convicted in a court of law.

A Joint Review Committee (JRC) investigation was undertaken into the issues raised by the complainant. The JRC is established pursuant to the 'Guidelines Between Commissioner of Police & Ombudsman For The Handling Of Complaints Against Police' and is charged with the oversight of investigations against police. The JRC comprises of the Commander of the Ethical and Professional Standards Command as a representative of the Commissioner of Police and the Deputy Ombudsman as a representative of the Ombudsman.

It transpired that the JRC could not agree on the conclusions reached during the investigation. I therefore drafted an Ombudsman Report and provided copies to the relevant parties for comment.

The Constable concerned objected saying I had no power to release my report containing excerpts from his statements to the complainant. I disagreed. I considered that I had that power under Sections 26 and 27 of the *Ombudsman (Northern Territory) Act*. I also have power under Section 28 to cause the report to be tabled in the Legislative Assembly. The Constable also objected that, as he was required to answer questions put to him by the Ethical and Professional Standards Command, to use his statement would be unfair, oppressive and breach his right not to incriminate himself. In my opinion his statement would not be admissible against him if charges of a criminal nature were laid. However, as evidence relevant to the guilt or otherwise of the complainant, not only is it admissible on a charge against the complainant, there was a positive duty to disclose it. I remedied that omission by disclosing my report to prevent injustice.

I also point out that Section 23 of the *Ombudsman (Northern Territory) Act* has no application to a complaint against NT Police that is handled under Section 14(3) and there is no legal impediment restraining me from releasing the information in the report to the complainant, the Attorney General and the Minister for Police.

Subsequently my report was released to the complainant, his lawyer, the DPP, Commissioner of Police and the Legislative Assembly.

I recommended that the Constable concerned be disciplined for his actions on the night, this included the Constable recording incorrect information into his notes, chasing the complainant when he did not have an intention to arrest, calling for backup assistance from other officers without advising his colleagues what reason or offence the complainant was wanted for and for the Constable failing to be entirely candid and frank about his intentions and recollections of the events during the court hearing and subsequent investigation interviews. Due to the length of time taken to investigate the incident, no sanction could be applied. This Office therefore recommended counselling of the officer.

The fact that the convictions against the complainant were made on one version of events being heard by the presiding Magistrate without the other version being disclosed, in my opinion, may have rendered the convictions unsafe. That was not for me to decide. It is a matter for the Director of Public Prosecutions or an Appeal Court, or the complainant's legal advisers.

### BMX Bandit

A complaint was lodged at the Alice Springs Police Station in December 2007. The complaint was that three Police Officers observed approximately 6 youths riding pushbikes on the footpath. Police stated that several of these youths were causing traffic to slow due to their erratic riding near the roadside and several of the boys were not wearing helmets.

The Police had stopped and requested the youths to come over to the Police vehicle. All of them, except the complainant, followed the police direction. The complainant was reported by Police as jumping his BMX bike off the gutter in front of a police vehicle narrowly missing being struck by a passing car. Both Police vehicles pursued the complainant and reported that at times the complainant was riding up the road against the flow of traffic.

Police in a caged vehicle (two Constables) activated the emergency beacons and siren in an effort to get the complainant to stop, for his protection as well as passing traffic. The complainant ignored this direction and continued to ride his BMX in an incorrect manner.

Police apprehended the complainant as he attempted to jump up the gutter of a church. As Police approached him, they state that the complainant acted in an aggressive manner, waving his arms around in the air saying "*what the f\*\*k is going on*".

The youth's complaint was that he was choked by an Officer who was identified as a Sergeant, and that his right arm was twisted behind his back before having his right leg lifted causing him to fall to the ground. Further, that he was restrained on the ground and then stood up whilst continually being restrained before being taken to the police vehicle cage and having his head pushed up against it whilst the door was opened.

The complainant also alleged that he was called a "c\*\*k head", a "f\*\*k head" and a "f\*\*ken' idiot" by the Police. The incident resulted in the complainant being issued with an infringement notice for riding without a helmet and riding a bicycle incorrectly.

The Police state that not knowing what the complainant's intentions were they used force to prevent further breaches of the peace. Due to the fact that the complainant was not supplying his details and also the fact that he had already attempted to evade Police the Police convinced him to accompany them to the police station with a view to obtaining his details.

The complainant nominated five witnesses to the incident, one of them apparently having taken photos of the incident on a mobile phone. Another independent witness who was driving past during the incident stopped and told police to stop assaulting the complainant. This witness was approached by an officer before being told to move on and when she didn't immediately leave questioned her regarding the roadworthiness of her vehicle.

The Joint Review Committee (JRC) was tasked with investigating the matter. The JRC is established pursuant to the 'Guidelines Between the Commissioner of Police & Ombudsman For The Handling Of Complaints Against Police' and is charged with the oversight of investigations against police. The JRC comprises of the Commander of the Ethical and Professional Standards Command as a representative of the Commissioner of Police and the Deputy Ombudsman as a representative of the Ombudsman.

The JRC identified six issues requiring investigation:

1. Allegation that there was no lawful basis for the pursuit and apprehension of youth.
2. Allegation that excessive force was used in effecting the youth's apprehension.
3. Allegation that there was no lawful basis for taking the youth to the watch house.
4. Allegation that police exceeded their powers by giving directions to a witness in relation to his filming the incident to delete the footage.
5. Allegation that police exceeded their powers in giving directions to a witness in relation to her stopping to view the incident.
6. Allegation that police used offensive language during the incident.

As a result of the investigation into the above issues the JRC determined that the Sergeant be disciplined for engaging in the pursuit of a juvenile for bicycle offences when he was tasked to attend a more serious matter (alleged suicide attempt). The Sergeant's actions in involving himself in such a

matter demonstrated poor decision making and judgment. The JRC also recommended that disciplinary action be taken against the Sergeant for unreasonable (excessive) force used against the complainant, in that the Sergeant approached the complainant who he had pursued for bicycle offences and with his right hand pushed his index finger and middle fingers into the complainant's throat between his collar bone with sufficient force to make it difficult for the complainant to breathe. The Sergeant forced the complainant to the ground and employed a ground stabilising technique during which he kned the complainant in the back and right leg with sufficient force to cause significant bruising. After pulling the complainant to his feet, the Sergeant again put his fingers back into the complainant's throat area making it difficult for him to breathe.

The JRC also recommended a letter of apology be provided by the Commissioner of Police to the complainant and his mother for the actions taken by NT Police and that counselling be provided to the Constables for the manner in which the complainant was conveyed to the station.

The JRC further recommended that an organisational direction be given about the taking of juveniles into custody that are not specifically arrested or on a charge of an offence, where arrest is justified by law. There are no specific provisions for this in the *Youth Justices Act*. The *Community Welfare Act* only empowers police to apprehend in circumstances of a 'Need of Care'.

The JRC recommended that the Constable be formally counselled over his conduct and manner in asking a witness to delete photographs of the incident and asking a member of the public to move on when she questioned the actions of the Police apprehending a juvenile.

The final recommendations of the JRC were that an organisational direction/warning be given to Police in respect of the rights of members of the public to film Police conducting their duties. The direction/warning should describe circumstances where police might consider preventing or restricting the taking of photographs and warn members to be circumspect when giving any direction about filming.

#### **Cell mates**

The complainant (a 15 year old youth) reported that he was at the East Point Reserve with a group of about fifty friends when Police arrived. He admitted that he had been drinking beer, rum, and vodka and was intoxicated. He said that the Police grabbed him and were taking him towards their vehicle, but that they had twisted his arm behind his back and were pushing him towards the ground. The complainant described Police as being 'very rough'.

The complainant admitted that he was uttering obscenities about the Police member's mother and daughter, and that this caused the member to twist his arm further up his back and to push him further towards the ground. He said that the male officer then slammed him into the bonnet of the Police vehicle. He advised that when Police were doing this the members were yelling "stop resisting arrest"; however, the complainant claimed he was not resisting.

The complainant continued to yell obscenities about the member's mother and daughter, at which point one of the members allegedly punched the complainant in the left eye and then slammed him into the Police vehicle about four times. The complainant believed there were several witnesses to this alleged assault upon him by Police.

The complainant stated that other Police members arrived, and he was then thrown on to the ground and dragged along the ground by the Police towards their vehicle. He claimed that he was then picked up and thrown head first into the cage of the Police vehicle. He stated that the vehicle was then driven roughly to the watch house.

At the watch house, the complainant stated that he was slammed against the bench a few times by more than one Police member at the same time. He also claimed that when he was emptying his belongings on to the bench one of the members threatened to steal his money.

The complainant was placed into a cell and soon after an Aboriginal male was placed into the cell with him. The complainant soon realised that this was the Aboriginal male who had been making signals

towards the complainant that he wanted to fight the complainant, when he was at the watch-house reception counter being processed. The complainant alleged that when Police placed this person into the cell with him they said *"have fun"* and walked off. The Aboriginal male asked the complainant *"do you want to fight me?"* to which the complainant replied *"no"*, however this person allegedly punched the complainant up to five times with both fists.

The complainant alleged that Police casually strolled in, removed the Aboriginal male and placed him in the opposite cell, whereupon he commenced laughing about how he had just bashed the complainant.

The complainant continued that he began kicking the cell wall and pressed the intercom button, to which someone answered *"you got bashed by a black"*. The complainant also states that loud classical music was played in the cell all night.

The complainant claimed that the next morning a police member came to the cell and told him that he got the black eye because he was a racist, and that this member also threatened the complainant. The complainant was released into the custody of his mother.

A detailed investigation of the complaint was conducted by the Ethical and Professional Standards Command of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC is established pursuant to the 'Guidelines Between the Commissioner of Police & Ombudsman For The Handling Of Complaints Against Police' and is charged with the oversight of investigations against police. The JRC comprises of the Commander of the Ethical and Professional Standards Command as a representative of the Commissioner of Police and the Deputy Ombudsman as a representative of the Ombudsman. The JRC finalised its consideration of the complaint and provided a report to the complainant for his information.

In accordance with Section 128 of the PAA, a member may take an 'intoxicated person' into custody, more commonly referred to as 'protective custody'. 'Intoxicated' is defined under Section 127A of the PAA as meaning 'seriously affected by alcohol or a drug'.

The law treats the taking of a person into protective custody as an 'arrest'; this is because when a person is taken into protective custody they are effectively being restrained and cannot leave as they choose. As such the Police have a duty of care to persons taken into protective custody, just as they would for someone they have arrested for committing an offence.

The NT Police Custody Manual states:

8. *Intoxicated Persons*

8.1 *Where police attend an intoxicated person and form the view that protective custody is necessary, they should convey that person to a sobering up shelter where such facility exists, or other such place the occupants of which (family/friends) are willing to accept care of the intoxicated.*

8.2 ...

8.3 *Police cells should only be used as a last resort for the custody of intoxicated persons.*

It was determined from the evidence that the complainant was seriously affected by alcohol and/or other substances at the time of his arrest. The JRC found that it was open to the members present to decide to take the complainant into protective custody.

Police policy is quite clear however that the Police cells are only to be used as a last resort. The fact that Police made no effort to contact the parents until the end of the maximum period of custody was of concern given the fact that it would have been easy to get contact details (phone number, home address etc) from the Police database.

The JRC recommended that the Constables be given managerial guidance as to the proper procedures to be followed regarding persons taken into protective custody, especially in regards to juveniles and contacting parents or guardians in the first instance.

The JRC found that the force used by the members involved in pushing the complainant against the counter was reasonable given the circumstances.

The JRC also found that the Senior Auxiliary failed in his duty of care to the complainant by deciding to house the complainant and the other male in the same cell, when the hostility between the two was clearly displayed.

The JRC found that the Police failed in their duty of care to the complainant, by not questioning the decision of the Senior Auxiliary to place the other male in the same cell. They could have fulfilled their duty by notifying the Watch Commander of the situation, but they chose to do nothing. Instead they relied on the excuse that the Senior Auxiliary was the Watch House Keeper and thus it was his decision to make.

The JRC was of the opinion that the evidence lent itself to the proposition that the Senior Auxiliary, Senior Constable, Auxiliaries, and Constables ought to have realised that, given the circumstances, the Aboriginal male was likely to assault the complainant when placed together in the cell at the Darwin watch house and, as such, failed to fulfil their duty of care to the complainant who was a person in their care and custody.

The JRC noted that both the Senior Auxiliary and Senior Constable were charged with assault in respect to this matter but the DPP withdrew all charges against the two members. This did not alter the JRC's finding that these two members' failed in their duty of care.

The JRC recommended that the Commissioner of Police formally apologise to the complainant for the action of his members.

The JRC found that an adequate examination of the complainant's injuries was not carried out. The JRC found that section 13 of the Custody Manual was not complied with and that the responsibility for this failure rested with the Watch House Keeper.

The JRC found that effectively no medical treatment was rendered to the complainant for the injuries suffered during the assault.

The JRC also found that the Watch House Keeper failed to make the required journal/database entries about the injuries suffered by the complainant.

### **Drunk driver escapes penalty for causing accident**

An elderly female complainant was involved in a traffic accident with another vehicle and sustained significant injuries. Both parties at the scene were conveyed to the hospital and blood taken for analysis.

The results of the test indicated that the other driver was over the alcohol limit for driving and was told to expect a summons. The elderly female's results at that time had not come back from the Lab, so the case officer decided to wait for her result before actioning the matter.

The complainant's family took an interest in the criminal investigation of the other driver and asked the Officer in Charge of the police station to keep him informed of progress. Initial regular communication from the OIC tapered off, until several months later when the complainant's family sought an update. Her son was then told that the statute of limitation had been reached, this being six months for a drink driving offence, and that as a result of the case officer failing to prefer a charge, the other driver could not be charged.

The complainant's family was angry that the offender had escaped punishment and wanted to know why the investigation had taken so long and whether any officer would be held responsible.

The investigation of the complaint, conducted under the oversight of the Joint Review Committee found that neither the investigating officer nor his OIC had been aware of the statute of limitation for the offence of drink-driving, believing it was 12 months. The police station was a busy one and the investigating officer provided this reason, his leave, and lack of knowledge on the statute limitation as excuses for not acting.

The JRC found that there had been undue delay in the investigation, notwithstanding the workload of the station and the fact that blood alcohol content results for the other driver took around three months to be made available to the investigating officer. The JRC found that the OIC had not managed workloads effectively or case managed his staff efficiently. The JRC noted that the lack of awareness of the statute of limitation for this offence could not be attributed to lack of experience or training; rather it was due to lack of proper regard to checking facts.

NT Police had already initiated disciplinary action in respect of the investigating officer and the OIC prior to the JRC completing its investigation. The JRC recommended that NT Police offer an apology to the complainant. It also recommended that the Blood Alcohol Content Result form be amended to include a statement reminding investigating officers that a six month statute of limitation applies to drink driving offences and that a failure to submit a prosecution file within this period may result in disciplinary action.

Both recommendations were accepted and implemented by NT Police.

#### **Actions of over zealous police officer has unexpected consequences**

The complainant in this matter is understood to have a slight intellectual disability. He had also had an accident and had recently been released from hospital and was on crutches at the time of the incident with police.

Aboriginal Community Police Officers (ACPOs) undertaking routine patrol observed the complainant wearing a shirt that appeared to be an item of Federal Police uniform. They approached the complainant to question him about his identity and the resulting answers suggested that he was claiming to be a Federal police officer, although this appeared unlikely to be true. The complainant was asked to accompany the ACPOs to the police station to 'sort the matter out' and despite objecting to this he was escorted into the police van and taken to the station.

At the station the Sergeant made a phone call to the Federal Police and quickly established that the shirt was no longer in official use and was known to have found its way into Opportunity Shops, to the dismay of the Federal Police who would prefer not to provide opportunities for people to impersonate a police officer. The Sergeant agreed that the situation would be ideally resolved by the complainant voluntarily surrendering the shirt. He determined there was no basis to hold or charge the complainant and instructed the ACPOs to take the complainant home. This they did, again transporting the complainant in the cage of the police van.

Once at his house the complainant leapt out and told the ACPOs to go away in no uncertain terms. However they pursued him to his door, insisting that they would not leave without the shirt, this being the impression they had gained from overhearing the sergeant's phone call to the Federal Police. Despite the complainant's attempt to close the door in their face the ACPOs entered his house, causing the complainant to slip to the floor. Whether he was actually held down on the floor as alleged could not be established, however, the end result was that he agreed to hand over his shirt and the ACPOs then left with it. On return to the police station they faced the wrath of the Sergeant, who had been telephoned by the irate complainant and heard what had happened. By this time the complainant wanted nothing more to do with the shirt and had refused the Sergeant's offer to return it.

The JRC found that there was no lawful basis for the arrest and that the arresting officer was insufficiently familiar with the legislation and his powers of arrest. It further found that transporting the complainant in the cage of the van after the Sergeant had determined there was no reason to keep him in custody amounted to unlawful custody and that the entry by the ACPOs into the complainant's residence was also unlawful. The JRC also found that the Sergeant had failed to properly brief the ACPOs, resulting in misunderstanding as to what he required. Disciplinary action was taken against the arresting officer, while the Sergeant was counselled for his role in the matter. The JRC recommended that consideration be given to the adequacy of ACPO training and steps are now underway to improve in-service training.

### Search of juveniles denied by police members

The complainant was driving her vehicle when she was intercepted by Police in a busy section of town. The complainant and the other four occupants of her vehicle were told to get out and stand by the side of the road. Police then proceeded to search her vehicle without consent and without informing the complainant of the grounds for the search. The complainant also stated that one of the occupants of the vehicle was made to empty the contents of her handbag on the curb. This caused the occupant significant embarrassment insofar as personal items were on display for others to see. The complainant also advised that the passengers were ordered to tip out opened and unopened containers of alcohol during the incident.

The investigation of this complaint, conducted under the oversight of the Joint Review Committee found that:

#### **Issue 1 – Complaint that Police conducted an unlawful search of vehicle**

Pursuant to section 120C of the *Police Administration Act*, members are authorised to search a vehicle if they have “reasonable grounds to suspect that a dangerous drug, precursor or drug manufacturing equipment may be found on or in it”. No evidence had been tendered by Police to suggest that any of the members involved in the apprehension of the vehicle had such reasonable grounds.

There was also no consensus between the Darwin and Alice Springs members involved in the incident as to whether or not a search of the vehicle actually occurred. Three of the four Darwin members denied that a search of the vehicle took place, and that members only entered the vehicle to complete a road worthy inspection, i.e. check seat belts, handbrake etc. In contrast, all of the Alice Springs members interviewed indicated that a search of the vehicle did take place and that the search was conducted by the Darwin members alone. All of the passengers of the vehicle confirmed that Police conducted a thorough search of the vehicle.

The JRC was of the opinion that a search of the vehicle did take place and further, that the search was conducted by the Darwin members only with Alice Springs members limiting their actions to checking under the bonnet of the vehicle, checking the complainant’s licence and breath testing the complainant.

The JRC found that the Darwin members interviewed, were at best inaccurate in their evidence as to what occurred and, at worst, dishonest. In light of the overwhelming witness evidence that a search did occur, the JRC found that the Darwin members were less than truthful in this aspect of their evidence.

The JRC concluded that the issue of complaint that Police conducted an unlawful search was substantiated and that the Commissioner apologise to the complainant for the unlawful search of the vehicle. The JRC further recommended that three of the Police members receive counselling and managerial guidance in regards to their participation in the unlawful search of the vehicle. Disciplinary action would have been recommended, however, the six month disciplinary period under the *Police Administration Act* had already expired.

#### **Issue 2 – Complaint that Police may not have adhered to the *Juvenile Justice Act* in their dealings (i.e. searches, questioning etc.) with the four passengers of the vehicle who were all juveniles**

The JRC found that a female passenger of the vehicle was told by member(s) to tip out the contents of her bag on to the ground in full view of other persons, and that she complied with this request even though she made it known to members that she did not want to. The JRC also believed, on the evidence provided, that member(s) searched passenger’s bags, and told another passenger to turn out his pockets for inspection. All of the passengers of the vehicle were juveniles and two were obviously intoxicated.

The applicable legislation in relation to juveniles in the Northern Territory (at the time of the incident) included the *Juvenile Justice Act* (the JJA) (which has since been repealed and replaced by the *Youth Justice Act*), the *Community Welfare Act*, and the *Police Administration Act* (the PAA).

The JRC was satisfied that the action of the Police in asking the names and addresses of the complainant’s passengers was in accordance with the relevant legislation and NT Police General Order



C1 – Children (Juveniles). However, the JRC found that the searches of the complainant's passenger's bags were not undertaken in accordance with the relevant legislation or the NT Police General Order C1 – Children (Juveniles).

The JRC is also mindful of the fact that the members involved were faced with a situation where a number of juveniles were drinking alcohol whilst in a vehicle which was described by members as driving 'erratically' through town. It is understandable that the members would have wanted to ensure that the juveniles did not continue drinking. Unfortunately, in this case, the members failed to comply with the JJA and the NT Police General Order. The juveniles in question admitted, during their interviews, that they understood why Police wanted to ensure that they did not have any alcohol in their possession.

It was also not readily understood why Police did not contact the parents of the juveniles before allowing them to leave in the complainant's vehicle, or in fact why they (the passengers) were not conveyed to their parents.

In relation to this issue of complaint the JRC recommended that all of the members involved be given managerial guidance in regards to the existence and application of the *Juvenile Justice Act* (now *Youth Justice Act*) and the NT Police General Order C1 – Children (Juveniles), particularly in regard to searches of juveniles.

### **Issue 3 – Complaint as to whether or not Police were authorised to order the tipping out of alcohol in the complainant's and passengers' possession.**

All four of the complainant's passengers were minors at the date of the offence. Two of them were noticeably intoxicated when the vehicle was apprehended by Police. Police correctly instructed the passengers to tip out opened containers of liquor. However, the members should not have instructed them to tip out the unopened cans of liquor in their possession; instead, they should have seized those cans in accordance with their powers under the provisions of the *Summary Offences Act*, and taken them back to their station where it would have been destroyed.

Although the members involved did not strictly comply with the requirements of the *Summary Offences Act*, the JRC found that it was reasonably clear that they believed they were acting in the best interests of the minors whom the liquor belonged to.

In relation to this issue of complaint the JRC recommended that the members involved be given managerial guidance in relation to their powers to seize and destroy liquor under the *Summary Offences Act*.

### **Intellectually disabled Aboriginal man unjustifiably sprayed with capsicum**

The complainant was a 30 year old man under an intellectual disability who had lived most of his life at a remote Aboriginal community, and was being supported by a disability program in the community. He complained that he was sprayed in the eyes with capsicum spray by a Bush Patrol police officer. In addition a witness provided a statutory declaration outlining his observations. The witness stated that he did not see any weapon near or on the complainant's person at the time and stressed the fact the complainant did not offer any form of physical aggression. The complainant believed there was a prima facie case to suggest that the use of the capsicum spray may not have been justified.

The investigation of this complaint was conducted under the oversight of the Joint Review Committee.

The JRC accepted that the complainant (prior to the incident) was at a community school armed with a knife in the presence of a large number of children and that he was confronted there by an Aboriginal Community Police Officer (ACPO) who disarmed him and then searched him for other weapons, with no other weapons being located. The JRC also accepted that the ACPO then spoke to two local Constables advising them that he had disarmed the complainant and requested that they speak to the complainant about the incident involving the knife.

The JRC found that the ACPO did not inform the Constables of the complainant's intellectual disability or any other background information, nor did he advise them that he had already searched the complainant for other weapons.

The JRC also found that the complainant refused to give the two Constables his name or to comply with their verbal requests to stand up or move from his sitting position, and that he also swore at them.

The JRC found that the complainant remained seated through the entire incident, even when sprayed twice by one of the Constables, and that he did not react in any physically aggressive way towards the two Constables at anytime. The only aggressive behaviour demonstrated by the complainant was that he swore when responding to the Constables' questions and that he looked 'angry'.

During the whole time of the incident the complainant's hands were always in clear view. Furthermore, he was wearing a singlet and pair of shorts, limiting the places he could have successfully hid a weapon on his person. The JRC accepted, however, that the Constables were unsure whether the complainant had a knife or not at the time they were speaking with him.

The situations in which Police may use ASR's are set out in clause 15 of the OSTP Manual. The OSTP Manual very clearly states that ASR's must not be used against persons *'offering passive resistance'*. The JRC found that in this case the complainant was offering passive resistance only and the situation did not fall within those listed in clause 15. The Constables did not attempt to use 'empty hand' tactics, such as restraint holds, in the situation, before they escalated the amount of force to the use of the ASR.

The JRC noted that although only one of the Constables administered the ASR, the other Constable approved the action taken by signalling his agreement and they were therefore jointly responsible for the action.

In regards to the actual arrest of the complainant, NT Police are authorised pursuant to section 123 of the *Police Administration Act* to take someone into custody without an arrest warrant if the Police member *'believes on reasonable grounds that the person has committed, is committing or is about to commit an offence'*. It was clear from the information provided by the ACPO that the Constables had such reasonable grounds and, as such, were authorised to arrest the complainant without a warrant.

It was the Constables' duty to ensure that they used the minimum amount of force necessary to affect an arrest. Given the circumstances of this case, the JRC found that the force used by the Constables was unreasonable, in that they failed to attempt to utilise other options available to them.

It is not known why the Constables did not take more time to gather background information on the person they were dealing with before approaching a possible armed suspect. They had ample opportunity to do so with the ACPO who, if questioned further, would have been able to advise them that the complainant was suffering from an intellectual disability, that he was under an Adult Guardianship order, that he had been searched and was no longer armed. The Constables may also have been able to avoid any incident at all if they had sought the assistance of the complainant's family in the first instance, as was normally the practice of the ACPO, and had they sought facts from the ACPO they may have extracted this information.

The JRC also noted the absence of any General Orders or guidelines for members in relation to their dealings with persons suffering from an intellectual disability.

The JRC recommended that formal counselling be given to one of the Constables who was a trained OSTT instructor and the senior member. It was his duty to take control of the incident and mentor the junior officer. Further, that he undertake additional training in his role as an OSTT instructor as it was clear from his responses during interview that he was uncertain of the actions that could be taken. The JRC further recommended that the other Constable receive managerial guidance in relation to the use of ASR and the actions he took during this incident.

The JRC also recommended that the Commissioner formally apologise to the complainant (through his carer's and family if necessary) and that the Commissioner consider developing guidelines to assist members in dealing with persons who are intellectually disabled. Such guidelines may include the requirement of bulletins to be issued in regards to known violent intellectually disabled persons in remote communities and include carer contact details for them.

### **Best friends destroyed**

The complainant attended the Office of the Ombudsman visibly upset and distressed when making his complaint.

The complainant and his neighbour work away from home frequently. Last year the complainant owned 3 dogs (1 male and 2 females, two of which were purchased from the RSPCA). In August 2006 his next door neighbour decided to shoot the two bitches as he had been advised by a person house sitting at his property, whilst he was away, that two ridgeback dogs had mauled his own dogs killing a puppy aged about 8 months old and requiring another to have vet treatment. The complainant's bitches were locked away in bitches boxes at the time of being shot and were not a threat to any person or animal when the neighbour decided to kill them a day after the attack on his dogs. It was apparent that one of the dogs had moved around the cage for some time bleeding from the bullet wound before lying down next to the other deceased dog.

The neighbour, after shooting the two caged dogs, went home and called the Police to advise them of what he had done. The neighbour later confirmed in a JRC interview that he never believed he had any right to shoot the dogs on a property other than his own but, instead, made the conscious choice to take the matter and law into his own hands and discharge a firearm on property which was not his and was without authority. The Police investigation resulted in only two charges being preferred, that being, Discharge a Firearm on Land without Authority and Trespass. During the court process the charge of trespass was dropped.

The précis of evidence written by the Police indicated that it was two ridgeback dogs that attacked the neighbour's dogs. The police who had attended the property and saw the deceased dogs in their cage (a white bull terrier and a small brown mixed ridgeback) photographed the two dogs.

The first point raised by the complainant was that he did not own two ridgeback dogs. It was clear from the photographs taken by Police that one of the dogs was definitely not a ridgeback and did not look like or have the features of a ridgeback.

The complainant asked this office to investigate why the Police had incorrectly described his two dogs in the court précis, why the Police failed to provide a factual event to the court, why the Police didn't make inquiries to determine the truth about what his neighbour had told Police, why the Police didn't interview the 'house-sitter', why the précis incorrectly reported that on the day of the shooting the Police spoke with the complainant when in fact he was hundreds of kilometres away at work, why hadn't the police charged his neighbour for unlawfully killing his pets, why hadn't the Police contacted the vet to corroborate information provided to them, why didn't the Police notice that apart from the bullet wounds to his dogs that there was no sign injury from them being in a fight with the neighbour's 3 dogs, and why the Police hadn't questioned the neighbour about his intentions if a person had been at home when he attended the complainant's property armed with a firearm.

The second issue raised by the complainant was that he was not informed of the charges against his neighbour, that he was not informed about the investigation process, that he received no advice about restraint orders or trespass notices and when he requested the Police submit a victim impact statement to the court he was told that he could not do so.

The third issue of complaint was that the Police had told him that his neighbour was 'well within his rights' to shoot the dogs. The complainant was very concerned that the police accepted his neighbour's version of the event without seeking any further evidence; this in turn, leading to 'misleading' information being placed into the court précis of evidence.

Finally the complainant reported that his daughter (a Justice of the Peace) had previously been house-sitting at his property. She had heard a young dog yelping in pain and, believing the dog was under attack by the same 2 ridgebacks, entered the neighbour's property. She saw the 'house sitter' watching two blue healer dogs attacking a small puppy. The house sitter was not doing anything to stop the puppy from being severely injured. The complainant's daughter asked the house sitter what was going on. This person replied that the "big ones are teaching the little one a lesson". The complainant's daughter was horrified and sickened by what she was watching. After stating that if he didn't stop the attack she would call the RSPCA, the male grabbed the young puppy and threw it to one side, kicking the blue healers into submission. The complainant's daughter walked away not knowing what to do.

She suggested to this Office that, whilst the neighbour is away, his 'house sitter' purposely has the older dogs attack the younger pups. It was opined that this house-sitter probably caused the older dogs to attack and kill the puppy when the neighbour was away and that he made up his story about the complainant's dogs to direct the attention away from himself.

The JRC investigated the complaints made. The JRC found that all the complaints made by the complainant were substantiated. Due to the length of time taken to investigate this matter, and the matter being held so as not to interfere with the judicial process, the statute of limitation for disciplinary action being taken against the Police had expired. Therefore the JRC determined that an apology from the Commissioner of Police be sent to the complainant and managerial guidance and counselling be provided to the officers involved in the matter.

## ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES

### OUTPUTS

1. Recommendations made to agencies and other appropriate bodies.
2. Follow-up on implementation of recommendations.

### HIGHLIGHTS

During the year, the Ombudsman made 141 recommendations to government agencies, local councils and the NT Police of which 135 were adopted and implemented in some form.

A comparison of the number of recommendations made and those adopted over the past three years follows:

**Table 7: Recommendations made**

	2005/06	2006/07	2007/08
Recommendation made	244	131	141
Recommendation adopted	230	125	135

There has been a reduction in the number of recommendations made and recommendations adopted this year when compared to last financial year.

Examples of significant investigations undertaken by the Ombudsman follow:

### WOMEN IN PRISON

In early 2006 an investigation was launched by the Office of the NT Ombudsman into systemic concerns surrounding the conditions for women prisoners in the Northern Territory. The investigation followed a series of complaints being received from women at Darwin Correctional Centre (DCC).

The central issues of complaint explored in the investigation were:

- Access to programs, education and employment for women prisoners.
- The management of and support for women prisoners with mental illness, cognitive disability or acquired brain injury.
- The prison's response to self harm and attempted suicide.

The complaints were primarily against NT Correctional Services (NTCS) (Department of Justice) but also concerned the mental health care and disability services provided by the NT Department of Health and Community Services (DHCS).

The investigation sought to establish the current situation on the ground for women prisoners at Darwin and Alice Springs Correctional Centres and measure it against the national and international standards and literature on best practice. It found a number of positive recent initiatives and considerable momentum and enthusiasm for change among staff and management. It also found a lack of resources, poor planning, outdated and inappropriate procedures and a failure to consider women as a distinct group with specific needs. This had resulted in a profound lack of services, discriminatory practices, inadequate safeguards against abuse and very little in the way of opportunities to assist women to escape cycles of crime, poverty, substance abuse and family violence.

Women constitute a small but growing part of the NT prisoner population. Their small numbers present both a challenge and an opportunity for the Territory to get things right. This investigation sought to identify key problems, suggest a framework for action, and put forward a series of practical recommendations to achieve this aim.

The recommendations put forward by the Ombudsman were:

### **The need for a women-specific approach**

1. That NTCS supply this office with a draft copy of the new women's policy within six months of the release of this report.

### **Programs, Education & Employment**

2. That in light of the generally shorter sentences served by women, DCC develop a specific assessment process for women prisoners which allows for a full case plan at the 3 month rather than the 6 month point.
3. That with the roll-out of IOMS assessment tools, the shorter sentence length of women be taken into account in formulating assessment procedures.
4. That the DCC Superintendent's undertaking to develop and implement a new induction process for women prisoners (with a view to making it more practical, comprehensive and targeted) be completed within 6 months of the release of this report.
5. That the new induction process include the production of a prisoner handbook (in audio as well as hard copy format) specific to women at DCC in consultation with women prisoners. Women prisoners should be invited to write or audio-record some sections themselves, and be provided with the facilities to do so.
6. That the new process and handbook be reviewed in consultation with women prisoners after a 6 month period to ensure that it is meeting its aims.
7. That the Prisoner Rehabilitation Team develop a core number of programs specific to women based on the available research about best practice in women's programming and in consultation with currently serving women prisoners. That these core programs include:
  - a) Alcohol rehabilitation.
  - b) Family violence and abuse.
  - c) Children and parenting.
8. That the Prisoner Rehabilitation Team develop a delivery schedule for programs in J block for the forthcoming year.
9. That NTCS adopt a service charter for female prisoners at DCC which ensures access to these core programs on a regular schedule regardless of class size, in

order that each prisoner serving a sentence or on remand for three months or more *will* have access to a suitable program.

The core programs need not be delivered by the Prisoner Rehabilitation Team directly but could be delivered by other appropriate organisations outside the prison or in a joint partnership arrangement.

10. That NTCS appoint a project officer to actively negotiate with community organisations and other services outside the prison with a view to involving them in the delivery of rehabilitation programs (both core and non-core) to women to the greatest extent possible. The access of these organisations to the prison should be encouraged and facilitated, including by fee-for-service arrangements where appropriate.
11. That the NT Government make the necessary funds available to NTCS to action these recommendations without removing funds from men's programming.
12. That NTCS review its educational provision for women prisoners and develop short, medium and long term plans in consultation with women prisoners to enhance the variety of courses available to women at both DCC and ASCC.
13. That NTCS develop educational courses specific to the needs of women prisoners, including conducting an examination of the feasibility and delivery options of each of the following courses suggested by J block prisoners:
  - a) Accelerated Literacy
  - b) English as a Second Language
  - c) Living skills
  - d) Budgeting
  - e) Basic Hygiene
  - f) Cooking
  - g) First Aid
  - h) Courses leading to trade qualifications
  - i) Interpreting (Aboriginal languages)
  - j) Nursery training
  - k) Agriculture
  - l) Ranger, conservation and 'Caring for Country' training
  - m) Deckhand course
  - n) Crocodile management
  - o) Facilitators course
  - p) Counselling services
  - q) Certificate 4 – workplace training and assessing
  - r) Bush medicine and tucker, tracking skills
  - s) Traditional weaving
  - t) Aboriginal culture.
14. That the Education Unit ensure that appropriate support is provided to prisoners undertaking external studies including liaison with the educational institution, sending assignments, receiving results, conducting examinations, obtaining required study materials, photocopying, downloading documents, supply of writing materials, and general advice and support.
15. That reasonable access to computers (and where required, internet) be provided to prisoners undertaking external courses.
16. That the DCC Education Unit consult with women prisoners to develop a formalised peer tutoring network supported by qualified staff, to supplement but in no way replace the provision of formal education for the block.

17. That NTCS decide as a matter of policy that a similar range of employment options, including full time work, will be available to female prisoners as for male prisoners on similar classifications.
18. That NTCS allow and encourage women to become involved in prison industries work alongside men, and put in place the appropriate procedures to facilitate this.
19. That NTCS develop and implement a plan in consultation with women prisoners to bring its employment opportunities into line with the relevant standards. That this plan include:
  - a) Undertaking an analysis of the skills in demand in women prisoners' home towns and communities in consultation with women prisoners, community councils, land councils, Federal and Territory government departments, industry and other stakeholders. The analysis should include consideration of different types of criminal convictions and the limits they place on employment options.
  - b) Developing new work opportunities in prison to match this analysis as closely as possible.
  - c) Emphasising employment linked to vocational education which can lead to formal accreditation.
  - d) Expanding access to the Community Support Program for women prisoners at DCC including on a full time basis, and instituting access in the case of women at ASCC.
  - e) Exploring opportunities for meaningful volunteer work on the block by developing partnerships with community service organisations and government departments.
  - f) Linking employment to existing education options. For example, enhancing the employment outcomes of the existing art program by adding an additional unit focussed on training in relevant aspects of the art industry and involving work experience, for example, in co-managing prisoner art exhibitions in the community.
  - g) Developing the capacity of J block facilities to enable some meal preparation for J block prisoners to occur in J block, offering skilled jobs to women prisoners. In the longer term this should be linked to formal training and accreditation.
20. That in the interim period, before J block capital works to expand programs space and facilities, DCC work to maximise access to programs and education facilities in the men's section to women.
21. That DCC implement a strategy that will enable it to expand out-of-cell hours to the women's block in order to bring it into line with the national average of around ten hours per day by mid 2008.
22. That DCC continue to monitor staffing levels to ensure that unscheduled lockdowns are kept to a minimum and do not again reach 2005 levels.
23. That DCC take appropriate measures to ensure that, in future, women prisoners are not disproportionately targeted for lockdown.
24. That NTCS develop a directive on the issue of women prisoner's access to men's courses. This directive should:
  - a) Ensure that women of equivalent security status are able to take part in courses offered to men except where women's participation is clearly inappropriate to the nature of the program (ie some therapeutic programs).
  - b) Outline the appropriate supervision and other procedures to minimise potential risks to women prisoners.



- c) Put in place measures and supports to ensure that the individual woman prisoner understands that she has the right to choose not to participate in a course alongside men or to discontinue a course if she does not feel comfortable, and will not be penalised for doing so.
  - d) Specify that access to men's courses is not considered an alternative to delivering courses specifically designed for and delivered to women.
25. That the directive be accompanied by in-service training for prison officers and other relevant staff.
  26. That women prisoners be clearly advised of, assessed for, and invited to participate in courses alongside men in an ongoing way, and that access to these courses be encouraged and facilitated in a genuine and practical manner.
  27. That Superintendent Raby's undertaking to review and formally articulate the policy regarding opposite gender escorts be supported and actioned within six months of the release of this report.
  28. That the new policy be clearly explained to prison officers and other relevant staff by way of in-service training to ensure that it is correctly implemented in future.
  29. That NTCS continue in its project to develop and implement a suitable model for gradual release for NT prisoners.
  30. That NTCS review the classification system for women prisoners and develop specific measures to facilitate women prisoners moving to D classifications, or develop a specific classification processes for women, in order to facilitate their access to programs, education and work in the community.
  31. That NTCS develop and implement a comprehensive individual case management model for the Territory over the next five years, including the development of policy and procedures, staff and training, and appropriate facilities. That the model fully recognise the specific situation of women prisoners, their generally greater need for welfare services and their shorter sentences.
  32. That NTCS implement Recommendation 43 of the CAYA Review of Adult Custodial Services by providing case management staff on the ratio of one case management officer per 35 to 50 inmates.
  33. That in light of this investigation, the Department of Justice review the fifteen recommendations of the NT Legal Aid Commission's 2006 paper *Managing Prisoner Growth in the NT* and furnish a report to the Ombudsman within six months setting out its response to the recommendations.
  34. That the Department of Justice Annual Report in future specify in its standard Custodial Services Performance Reporting the precise figure for female prisoners' "Participation in prison programs" in addition to the existing figure covering all prisoners.
  35. That the Department of Justice Annual Report contain a standing section specific to female prisoners which includes:
    - a) Which treatment intervention programs were delivered to female prisoners over the last financial year.
    - b) Which educational courses were delivered to female prisoners over the last financial year.
    - c) What types of employment were held by female prisoners over the last financial year.

## Pre and Post Release

36. That women prisoners be immediately informed of the August 2006 decision to allow them to attend the men's Pre-Release Program and that, in the absence of any other pre-release program, their attendance at the men's program prior to their release be encouraged and facilitated.
37. That until women prisoners at DCC receive access to a comparable Pre-Release Program to that currently offered to men, Directive 2.15.4 be immediately amended in order to avoid the anomaly that a female prisoner's entitlements to visits are affected by a professional visit from an agency providing pre-release information.
38. That the NT Government actively support and facilitate the development of post-release housing options for women prisoners and their children such as halfway housing, bail hostels and accommodation on the OARS NT farm.
39. That the Department of Justice liaise with Territory Housing regarding changes to Territory Housing policy which would allow prisoners on short sentences to hold onto their housing during their incarceration.
40. That the NT Government fund a community-based women's re-entry service, including the employment of a full time case management officer based in Darwin, to provide support, information, referral and advocacy for women prisoners. Consideration should be given to employing a female ex-prisoner for this position. The service should be operational within 18 months of the release of this report. I suggest that the service be hosted by OARS NT, Dawn House or other relevant organisation. Its functions would include:
  - a) Working with women during incarceration to develop an individualised post-release plan linking the prisoner to appropriate services, including accommodation.
  - b) Providing a contact point for prisoners, prison officers and other staff for concerns relating to pre and post release issues of women prisoners.
  - c) Arranging for visits to the prison by Territory Housing, the Anglicare Financial Counsellor and other agencies as appropriate to the needs of the particular women approaching release from time to time.
  - d) Linking with families, Elders and communities to which women prisoners will be returning.
  - e) Assisting prisoners to deal with issues relating to children and custody.
  - f) Developing resources such as the Release Kit produced by Sisters Inside.
  - g) Working closely with OARS NT to involve women in the services it provides, such as the carpentry workshop, art workshop and art gallery, and/or developing other services specific to women.
  - h) Working with OARS NT, the NT Government and other relevant organisations to develop suitable housing options for women prisoners post release.
  - i) Advocating for the needs of women prisoners pre and post release.
41. That in addition to this service, women continue to receive full access to the men's Pre-Release Program should they wish to attend.
42. That the NT Government fund OARS NT to employ a full time community-based re-entry support officer based in Alice Springs, to service both male and female prisoners. The exact functions of the position should be developed in consultation with OARS NT, ASCC, Prisoners' Aid, Prisoners' Fellowship, and other stakeholders.

## Mental health and wellbeing

43. That FMH and the Disability Team ensure that their clients are provided with a continuum of care from prison through to post-release support in the community, including medical and psychiatric through care, linkage with external support services, assistance with living skills and housing, and other practical and social support.
44. That the Department of Justice review the situation of weekend release of prisoners in consultation with OARS NT and consider whether a change in sentencing practice is warranted. If so, the Department should consult with the Director of Public Prosecutions to explain the effect of weekend release and consider developing a protocol with prosecuting personnel that a weekday release date be sought from the court wherever possible.
45. That NTCS Directive 2.4.2 be reviewed for its impact on prisoners with mental illness, intellectual disability or acquired brain injury. That changes include:
  - a) Setting out the principle that separate confinement is generally damaging for mental health and should be avoided wherever possible.
  - b) Setting out the principle that separate confinement may be particularly distressing for Indigenous prisoners.
  - c) Setting out the principle that the separate confinement of women in a men's block may be particularly distressing.
  - d) Setting out the principle that separate confinement for extended periods (greater than 21 days) should be avoided at all costs.
  - e) Requiring officers to demonstrate that the decision to separately confine a prisoner is a last resort and that all other alternatives are not feasible or appropriate.
  - f) Defining minimum out of cell hours for those in confinement and the conditions for the out of cell hours (including adequate space to allow exercise in the open air).
  - g) Requiring daily medical and/or FMH monitoring of those in confinement.
  - h) Requiring daily visits by the Welfare Officer and/or Indigenous Support Worker of those in confinement.
  - i) Amending Appendix A ("Management Regime for Separate Confinement") to specify that the prisoner may receive visits in accordance with the entitlements of maximum security prisoners, and that the decision to provide a contact or non-contact visit should be made on a case-by-case basis. Where the visit involves children, the presumption should be to allow a contact visit.
  - j) In the section relating to "Disruptive Prisoners":  
Clearly distinguishing between behaviours *intended* to disrupt and those disruptive behaviours which stem from mental illness, intellectual disability or acquired brain injury. In the latter case, the underlying principle should be that a health intervention is the priority, and that consultation with FMH or disability support officers is mandatory.
46. That the management cell of J block be renovated or shifted to allow access to a larger open-air area. That, in the interim, prisoners confined to the management cell receive at least one hour per day in the open grounds of J block under supervision.
47. That NTCS and DHCS establish a clear policy position that patients who have been found unfit to stand trial or not guilty on grounds of mental impairment should be housed in a hospital setting rather than prison.

48. That the Department's move to develop an appropriate long term forensic facility outside the prison, under health management, and in compliance with the national and international standards, be operational within five years of the release of this report.
49. That NTCS ensure that female prisoners are fully informed of their right to request individual counselling sessions, and the process for making such requests, through the formal induction and prisoner handbook.
50. That in conjunction with the new recording regime for counselling sessions at DCC, the prisoner Rehabilitation Team track the requests or referrals received for individual counselling sessions from female prisoners, and the waiting times between requests and delivery of the service, to ensure that waiting times are within the two week range suggested by NTCS.
51. That DHCS and NTCS furnish a joint report to the Ombudsman within one year of the release of this report which sets out the following:
  - a) The extent to which the new screening tool is operational.
  - b) Early indications as to the level of mental health and disability needs among women prisoners at ASCC and DCC.
  - c) The types and levels of services that have been delivered to women prisoners by the new disability support officers at each prison.
  - d) The level of contact between the new Top End FMH Indigenous consultant and Indigenous women prisoners at DCC.
  - e) The proportion of prison officers having completed the three new training modules on mental health, intellectual disability and acquired brain injury.
  - f) The progress in establishing an on-site FMH presence at DCC and the impact on service provision.
  - g) The progress in developing the proposed secure mental health units.
  - h) The progress in establishing a long term forensic facility for the NT.
  - i) Other progress in mental health and disability care for women prisoners, including future strategies and long term plans for expanding services.
52. That the Department of Justice, in consultation with DHCS, research and develop options for greater front-end diversion of offenders with mental illness, intellectual disability and acquired brain injury from the criminal justice system.
53. As recommended in 2006 by the Anti-Discrimination Commission Queensland and the Senate Select Committee on Mental Health, that the Human Rights and Equal Opportunity Commission conduct a national review of the treatment of women with mental health problems within the criminal justice and prison systems.

### **Suicide & self harm**

54. That section 3.4 of the NTCS Directive 2.8.3 'At Risk' Procedures Manual in relation to court-ordered At Risk status ("Management of Prisoners Flagged At Risk prior to Reception") be immediately amended to require:
  - a) Notification of Forensic Mental Health by the primary health provider as soon as practicable.
  - b) Assessment of the prisoner within two hours by the primary health provider and as soon as practicable or within 24 hours by Forensic Mental Health.
  - c) Cessation of At Risk status as per the normal procedure at section 9.
  - d) Adequate medical and mental health follow-up.
55. That the At Risk Procedures Manual be immediately amended to stipulate that in relation to prisoners identified as At Risk of self harm or suicide:

- i) Isolation in an observation cell occur only as a last resort, and only when the prisoner is a risk to other prisoners or staff.
  - ii) That observation occur by way of supportive human contact.
  - iii) That in the immediate aftermath of a self harm incident or suicide attempt, in addition to the procedures currently in place regarding assessment by the primary health provider and FMH, the following occur:
    - i. that urgent crisis counselling be arranged through the Prisoner Rehabilitation team, Forensic Mental Health, or an external provider
    - ii. that the prisoner be visited by the Welfare Officer or Indigenous Support Worker
    - iii. that prison staff facilitate contact with family members and other support people nominated by the prisoner.
56. That NTCS Directive 2.2.3 (Use of Restraints) be immediately amended to include the following procedures in relation to the use of the cell B6 restraint:
- a) That the procedures applying to “restraint belts, hobbles or body chains” apply to the use of the cell B6 restraint in addition to the following provisions.
  - b) That the restraint be used as a last resort only in order to protect a prisoner from harm to self.
  - c) That the use of the restraint be accompanied by constant direct supervision.
  - d) That a mattress always be used.
  - e) That a maximum duration for the application of the restraint be specified, in the order of two hours..
  - f) That a detailed report be furnished to the Superintendent by the senior officer containing:
    - i. a detailed statement of the reasons for use and thus the reasons for not using some alternative
    - ii. the time at which the prisoner was first restrained
    - iii. the names of the officers who were involved in the cell extraction or other event immediately preceding his being put under restraint
    - iv. a notation of the prisoner’s physical and mental condition once under restraint and
    - v. a statement that the Visiting Medical Officer had been notified and asked to attend.
  - g) That the Visiting Medical Officer note the time of his/her arrival, observations made of the prisoner, any action taken or recommended, and the time scheduled for the next visit.
  - h) That if available, the Welfare Officer or Indigenous Support Worker should attend.
  - i) The Superintendent should attend at or immediately after the time that the prisoner is released back into his/her cell, interview him/her and note and sign off any complaints made by the prisoner.
57. That the use of the cell B6 restraint be phased out over a three year period from the release of this report, in conjunction with the development of a holistic suicide prevention strategy.
58. That NTCS, in conjunction with DHCS, research and develop a multi-disciplinary suicide and self harm prevention strategy for DCC and ASCC based on best practice, which emphasises the development and strengthening of protective factors, supportive relationships, case management of vulnerable prisoners and avoids the use of isolation and passive observation. That adequate training,

programs, procedures and facilities be put in place to facilitate the strategy, including alignment with IOMS. That the strategy be in place within two years of the release of this report.

59. That DCC consult with women prisoners to consider options for the formal involvement of prisoners in suicide and self-harm prevention including the development of a peer listener scheme whereby prisoners are carefully selected, trained, paid and supported to identify and assist others experiencing distress.

### **Issues arising**

60. That DCC develop a five year capital works plan for the upgrade of J block based on best practice design for women's prisons and in consultation with women prisoners, particularly the enhancement of facilities for programs, education, sport, recreation and kitchen facilities (Low Security Area).
61. That DCC, in consultation with women prisoners, implement Recommendation 48 of the CAYA Review of Adult Custodial Services in relation to J block within two years of the release of this report. That this include:
  - a) Enhancing visits facilities by constructing additional shade and rain cover.
  - b) Developing appropriate visits facilities for children including an enclosed play area and playground equipment.
  - c) Expanding visiting times, especially for children.
  - d) Reviewing the telephone program to see if it can be enhanced and/or costs reduced.
  - e) Developing extended stay family visiting units.
  - f) Holding more family days involving barbecues and activities.
  - g) Greatly improving facilities and support for young children to be housed with their incarcerated mother.
  - h) Making visits and family contact a programs responsibility.
62. That rather than expanding female prison capacity, the Department of Justice develop a comprehensive strategy for the establishment of further alternative sentencing and remand options for women around the Territory.
63. That NTCS consider the creation of a new senior position in DCC or the alteration of an existing job description to oversee management and services to women prisoners.
64. That a prisoner committee or representative structure be established in J block within six months of the release of this report to serve the following functions:
  - a) Providing a conduit for information from prisoners to management and vice versa.
  - b) Providing a forum for management to consult with prisoners.
  - c) Hearing prisoner concerns, advocating for individual prisoners and providing a unified voice to management.
  - d) Resolving/mediating disputes between inmates.
65. That the representatives be supported in their work including receiving basic training, reasonable access to information, to areas of the block, and to stationery, and receive a meeting with the Superintendent once per month.
66. That representatives be selected by J block prisoners and paid for their work
67. That an NTCS Directive mandating the existence of the committee/ representative structure and setting out its functions and processes be developed within one year of the release of this report.

A copy of the full report can be found by accessing the Ombudsman's website at [www.nt.gov.au/omb\\_hcsc/ombudsman/statement](http://www.nt.gov.au/omb_hcsc/ombudsman/statement)

## COMPLAINANT QUESTIONS DENTAL INVESTIGATION PROCESS

### BACKGROUND

In June 2004 the complainant lodged a complaint against a dentist with the Health & Community Services Complaints Commission (HCSCC). Following an assessment of the complaint, the HCSCC, under its legislation, notified the Dental Board of receipt of the complaint and it was agreed that the Board would accept the complaint for investigation pursuant to its own legislation.

After completing its investigation of the matter during 2004 and early 2005, the Board wrote to the complainant in May 2005 informing her that they had dismissed the complaint. The complainant was dissatisfied with the Board's findings and investigation and wrote to them requesting a review of their investigation process.

In May 2006 the Board wrote to the complainant advising, among other things, that there were no review or appeal rights under the Act, but that the matter would still be considered by them at a meeting in June 2006. The Board undertook to write to the complainant about the matter after the meeting, however, this was never done.

On not hearing anything further, the complainant approached the Ombudsman in early 2007 requesting the Board's investigation processes be reviewed. The Ombudsman undertook preliminary inquiries into the following issues of complaint:

1. That the Health Professions Licensing Authority of the Northern Territory (the HPLA), representing the Board, failed to keep to an undertaking to write to the complainant about the outcome of the Board's meeting in June 2006.
2. The complainant's dissatisfaction with the Board's processes in investigating the complaint against the dentist, in particular the following issues:
  - (i) *That in investigating the complaint, the Board only relied on information supplied by the dentist and did not contact any other party.*
  - (ii) *That the complainant was not given the opportunity to view the dentist's claims in response to the complaint.*
  - (iii) *That at no time did the Board contact the complainant during its investigation.*
  - (iv) *The inconsistency in what the Board initially claimed to investigate.*
  - (v) *The Board's decision that apparently "not all tooth decay is evident on X-ray".*
  - (vi) *That the Board did not address the actions of the dentist's handling of the matter overall, i.e. his level of communication and provision of information, etc.*
  - (vii) *That the Board failed to consider documentation supplied by the complainant to the Board.*
  - (viii) *The length of time taken by the Board to investigate this matter.*

## **PRELIMINARY INQUIRIES**

Preliminary inquiries pursuant to section 17A of the *Ombudsman (Northern Territory) Act* were conducted which included discussions with the Director of the HPLA and the Complaints Manager about the complaint and conducting a review of the relevant Board file. Both the Director and the Complaints Manager were most helpful and open in assisting the Ombudsman with inquiries into the complaint.

### **ISSUE 1: THAT THE HEALTH PROFESSIONS LICENSING AUTHORITY OF THE NORTHERN TERRITORY (THE HPLA), REPRESENTING THE BOARD, FAILED TO KEEP TO AN UNDERTAKING TO WRITE TO THE COMPLAINANT ABOUT THE OUTCOME OF THE BOARD'S MEETING IN JUNE 2006**

On receipt of the complaint the HPLA undertook a close examination of what had happened and wrote to the complainant, apologising for the delay and explained about the Board's powers, functions, etc, as well as providing the complainant with advice on the remedial measures being taken to improve their administrative processes overall. The Ombudsman considered this to be a reasonable response and since this issue had been resolved took no further action.

### **ISSUE 2: CONCERNS ABOUT ASPECTS OF THE BOARD'S PROCESSES IN INVESTIGATING THE COMPLAINT AGAINST THE DENTIST**

This broad issue of complaint was divided into a number of sub issues, to focus only on the administrative processes the Board followed during its investigation. These issues are as follows:

#### **(i) That in investigating the complaint, the Board only relied on information supplied by the dentist and did not contact any other party**

From the records reviewed, the parties that the Board contacted during the investigation were the HCSCC, the dentist and a Dental Clinic, in order to obtain copies of X-rays and dental records, etc, as part of the investigation process, for which prior authorisation had already been obtained from the complainant. No other records or evidence could be found to indicate whether the Board had contacted any other dental health practitioners direct to obtain their comments, views, etc.

The Dental Board is established under the Act to ensure that matters referred to it are considered by a number of dental health practitioners who are qualified experts in their field of dentistry and are therefore adequately equipped to consider such matters referred to them and make decisions, without the need to consult with another dental health practitioner. Therefore the Board's decision not to contact another dental health practitioner is one that is reasonably open to it to make considering its own qualified members.

The Ombudsman concluded that there were insufficient grounds to criticise the Board's decision in this regard and further inquiry of this issue was unwarranted as it was unlikely to achieve any further meaningful outcome for the complainant.



**(ii) That the complainant was not given the opportunity to view the dentist's claims in response to her complaint**

The Board, after obtaining and considering the dentist's written response along with copies of medical notes, X-rays, reports, etc, at their meeting in April 2005, determined to dismiss the complaint and notify the complainant of the outcome in writing.

The legislation applicable to the Board appears to limit the information the Board can provide to a complainant. It was therefore not unreasonable for the Board to not release specific information to the complainant about another dentist since there were issues of privacy, confidentiality and the protection of the dental health practitioner to consider and comply with under the Act, including penalties for any breaches. However, from a good administrative point of view it is arguable that the Board could have considered affording the complainant the opportunity (in general terms) to respond to its preliminary views for consideration, before it made its final determination.

The Ombudsman concluded that the actions of the Board in not releasing a copy of the dentist's response to the complainant for comment was reasonable and that any further inquiry of this issue was unwarranted as it was unlikely to achieve any further meaningful outcome for the complainant.

**(iii) That at no time did the Board contact the complainant during its investigation**

Preliminary inquiries showed that there were some records on file showing that HPLA had been in contact with the complainant during this period. Apart from these few occasions, no other evidence or records could be found to indicate whether the complainant was contacted by telephone or in writing during the investigation or updated on the status of the Board's investigation into her complaint.

The HPLA's draft Guidelines at the time did not appear to include the issue of updating a complainant with information on a progressive basis. It was the Ombudsman's view that it would have been good administrative practice for the complainant to have been kept periodically informed of the status of the investigation or progress being made at certain stages via a quick telephone call, email or even a short letter, so that she could have been assured that the matter was still under investigation and was not being unnecessarily delayed or overlooked.

The Ombudsman concluded that it was not an unreasonable expectation for a complainant to be kept regularly informed by a Board of the progress of their matter by phone or in writing (email), etc, with such contact being file-noted. The Ombudsman therefore determined, in the interests of improving public administration and good administrative practice, to bring this deficiency to the attention of the HPLA so that they could improve their administrative processes.

**(iv) The inconsistency in what the Board initially claimed to investigate**

The records on file show that, during the investigation, the Board wrote to the dentist seeking his written response to the issues of complaint (including the two issues the complainant raised) pursuant to section 61 of the Act.

The dentist's written response, together with other supporting complaint documentation obtained during the investigation, was provided to the Board for them to make a determination under the Act. However, from the available records reviewed, the Ombudsman was unable to establish whether the Board members' deliberations had included the two points raised above. Only the resulting decisions of the Board were recorded. The Board's final determination letter to the complainant did not reflect that the specific issues were dealt with.

It might reasonably be argued that, by not being providing the complainant with a comprehensive written response, it gave rise to a suspicion of bias or a perception that the complaint may not have been properly investigated, even though this might not have been the case in reality.

I note that Section 4 of the Act states that a Board must keep accurate Minutes of its meetings. However, it appears silent on the level of detail required to be maintained.

The Ombudsman concluded that the Board's final letter to the complainant did not provide her with a clear explanation of the reasons for conclusions reached and decisions made, particularly for those issues within its jurisdiction. Instead, the Board's letter provided brief statements of its decision without a proper explanation to support its decisions.

The Ombudsman therefore determined, in the interests of improving public administration and the standard of communication and record keeping, to bring the following deficiencies to the notice of the Board:

- the need to provide a clear explanation of the reasons and conclusions reached by a Board in order to support the decision/s reached; and
- the importance of maintaining complete and accurate Minutes and records.

**(v) Questioning the Board's decision that "not all tooth decay is evident on X-ray."**

The Ombudsman noted that the Board's final letter to the complainant only contained a brief reference to this issue, stating among other things, that "*not all tooth decay is evident on X-ray*". There was no explanation or reason given to explaining how and why the Board reached this conclusion.

In arriving at that statement or conclusion, the Board did obtain the dentist's medical records and X-rays, which the members reviewed before coming to the conclusion.

It is not the Ombudsman's role to question the professional medical opinions of the Board members in making their conclusions or determinations, as it relates to medical decisions reached by a panel of dental health experts coming together to consider dental issues in the field of dentistry.

However, from a good administrative practice point of view, the Board could have considered supporting their brief statement by giving the complainant an explanation and reasons of how and why they reached their conclusion.

This again emphasises the importance of providing a clear written explanation to complainants and, where appropriate, include supporting documentation so that they can understand how and why conclusions and decisions are reached.

**(vi) That the Board failed to consider documentation supplied by the complainant to the Board**

From the information made available, the Ombudsman was unable to conclude whether the Board had considered or read the documentation or that the Board had acted unreasonably by not considering this documentation. Therefore no further inquiry of this issue was warranted as it was unlikely to achieve any further meaningful outcome for the complainant, and the Ombudsman has no power to look into the decision making process of the Board or the merits of its decision.

**(vii) The length of time taken by the Board to investigate this matter**

Preliminary inquiries showed that the Board had contacted the HCSCC, the dentist, a dental clinic, the complainant, senior officers of HPLA and administrative support staff during the investigation.

From the records reviewed there did not appear to be anything untoward or an intentional delay by the Board in handling the matter. There was adequate consultation and follow up of information between the parties required by the Act. (This is notwithstanding that the complainant may not have been kept regularly informed of progress of the investigation).

When considering what is a reasonable amount of time in which to conduct the investigation regard needs to be given to:

- the complexity of the medical issues involved;
- the need for procedural fairness to be afforded to the parties;
- the consultation process between the parties required by the Act in investigating this matter; and
- the issue that the Board meets every 3 months.

The Ombudsman concluded that, in the circumstances, the length of time taken by the Board to investigate the complaint was not unreasonable.

**RECOMMENDATIONS**

The Ombudsman made the following recommendations:

1. That the Board, when writing to complainants about the outcome of an investigation into complaints, also provides to complainants a proper explanation and reasons to support conclusions reached and decisions made.
2. That the Board considers recording and signing off on deliberations at their meetings and include them in the Minutes to form a permanent authorised record of issues discussed and decisions made.

3. That the Board considers implementing a process whereby complainants are provided with regular updates on the progress of their complaint in writing, or telephone, or email, with such contact recorded, folioed and filed appropriately.

In responding to the recommendations made, the Dental Board raised a number of concerns they had with the manner in which the Ombudsman's office handled the complaint and were not supportive of implementing the recommendations.

The recommendations were made as a result of the Ombudsman undertaking preliminary inquiries. The Board had no requirement to implement or support them and as such their comments were noted and no further action could be taken by the Ombudsman.

## ACTIVITY 3: INSPECTION OF NT POLICE RECORDS

### OUTPUTS

1. Inspections undertaken pursuant to the *Telecommunications (Interception) Northern Territory Act* and the *Surveillance Devices Act 2007*.
2. Report to the Minister for Police, Fire and Emergency Services.

### HIGHLIGHTS

#### ***TELECOMMUNICATIONS (INTERCEPTION) NORTHERN TERRITORY ACT***

In the 2007/2008 financial year the NT Ombudsman undertook two inspections of NT Police records in accordance with Part 3 Section 9 of the *Telecommunications (Interception) Northern Territory Act*. The inspections are undertaken to ascertain and report to the Minister for Police, Fire and Emergency Services the extent to which the officers of NT Police have complied with the requirements of Part 2 of the Act.

Two inspections were required during 2007/08 and these were carried out on 10 January 2008 and 19 June 2008. The requisite report was issued to the Minister for Police, Fire and Emergency Services on 18 August 2008.

As per the legislation, two inspections will be undertaken during the course of 2008/09.

#### ***SURVEILLANCE DEVICES ACT 2007***

The *Surveillance Devices Act 2007* came into operation on 1 January 2008. It provides a legislative basis for the use of surveillance devices by law enforcement agencies (LEA) where such use would ordinarily be prohibited under Territory law. The *Surveillance Devices Act 2007* supersedes the *Listening Devices Act*.

The inspections are undertaken to ascertain and report to the Minister for Police, Fire and Emergency Services the extent to which the officers of NT Police have complied with the requirements of Part 8 of the Act.

In the 2007/2008 financial year the NT Ombudsman undertook one inspection of the NT Police records in accordance with Part 8 Section 63 of the *Surveillance Devices Act 2007*.

The 2007/2008 inspection was undertaken on 13 June 2008. The report to the Minister for Police, Fire and Emergency Services was tabled in the Legislative Assembly on 18 September 2008. It reported that NT Police were not complying with some requirements of the legislation.

## ACTIVITY 4: ACCESS AND AWARENESS

### OUTPUTS

1. Distribute Ombudsman brochures.
2. Provide a brochure in 10 different ethnic languages.
3. Give presentations on the Ombudsman's role and functions.
4. Utilise the media (radio, television and newspaper) to educate the public and increase awareness about the Ombudsman.
5. Visit rural and remote communities.

### HIGHLIGHTS

The program has two distinct objectives:

- raising public awareness about the Ombudsman's role and functions; and
- facilitating a complainant's access to the Ombudsman's services.

In all other States and Territories in Australia, the Ombudsman only has an office in the capital city of their respective State or Territory. In contrast, in the Northern Territory, the Ombudsman has offices located in both Darwin and Alice Springs. The Northern Territory Government has maintained a commitment to provide services and access to Territorians in Central Australia. The Alice Springs Office is therefore an integral part of this Office's access and awareness activities.

Over the previous three financial years, activities associated with access and awareness had gradually reduced by 40% because "efficiency dividends" continued to impact on the funds available for discretionary activities. Access and awareness visits this financial year remained the same as for 2006/07.

**Table 8:** Access and awareness visits – 3 year comparison

2005/06	2006/07	2007/08
25	19	19

### ACCESS AND AWARENESS AT NATIONAL LEVEL

#### National and International Collaboration

The Office relies heavily on education and training resources that have been developed and created by similar offices across Australia, the Pacific region and the International Ombudsman Institute.

I express my thanks to the Commonwealth Ombudsman, the New South Wales, Queensland, Victorian, Tasmanian, Western Australian and South Australian Ombudsmen, and the members of the Australian New Zealand Ombudsmen Association (ANZOA). The ANZOA comprises the various industry Ombudsmen such as the Banking and Financial Services Ombudsman, Insurance Ombudsman and Electricity and Water Ombudsman.

Opportunities were taken to enhance these invaluable collaborative relationships with officers attending the following conferences and meetings:

#### Ombudsman

- August 2007 - Commonwealth Ombudsman 30<sup>th</sup> Anniversary Seminar – Canberra
- October 2007 - Australian Public Sector Anti-Corruption Conference 2007
- December 2007 - “Better Pathways to Better Outcomes”, 7<sup>th</sup> National CSAC Women Offenders Conference – Melbourne
- April 2008 - Australia and New Zealand Ombudsman Association Conference – Melbourne
- May 2008 - Managing Risks to Integrity in the Public Sector, Australia and New Zealand School of Government - Melbourne

#### Deputy Ombudsman

- November 2007 – Meeting of all Australian Deputy Ombudsman – Wellington, New Zealand
- November 2007 - International Conference of Information Commissioners - Wellington, New Zealand
- June 2008 – Meeting of all Australian Deputy Ombudsman - Darwin

#### Director Investigations

- September 2007 – Australian National Telecommunications Conference – Adelaide
- October 2007 - Australian Public Sector Anti-Corruption Conference 2007
- December 2007 - Sharpening Your Teeth: Advanced Investigative Training for Administrative Watchdogs - Toronto, Canada

## **ACCESS AND AWARENESS THROUGHOUT THE TERRITORY**

A detailed breakdown of sessions and conferences attended is provided at Appendix A, pages 77 to 78. All but one of the access and awareness visits have been confined to Darwin and Alice Springs which is where staff are based and the cost is minimal.

### **NT Public Sector Complaints Handling Project**

In 2005 the NT Public Sector Complaints Handling Project was commenced by the Ombudsman to assist NT government agencies to enhance their internal complaints handling processes. Initially agencies were asked what systems they already had in place, whether it met the Australian Standard and what assistance they might benefit

from. The assistance offered included assistance to establish a complaints handling system or to review a system already in place; improving understanding of the key principles and elements of a complaints handling system and short course staff training in areas not currently offered by DCIS.

Feedback from the agencies indicates that the resources have been useful and that there has been progress in some agencies in developing or improving their complaints handling processes.

A good indication that Departments are successfully handling their own complaints effectively can be found in the fact that 40% of complaints made to the Ombudsman in the first instance were able to be successfully referred back to the agency to resolve without any further assistance required from my office.

### **Written Material**

The Office has continued to distribute its pamphlets and posters throughout the Northern Territory and to target organisations and consumer groups.

### **Community Newsletters**

Information concerning the Office has appeared in some newsletters produced for and by some community groups. This method reaches the Territory's diverse population at minimum cost.

### **Advertising**

The Office advertised in newspapers and newsletters during the year.

### **Website**

People throughout the Northern Territory, and indeed worldwide, can access the Ombudsman through our website [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). By logging onto the site people can make a complaint, access information (including the latest Annual Report), review our legislation or ask questions without the need to formally contact the Office.

During 2007/08 the number of people accessing the website were:

	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
Total visits:	7,946	31,001	34,868
Average visits per day:	22	85	110
Average visits per week:	153	596	770



## ACTIVITY 5: MANAGEMENT OF OFFICE OF THE OMBUDSMAN

### OUTPUTS:

1. Production of an Annual Report.
2. Compliance with the *Ombudsman (Northern Territory) Act*.
3. Compliance with the *Financial Management Act* and *Public Sector Employment and Management Act*.
4. Compliance with policies and procedures associated with:
  - Equal Employment; and
  - Occupational Health and Safety.
5. Compliance with the *Information Act*.
6. Management of resources.
7. Continuous review cycle.
8. Strategic Plan.
9. Annual Business Plan.
10. Five Year Corporate Plan.

### CORPORATE GOVERNANCE

As the accountable officer for the Office of the Ombudsman, the Ombudsman has the responsibility under the *Financial Management Act* for the efficient, effective and economic conduct of the Office.

Under the *Ombudsman (Northern Territory) Act*, the Ombudsman is independent of the Government and is not accountable to a Minister, but rather to the Legislative Assembly as a whole. However, under the Administrative Arrangements Orders, where relevant, the *Ombudsman (Northern Territory) Act* is the administrative responsibility of the Chief Minister.

### EQUAL OPPORTUNITY

The Ombudsman for the NT has an Equal Opportunity Management Plan with the following objectives:

- Foster an understanding and commitment to equity and diversity principles, activities and outcomes by all employees in the agency.
- Equity and diversity in all Human Resource Management policies and practices.
- Eliminate workplace discrimination and harassment.
- Balancing work, family and cultural responsibilities.

Through its Equity and Merit Plan the Office of the Ombudsman aims to ensure best and fairest employment practices by:

- Providing an opportunity for all staff to contribute to and benefit from the achievement of the Agency's objectives.
- Establishing and maintaining a work environment free from discrimination and harassment in which all individuals are guaranteed equitable access and treatment in all aspects of employment including conditions of service, recruitment, staff development and training.

In addition, the Office of the Ombudsman has an Aboriginal and Career Development Plan and continues to examine how to best utilise the skills of those it employs to improve the Ombudsman's ability to provide culturally appropriate services to Aboriginal people.

## **TRAINING AND DEVELOPMENT**

A performance appraisal framework has been implemented to meet the needs of the Ombudsman's Office.

A major objective achieved through the implementation of this program is the design of individual annual training and development programs for all staff.

This process is incorporated into the Business Plans for both the Ombudsman's Office and the Health and Community Services Complaints Commission.

Expenditure on staff training and development during 2007/08 amounted to \$32,530 (\$17,400 in 2006/07).

This is represented by a total figure of 326 training hours and comprised 23 training opportunities.

The key areas of focus for training activities for 2007/08 were: technical skills and professional training such as mediation skills, conflict management and resolution and finance training.

The Ombudsman for the NT is committed to the government's apprentice program. In 2007/08 one apprentice successfully completed a Certificate III in Business and one apprentice commenced in February 2008.

## **OCCUPATIONAL HEALTH AND SAFETY**

Health, safety, security and well being of staff continue to be monitored in accordance with the Occupational Health and Safety Management Plan. The presence of health and safety risks within the Office is consistently being assessed as low. During the

year there were 14 reported days lost as a result of reported injuries to one staff member.

Staff safety and well-being in the Office continued to be promoted and monitored throughout the year in line with the Northern Territory Public Service and Work Health OH&S Policy and legislation. Any potential hazards identified during the year were attended to and resolved. The Occupational Health and Safety Officer conducted regular inspections to identify and address any potential risks and hazards. Monthly reports on any OH&S issues identified during the month are prepared and distributed. OH&S is an agenda item on each monthly staff meeting.

When necessary, the OH&S Officer consults with and seeks advice from the OH&S DCIS Consultant and NT WorkSafe Officers on any important OH&S issues that may arise. Staff are encouraged and supported to participate in sporting activities to promote team spirit and the well being of staff.

My Office has a contract with the Employee Assistance Service of the Northern Territory (EAS) to provide Employee Assistance Program services including counselling and other advisory and training services to staff on an as needs basis. The availability of this service is actively promoted to all staff.

Some important OH&S initiatives completed during the year were:

- Workstation assessments as required.
- Workplace Inspection of the Darwin office.
- Workplace Inspection of the Alice Springs office.
- Implement recommendations following a workplace inspection of the Darwin Office:
  - Exit light repaired
  - Update furniture with ergonomic workstations as required

Employee safety and physical security continues to be addressed by regular monitoring and testing of the duress alarm system in the Darwin Office. Security has been increased in the Alice Springs Office with the installation of an internal door swipe card system to restrict access to authorised personnel only. A duress alarm and closed circuit television system has also been installed.

## **INFORMATION ACT ANNUAL REPORTING REQUIREMENTS**

Section 11 of the *Information Act* sets out the information a public sector organisation must publish annually in relation to its process and procedures for accessing information. A detailed description of the Office's obligations under Section 11 of the Act are provided at Appendix C, pages 83 to 86.

## RECORDS MANAGEMENT

Part 9 of the *Information Act* relates to Records and Archives Management. This section sets out the obligations, standards and management of records and archives to be complied with.

In accordance with Section 134 of the *Information Act*, the Ombudsman for the Northern Territory:

- (a) keeps full and accurate records of its activities and operations; and
- (b) Is in the process of implementing practices and procedures for managing its records necessary for compliance with the standards applicable to the organisation through the implementation of a Records Management Plan.

The Records Management Plan for the Ombudsman's Office incorporates the Health and Community Services Complaints Commission and is designed to achieve the following objectives:

- records management staff fully trained;
- adoption of new methods and technologies for keeping and managing records; and
- become fully compliant with the *Information Act* and the NTG Standards for Records Management.

The Ombudsman's Office completed a project to implement the whole of Government Information Management system TRIM before June 2008 to enable the Office to manage their records effectively and assist in working towards being fully compliant with the *Information Act* and the NTG Standards for Records Management.

## Appendix A

### ACCESS AND AWARENESS SESSIONS

As part of the public awareness program the following occurred:

**Visits made:**

Port Keats (1) Katherine (1) Alice Springs (2)

**Talks:**

Speaker	Date	Details
Senior Investigation Officer	8 August 2007	“Careers in Law” evening, School of Law, Charles Darwin University
Senior Investigation Officer	7 September 2007	NT WorkSafe
Senior Investigation Officer	22 October 2007	Senior Sergeant Training Course, NT Police
Senior Investigation Officer	15 November 2007	NT Legal Aid
Ombudsman	5 February 2008	Association of Independent Retirees
Senior Investigation Officer	13 February 2008	Prison Officers in Training (Promotional), Darwin Correctional Centre
Senior Investigation Officer & Enquiry Officer	10 March 2008	Prison Officers in Training
Senior Investigation Officer and Investigation Officer, Alice Springs	14 March 2008	Susu Mama Group, Multicultural Mothers and Babies Group, Alice Springs
Ombudsman	11 April 2008	Charles Darwin University, Governance Course
Senior Investigation Officer and Investigation Officer, Alice Springs	17 April 2008	Prisoners Aid and Rehabilitation Association, Alice Springs
Investigation Officer, Alice Springs	23 April 2008	Waltja Tjutangku Palyapayi Aboriginal Corporation, Alice Springs
Senior Investigation Officer & Investigation Officer, Alice Springs	6 May 2008	Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, Alice Springs
Senior Investigation Officer & Investigation Officer, Alice Springs	8 May 2008	Prison Fellowship International, Alice Springs Branch
Deputy Ombudsman	14 May 2008	Finance Officers in Training
Investigation Officer, Alice Springs	21 May 2008	Alice Springs Inter-Agency Meeting, Alice Springs

Senior Investigation Officer, Alice Springs	19 June 2008	Staff at Alice Springs Women's Shelter, Alice Springs
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**Conferences/Meetings:**

Ombudsman	4-5 August 2007	GARMA Festival on Indigenous Health, Gove
Ombudsman	9 August 2007	Commonwealth Ombudsman 30 <sup>th</sup> Anniversary Seminar, Canberra
Director of Investigations	27-28 September 2007	Australian National Telecommunications Conference, Adelaide
Ombudsman Director Investigations	23-26 October 2007	Australian Public Sector Anti- Corruption Conference 2007
Deputy Ombudsman	27-28 November 2007	International Conference of Information Commissioners, Wellington, New Zealand
Deputy Ombudsman	29-30 November 2007	Deputy Ombudsman Meeting, Wellington, New Zealand
Director of Investigations	3-4 December 2007	Sharpening Your Teeth: Advanced Investigative Training for Administrative Watchdogs, Toronto, Canada
Ombudsman	4 & 5 December 2007	"Better Pathways to Better Outcomes", 7 <sup>th</sup> National CSAC Women Offenders Conference, Melbourne
Ombudsman	22-23 April 2008	Australia and New Zealand Ombudsman Association Conference, Melbourne
Director of Investigations	4-8 May 2008	Managing Risks to Integrity in the Public Sector, Australia and New Zealand School of Government, Melbourne
Ombudsman	5-6 June 2008	Deputy Ombudsman Meeting, Darwin

## Appendix B

### DETAILED COMPLAINT STATISTICS FOR 2007/08

#### AGENCIES THE SUBJECT OF COMPLAINTS

The following is a detailed breakdown by agency of the 661 complaints accepted by the Office of the Ombudsman. Agencies not included in the following table have not been the subject of any complaints.

#### NT AGENCIES (EXCLUDING CORRECTIONS AND LOCAL GOVERNMENT)

AGENCY	2005/06	2006/07	2007/08
<b>Batchelor Institute Indigenous Tertiary Education</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Business Economic and Regional Development</b>	<b>0</b>	<b>0</b>	<b>2</b>
Business Development	0	0	2
<b>Charles Darwin University</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Development Consent Authority</b>	<b>0</b>	<b>2</b>	<b>1</b>
<b>Employment, Education and Training</b>	<b>6</b>	<b>4</b>	<b>8</b>
College	1	0	2 <sup>8</sup>
High School	0	1	2
Middle School	0	0	1
Strategic Services and Operations	1	0	0
NT Worksafe	1	2	0
Primary School	3	1	2
NTETA	0	0	1
<b>Health and Community Services</b>	<b>20</b>	<b>15</b>	<b>12</b>
Community Services	18	12	10
Health Services	0	1	0
Executive and Legal	0	1	2
Strategic Policy and Financial Services	1	0	0
Health Professions Licensing Authority	1	1	0
<b>Justice</b>	<b>30</b>	<b>18</b>	<b>9</b>
Births, Deaths and Marriages	0	1	1
Community Corrections	1	0	0
Consumer Affairs	5	2	0
Correctional Services (Administrative)	4	2	4
Office of Courts Administration	1	0	0
Fines Recovery Unit	4	6	1
Magistrates Court	3	1	0
Supreme Court	0	1	0
Public Trustees Office	6	1	0
Racing, Gaming and Licensing	5	2	3
Small Claims Court	1	0	0
Office of the Information Commissioner	0	2	0

<sup>8</sup> Includes an independent non-government school which should not have been registered against DEET.

<b>Local Government, Housing and Sport</b>	<b>23</b>	<b>12</b>	<b>21</b>
Animal Welfare Unit	1	0	0
Local Government	1	2	0
Pool Fencing Authority	3	1	1
Territory Housing	18	9	19
Sport and Recreation	0	0	1
<b>Natural Resources, Environment and the Arts</b>	<b>0</b>	<b>1</b>	<b>1</b>
Park Management	0	1	0
Arts and Museums	0	0	1
<b>Office of Commissioner for Public Employment</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>Planning and Infrastructure</b>	<b>0</b>	<b>24</b>	<b>8</b>
Construction Division – Building Advisory Services	0	3	3
Lands Group	0	9	0
Strategic and Business Services Group	0	1	0
Transport Group	0	11	5
<b>Police, Fire and Emergency Services</b>	<b>8</b>	<b>4</b>	<b>1</b>
Police Administration (not member)	5	4	1
Emergency Services	1	0	0
Fire Services	2	0	0
<b>Port Authority (Darwin)</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>Power and Water Corporation</b>	<b>18</b>	<b>6</b>	<b>11</b>
Electricity Generation and Supply	15	5	5
Non Electricity Sewerage Drainage or Water Issues	2	1	6
Public Water Supplies	1	0	0
<b>Primary Industries, Fisheries and Mines</b>	<b>3</b>	<b>6</b>	<b>0</b>
Fisheries	0	2	0
Minerals and Energy	2	0	0
Primary Industry Group	1	4	0
<b>Territory Insurance Office</b>	<b>6</b>	<b>4</b>	<b>2</b>
<b>Treasury</b>	<b>2</b>	<b>3</b>	<b>1</b>
Treasury	0	0	1
Commissioner of Taxes	2	3	0

### CORRECTIONAL SERVICES

Sections	2005/06	2006/07	2007/08
<b>Correctional Services</b>	<b>89</b>	<b>31</b>	<b>30</b>
Executive	2	0	0
Correctional Centre – Darwin Prison	58	17	18
Correctional Centre – Alice Springs Prison	29	13	12
Juvenile Justice	0	1	0

### LOCAL GOVERNMENT COUNCILS

Local Government Councils	2005/06	2006/07	2007/08
<b>Councils</b>	<b>18</b>	<b>8</b>	<b>17</b>
Alice Springs Town Council	3	1	1
Darwin City Council	4	2	7
Elliot District Community Government Council	1	0	0
Katherine Town Council	3	1	1



Litchfield Town Council	1	1	4
Palmerston City Council	1	1	1
Tennant Creek Town Council	0	0	3
Other	1	2	0

### NT POLICE

	2005/06	2006/07	2007/08
<b>NT Police</b>	<b>313</b>	<b>322</b>	<b>274</b>

### REFERRED TO AGENCY

	2005/06	2006/07	2007/08
<b>Referred to Agency<sup>9</sup></b>	<b>322</b>	<b>310</b>	<b>254</b>

### ISSUES IN COMPLAINTS RECEIVED

Information is recorded about the issues described in every complaint, and often more than one issue arises from a complaint. Standard matter descriptions are used and these are grouped under categories.

An understanding of the issues raised in complaints can serve to highlight areas where service and administrative improvement is warranted. This section provides information about the total number of complaints received against the different categories.

### NT AGENCIES (INCLUDING LOCAL GOVERNMENT)

Issues	2005/06	2006/07	2007/08
Other	2	0	0
Practices or procedures	55	21	19
Program/Service delivery	30	25	31
Fees and Charges	16	21	15
Information	11	12	5
Misapplication of law/policy	17	18	22
Attitude/Behaviour of staff	12	6	8
Grievance/Complaint procedures	17	15	15
Damages and Compensation	1	8	6
Misconduct	3	5	5
Natural Justice	3	4	3
Exercise discretion	3	1	3
Tenders/Contractual matters	6	2	2
<b>Total</b>	<b>176</b>	<b>138</b>	<b>134</b>

<sup>9</sup> These complaints were referred back to the agency for direct resolution with the complainant. Once referred back, the Ombudsman took no further action in relation to the complaint and it was closed.

**CORRECTIONAL SERVICES**

<b>Issues</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>
Prisoner rights and privileges	39	14	18
Administrative acts or omissions	19	8	5
Attitude/Behaviour of staff	9	7	4
Misconduct/Behaviour of staff	9	3	3
Transfers	5	1	2
Medical/Health issues	10	1	3
Mail	4	1	1
Property issues	11	1	1
Security measures/issues	9	3	3
Grievance/Complaint procedures	9	4	6
Assault	3	1	1
Practice and procedures	0	0	0
<b>Total</b>	<b>127</b>	<b>44</b>	<b>47</b>

**NT POLICE**

<b>Issues</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>
Police procedures	138	125	106
Abuse/Rudeness	83	77	63
Arrest	54	44	36
Assault not major injury	42	15	28
Harassment, threats, etc	37	25	26
Failure to perform duty	36	21	23
Information	33	28	6
Custodial/Watchhouse	30	21	14
Search	29	15	10
Juveniles	15	9	7
Custody of property	14	4	12
Other misconduct	10	6	4
Traffic	10	6	6
Breach of rights	9	7	3
Warrants	8	2	1
Prosecutorial discretion	7	0	5
Corruption/Favouritism	6	6	4
Quality of investigations	4	10	13
Assault causing major injury	4	11	8
Inadvertent wrong treatment	2	3	3
Firearms	2	3	2
<b>Total</b>	<b>573</b>	<b>438</b>	<b>380</b>

## Appendix C

### FREEDOM OF INFORMATION

#### INTRODUCTION

The object of the *Information Act* (the Act) is to extend, as far as possible, the right of a person to access government and personal information held by government, and to have personal information corrected if inaccurate. Some information is exempt from this process.

Section 49A of the *Information Act* states that information is exempt under section 44 if it is obtained or created in the course of an action that is:

- (a) in the nature of an investigation, audit or inquiry; and (b) taken by any of the following:
- (i) the Ombudsman;
  - (ii) the Health and Community Services Complaints Commissioner.

Under Section 11 of the Act, a public sector organisation must publish a statement about its structure and functions, kinds of government information usually held, a description of the organisation's procedures for providing access and a description of the organisation's procedures for correcting information.

Information concerning the organisation and functions of the Ombudsman can be found as follows:

- organisation (refer page 9 of this Annual Report)
- functions (refer page 8 of this Annual Report)

#### INFORMATION HELD BY THE OFFICE OF THE OMBUDSMAN

The Ombudsman holds information in the following categories:

- (a) information relating to inquiries and investigations into complaints against any Northern Territory Government Agency, Local Government Council or the actions of a member of the NT Police Force. This information includes: complaints; correspondence and consultations with complainants and agencies; and other information sources such as background material, records of conversation, analysis and advice and reports;
- (b) information relating to the Ombudsman's role as the chief executive of an NT agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation; and
- (c) information relating to the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

The following are specific types of information held by the Ombudsman:

### **1. Administrative and policy files**

The Ombudsman keeps files of correspondence and other documents, indexed by subject matter, on issues concerning office administration and management.

These files are usually located in Darwin, although Alice Springs has some administrative files relating to its own operations. There are records on a wide range of policy and general questions concerning the Ombudsman's functions and powers, the operation of the Office and the approach taken by the Ombudsman to particular classes of complaints.

Files may relate to the Ombudsman's jurisdiction over a particular body or over particular classes of actions, or they may represent the recording and consolidation of information on subjects or issues that have arisen in the course of investigations.

Access to information held on these files may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

### **2. Complaint files**

The Ombudsman keeps files of documents relating to each written complaint made under the *Ombudsman (Northern Territory) Act*. The files are indexed in several ways, including the complainant's name, the agency complained about and the subject of the complaint.

The Ombudsman maintains a computer-based register of all complaints. The Office also keeps records on special forms for some oral complaints received. A paper based file is also maintained.

Paper records have previously been stored in the office where the complaint was received, although there are occasions when files created in one office are located in another office. On completion of inquiries, complaint files or documents are stored in the Darwin office.

Access to the information on these files is generally restricted depending on who is seeking the information.

### **3. Legal opinions**

The Ombudsman maintains a copy of legal opinions it has been provided with. These opinions cover issues arising during the investigation of complaints and issues involving the Ombudsman's functions and powers.

### **4. Annual reports**

Copies of the current Annual Report and some previous Annual Reports are available for downloading on the Ombudsman's website at

[www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). Some printed copies of the current Annual Report are available free of charge soon after publication (subject to availability).

## 5. Brochures

The Ombudsman has a range of brochure material available to the public. The material details the functions of the Ombudsman and provides a guide to using the services of the office. Some printed copies of these brochures are available free of charge from the Ombudsman's Offices in Darwin and Alice Springs and some are available for downloading on the Ombudsman's website at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au).

## 6. Manuals and guidelines

The Ombudsman has the following manuals:

- **Procedures Manual:** This sets out general information about the role and functions of the Ombudsman and the policies and procedures applicable to officers dealing with complaints.
- **Accounting and Property Manual:** provides relevant, current and accurate information on the accounting systems, practices and procedures to be used by employees.
- **Employment and Training Policy and Procedures Manual:** provides a consolidated statement of policies, standards, procedures relating to employment and training.

Access to information contained in these manuals may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

## 7. Service Standards

The Ombudsman's Service Standards set out the standards of service you can expect. A copy of the Service Standards is available on the Ombudsman's website at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). Charges may apply where a hard copy is requested (see access arrangements below).

## DISCLOSURE OF INFORMATION

The information the Ombudsman holds may be disclosed:

- (a) As required by law (although the relevant legislation presents disclosure of information obtained for the purpose of an investigation); or
- (b) On request, for example in relation to information sought by a complainant about the investigation of his or her own complaint, where the documents are routine, an ongoing investigation will not be prejudiced and there is no other interest likely to be adversely affected by disclosure, and the information is not personal information as defined in the *Information Act*.

## PROCEDURES FOR PROVIDING ACCESS TO INFORMATION

### 1. Documents available

The following documents are available for inspection or purchase on request:

- **Brochures:** No charge
- **Annual Report:** \$20.00 for the purchase of a hard copy of the report
- **Service Standards:** No charge
- **Procedures Manual:** \$75.00 for the purchase of a hard copy

### 2. Administrative Arrangements for Access to Information

General inquiries and requests for access to documents may be made in person, by telephone or in writing at either the Darwin Office or the Alice Springs Office. Alternatively, current or past complainants or respondents may choose to approach the relevant Case Officer directly. Each Office is open between 8.00am and 4.30pm on weekdays. Access is free for a complainants' or respondents' own complaint generated information.

### 3. Access Under the Information Act

Commencing 1 July 2006 by amendment to the *Information Act* documents and information held by the Ombudsman in connection with an investigation are exempted from release. Applications will be transferred to the appropriate organisation from whom information in the control or custody of the Ombudsman was sourced.

## PROCEDURES FOR CORRECTING INFORMATION

Inquiries about correcting personal information should be directed to the relevant Case Officer, or to the Business Manager.

## Appendix D

### SERVICE STANDARDS OF THE OFFICE OF THE OMBUDSMAN

#### THOSE WE SERVE:

The Ombudsman's clients are:

- Community members of the Northern Territory
- Government Agencies and Statutory Authorities
- Local Government and Community Government Councils
- The Northern Territory Police Fire & Emergency Services
- The Legislative Assembly of the Northern Territory

#### OUR COMMITMENT:

The Ombudsman and staff are committed to the following core values:

- **Fairness**
- **Independence**
- **Professionalism**
- **Accountability**
- **Accessibility**
- **Timeliness**
- **Courtesy and Sensitivity**

#### **Fairness**

We promise that:

- You will be treated fairly and with respect.
- You will be given the right to be heard during the complaint process.
- Our decisions will be balanced, taking into account all available evidence and points of view.
- We will explain our decision and reasons to you.
- You can request a review of any decision or conclusion we have reached about your complaint.

#### **Independence**

We promise to be independent, objective and impartial.

#### **Professionalism**

We will:

- Be ethical, honest and will respect your confidentiality.
- Act with integrity and consistency.

- Be courteous, helpful and approachable.
- Be trained and competent and will provide information about our role and processes.
- Declare any interest which conflicts with our duty to properly determine complaints.
- Assist you by providing appropriate referrals to another organisation if your complaint is beyond our jurisdiction.
- Work together as a team to provide you with the highest standard of service possible.

### **Accountability**

We will strive to:

- Act lawfully and in accordance with the *Ombudsman (Northern Territory) Act*.
- Treat complaints against this Office seriously and with integrity.
- Be open and transparent in all our dealings.
- Be responsible for the appropriate use of our resources and will act on a complaint according to the nature and seriousness of the grievance and the reasonable needs of other complainants.
- Give you the opportunity to comment and provide feedback on our services by completing and returning anonymous survey forms.

### **Accessibility**

- Our Office hours are 8.00 am to 4.30 pm Monday to Friday.
- We will visit regional centres on a regular basis.
- Toll free telephone access within the Northern Territory will be maintained.
- Information material about our work will be freely available.
- We are trained in the use of translation and interpreter services and can arrange these services if required.
- We will use plain language in communicating with you in our letters and during interviews.
- You are welcome to bring a friend or mentor with you to talk with us, or to assist you in lodging your complaint.
- You can have someone else lodge a complaint on your behalf. However, you will need to authorise that person to act for you.
- Wheelchair access is provided at both Darwin and Alice Springs Offices.
- We will give you the name of a contact officer from our Office whom you can contact to check on progress of your complaint at any time.
- You can lodge a complaint in person, in writing, by telephone or fax, or via the Internet. However, you will need to consider the risks of disclosing personal or confidential information on the Internet.

### **Timeliness**

Where possible:

- Your complaint will be acknowledged within 7 days and you will be promptly informed of the action to be taken.



- Telephone, facsimile and email messages will be answered promptly, usually within 24 hours.
- Letters will be acknowledged within 7 days of receipt.
- You will be informed of the progress of the complaint regularly and usually every 6-8 weeks.
- We will be flexible in our approach and try to achieve a conciliated resolution of the complaint when appropriate.
- We will respond promptly to requests for information.
- If we cannot meet these benchmarks in your case you will be informed.

### **Courtesy and Sensitivity**

We will always strive to:

- Identify ourselves to all people who contact us.
- Include in our correspondence your correct name, contact details and a file reference number.
- Respect your privacy.
- Seek your permission before obtaining any necessary information.
- Provide you with high quality information and advice.
- Explain complex information to you in clear and simple language.
- Give you reasons for our decisions and recommendations.

### **Our Expectations of You**

All we ask is that you:

- Treat us with respect and courtesy.
- Be clear and frank in your dealings with us.
- Provide us with as much relevant information when requested so that we can serve you better.
- Keep us informed of any new developments that have a bearing on your complaint.

### **Our Commitment to Continuous Improvement**

We are fully committed to providing the best service we possibly can and are always looking for opportunities to improve our services to the highest standard. We will monitor and review our services periodically in order to provide the optimum service to you. As your views and opinions are important to us, we are open to comments or suggestions for improving our services and will try and resolve any grievance you may have about the quality of our services. You can telephone, write or make an appointment to see us to discuss your concerns. We will also conduct client feedback and satisfaction surveys and report our activities in our annual report.

### **How We Will Respond to Your Complaint**

The Ombudsman's Office is an office of last resort. Our legislation requires a person to, wherever possible, refer their complaint back to the agency complained about, to try and resolve the matter quickly. However, if you still remain dissatisfied with that approach, you can contact us with your complaint for further assistance. We will first

assess your complaint to decide whether or not it is within the Ombudsman's power to investigate. If it is not, we will assist you in referring your complaint to the appropriate agency or other organisation. When considering whether to investigate a matter ourselves or hand it over to another agency, we are obliged to consider the public interest and the capacity of the agency to deal with the matter. We also do not determine guilt. Only a court or tribunal can decide if someone is guilty or not guilty.

If we accept your complaint, it will be assigned to a case officer who, depending on the complexity or seriousness of the complaint, will make informal inquiries with the agency to try and resolve it expeditiously. In certain cases, a formal investigation may be necessary. We will keep you regularly informed of progress of your inquiry or investigation. At the end of our investigation, we will report our findings to you and the agency. Where appropriate, we may make recommendations to improve the agency's administrative practices and/or policies or even seek an apology from the agency if appropriate.

### **What the Ombudsman Cannot Do**

The Ombudsman must comply with the terms of the *Ombudsman (Northern Territory) Act*. The Act states that the Ombudsman cannot:

- Provide legal advice or representation;
- Act as an advocate; or
- Look into complaints about politicians, most employment disputes, racial vilification, decisions of the Courts, the Coroner, the Director of Public Prosecutions or actions of private individuals or businesses.

## Appendix E

### FINANCIAL STATEMENT OVERVIEW

**For the Year Ended 30 June 2008**

The Ombudsman's Office comprises two entities – the Ombudsman and the Health and Community Services Complaints Commission.

- The Ombudsman's role is to receive, investigate and resolve complaints made by members of the public about any administrative action to which the Ombudsman (Northern Territory) Act applies and to foster excellence in public sector services.
- The role of the Health and Community Services Complaints Commission is to conciliate, investigate and resolve health and community services complaints within the Northern Territory, to promote the rights of users of those services and to contribute to quality and safety in health care.

During 2007-08 the financial performance for the Office of the Ombudsman for the Northern Territory and the Health and Community Services Complaints Commission (the 'Department'), was within expectations with a net result of a deficit of \$2,000. The Department received total operating revenue of \$2,257,000. This amount included \$33,000 for Agency Agreements with the Commonwealth Ombudsman; \$5,000 for Unreasonable Complainant Conduct Training; \$4,000 for Salary Recovery; \$10,000 Apprentice/Trainee incentive funding; \$31,000 Project Employment funding; \$1,868,000 output revenue and \$306,000 for services received free of charge from the Department of Corporate and Information Services.

Operating expenses for the Department comprised \$1,639,000 for employee expenses, \$297,000 for the purchase of goods and services and \$306,000 for services received free of charge from the Department of Corporate and Information Services. Depreciation and amortisation totalled \$11,000.

**Table 1 - Performance by Output Group**

	Ombudsman		Health and Community Services Complaints Commission		Total	
	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
Income	1 832	1 596	425	606	2 257	2 202
Expenses	1 834	1 577	425	521	2 259	2 098
<b>Surplus/(Deficit)</b>	<b>(2)</b>	<b>19</b>	<b>-</b>	<b>85</b>	<b>(2)</b>	<b>104</b>

The net result is better than estimated in the 2007-08 revised budget. The final financial position is similar to last year with both current assets and current liabilities reduced.

#### **CERTIFICATION OF THE FINANCIAL STATEMENTS**

We certify that the attached financial statements for the Office of the Ombudsman for the Northern Territory have been prepared from proper accounts and records in accordance with the prescribed format, the Financial Management Act and Treasurer's Directions.

We further state that the information set out in the Operating Statement, Balance Sheet, Statement of Changes in Equity, Cash Flow Statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2008 and the financial position on that date.

At the time of signing, we are not aware of any circumstances that would render the particulars included in the financial statements misleading or inaccurate.



.....  
**CAROLYN RICHARDS**  
**OMBUDSMAN FOR THE NT**  
21 October 2008



.....  
**RACHELLE TAN**  
**A/BUSINESS MANAGER**  
21 October 2008

**OFFICE OF THE OMBUDSMAN FOR THE NORTHERN TERRITORY  
OPERATING STATEMENT  
As at 30 June 2008**

	NOTE	2008 \$'000	2007 \$'000
<b>INCOME</b>			
Output Revenue		1 868	1 854
Sales of Goods and Services		52	37
Goods and Services Received Free of Charge	4	306	306
Other Income		31	5
<b>TOTAL INCOME</b>	3	<b>2 257</b>	<b>2 202</b>
<b>EXPENSES</b>			
Employee Expenses		1 639	1 523
<i>Administrative Expenses</i>			
Purchases of Goods and Services	5	297	259
Repairs and Maintenance		6	1
Depreciation and Amortisation	8	11	9
Goods and Services Received Free of Charge	4	306	306
<b>TOTAL EXPENSES</b>	3	<b>2 259</b>	<b>2 098</b>
<b>NET SURPLUS/(DEFICIT)</b>	11	<b>(2)</b>	<b>104</b>

<sup>1</sup> Includes DCIS Service Charges

[The Operating Statement is to be read in conjunction with the notes to the financial statements.](#)

**BALANCE SHEET**  
As at 30 June 2008

	NOTE	2008 \$'000	2007 \$'000
<b>ASSETS</b>			
<i>Current Assets</i>			
Cash and Deposits	6	142	184
Receivables	7	5	9
Prepayments		3	-
<b>Total Current Assets</b>		<b>150</b>	<b>193</b>
<i>Non-Current Assets</i>			
Property, Plant and Equipment	8	79	52
<b>Total Non-Current Assets</b>		<b>79</b>	<b>52</b>
<b>TOTAL ASSETS</b>		<b>229</b>	<b>245</b>
<b>LIABILITIES</b>			
<i>Current Liabilities</i>			
Payables	9	35	53
Provisions	10	161	192
<b>Total Current Liabilities</b>		<b>196</b>	<b>245</b>
<i>Non-Current Liabilities</i>			
Provisions	10	35	-
<b>Total Non-Current Liabilities</b>		<b>35</b>	<b>-</b>
<b>TOTAL LIABILITIES</b>		<b>231</b>	<b>245</b>
<b>NET ASSETS</b>		<b>(2)</b>	<b>-</b>
<b>EQUITY</b>			
	11		
Capital		(91)	(91)
Accumulated Funds		89	91
<b>TOTAL EQUITY</b>		<b>(2)</b>	<b>-</b>

The Balance Sheet is to be read in conjunction with the notes to the financial statements.

**STATEMENT OF CHANGES IN EQUITY**  
For the year ended 30 June 2008

	NOTE	2008 \$'000	2007 \$'000
<b>BALANCE OF EQUITY AT 1 JULY</b>		<b>-</b>	<b>(111)</b>
<i>Capital</i>			
	11		
Balance at 1 July		(91)	(98)
Equity Injections		-	7
Balance at 30 June		(91)	(91)
<i>Accumulated Funds</i>			
	11		
Balance at 1 July		91	(13)
Surplus/(Deficit) for the Period		(2)	104
Balance at 30 June		89	91
<b>BALANCE OF EQUITY AT 30 JUNE</b>		<b>(2)</b>	<b>-</b>

This Statement of Changes in Equity is to be read in conjunction with the notes to the financial statements.

**CASH FLOW STATEMENT**  
For the year ended 30 June 2008

	NOTE	2008 \$'000 (Outflows) / Inflows	2007 \$'000 (Outflows) / Inflows
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<i>Operating Receipts</i>			
Output Revenue Received		1 868	1 854
Receipts From Sales of Goods And Services		123	60
<b>Total Operating Receipts</b>		<b>1 991</b>	<b>1 914</b>
<i>Operating Payments</i>			
Payments to Employees		(1 628)	(1 506)
Payments for Goods and Services		(367)	(256)
<b>Total Operating Payments</b>		<b>(1 995)</b>	<b>(1 762)</b>
<b>Net Cash From/(Used In) Operating Activities</b>	12	<b>(4)</b>	<b>152</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
<i>Investing Payments</i>			
Purchases of Assets	8	(38)	-
<b>Total Investing Payments</b>		<b>(38)</b>	<b>-</b>
<b>Net Cash From/(Used In) Investing Activities</b>		<b>(38)</b>	<b>-</b>
Net Increase/(Decrease) in Cash Held		(42)	152
Cash at Beginning of Financial Year		184	32
<b>CASH AT END OF FINANCIAL YEAR</b>	6	<b>142</b>	<b>184</b>

The Cash Flow Statement is to be read in conjunction with the notes to the financial statements.

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

**INDEX OF NOTES TO THE FINANCIAL STATEMENTS**

1. Objectives and Funding
2. Statement of Significant Accounting Policies
3. Operating Statement by Output Group

**INCOME**

4. Goods and Services Received Free of Charge

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**ASSETS**

6. Cash and Deposits
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**OTHER DISCLOSURES**

12. Notes to the Cash Flow Statement
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14. Commitments
15. Contingent Liabilities and Contingent Assets
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## NOTES TO THE FINANCIAL STATEMENTS For the year ended 30 June 2008

### 1. OBJECTIVES AND FUNDING

The Office of the Ombudsman for the Northern Territory (the 'Department') includes the Health and Community Services Complaints Commission. The Ombudsman's role is to receive, investigate and resolve complaints made by members of the public about any administrative action to which the *Ombudsman (Northern Territory) Act* applies. The Commission's role is to inquire into, conciliate, investigate and resolve health and community services complaints within the Northern Territory.

The Department is predominantly funded by Parliamentary appropriations. The financial statements encompass all funds through which the Department controls resources to perform its functions.

In the process of reporting on the Department as a single agency, all intra agency transactions and balances have been eliminated.

Additional information in relation to the Department and the Health and Community Services Complaints Commission and its principal activities may be found in the Annual Report.

### 2. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Basis of Accounting

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act* and related Treasurer's Directions. The *Financial Management Act* requires the Department to prepare financial statements for the year ended 30 June based on the form determined by the Treasurer, which is required to include:

- (i) a Certification of the Financial Statements;
- (ii) an Operating Statement;
- (iii) a Balance Sheet;
- (iv) a Statement of Changes in Equity;
- (v) a Cash Flow Statement; and
- (vi) applicable explanatory notes to the financial statements.

The form of financial statements is consistent with the accrual budget format and the requirements of Australian Accounting Standards, including AASB 101 and AASB 107. The format also requires additional disclosures specific to Territory Government entities.

The financial statements have been prepared using the accrual basis of accounting, which recognises the effect of financial transactions and events when they occur, rather than when cash is paid out or received. As part of the preparation of the financial statements, all intra agency transactions and balances have been eliminated.

Except where stated, the financial statements have also been prepared in accordance with the historical cost convention.

#### (b) Agency and Territory Items

The financial statements of the Department include income, expenses, assets, liabilities and equity over which the Department has control (Agency items). Certain items, while managed by the Agency, are controlled and recorded by the Territory rather than the Agency (Territory items). Territory items are recognised and recorded in the Central Holding Authority as discussed below.

##### ***Central Holding Authority***

The Central Holding Authority is the 'parent body' that represents the Government's ownership interest in Government controlled entities.

## **NOTES TO THE FINANCIAL STATEMENTS**

### **For the year ended 30 June 2008**

The Central Holding Authority also records all Territory items, such as income, expenses, assets and liabilities controlled by the Government and managed by Agencies on behalf of the Government. The main Territory item is Territory income, which includes taxation and royalty revenue, Commonwealth general purpose funding (such as GST revenue), fines, and statutory fees and charges.

The Central Holding Authority also holds certain Territory assets not assigned to Agencies as well as certain Territory liabilities that are not practical or effective to assign to individual Agencies, such as unfunded superannuation and long service leave.

**(c) Comparatives**

Where necessary, comparative information for the 2006-07 financial year has been reclassified to provide consistency with current year disclosures.

**(d) Presentation and Rounding of Amounts**

Amounts in the financial statements and notes to the financial statements are presented in Australian dollars and have been rounded to the nearest thousand dollars, with amounts of \$500 or less being rounded down to zero.

**(e) Changes in Accounting Policies**

There have been no changes to accounting policies adopted in 2007-08 as a result of management decisions.

**(f) Goods and Services Tax**

Income, expenses and assets are recognised net of the amount of Goods and Services Tax (GST), except where the amount of GST incurred on a purchase of goods and services is not recoverable from the Australian Tax Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated with the amount of GST included. The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables in the Balance Sheet.

Cash flows are included in the Cash Flow Statement on a gross basis. The GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows. Commitments and contingencies are disclosed net of the amount of GST recoverable or payable unless otherwise specified.

**(g) Income Recognition**

Income encompasses both revenue and gains.

Income is recognised at the fair value of the consideration received, exclusive of the amount of GST. Exchanges of goods or services of the same nature and value without any cash consideration being exchanged are not recognised as income.

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

***Output Revenue***

Output revenue represents Government funding for Department operations and is calculated as the net cost of Department outputs after taking into account funding from Department income. The net cost of Department outputs for Output Appropriation purposes does not include any allowance for major non-cash costs such as depreciation.

Revenue in respect of this funding is recognised in the period in which the Department gains control of the funds.

***Grants and Other Contributions***

Grants, donations, gifts and other non-reciprocal contributions are recognised as revenue when the Department obtains control over the assets comprising the contributions. Control is normally obtained upon receipt.

Contributions are recognised at their fair value. Contributions of services are only recognised when a fair value can be reliably determined and the services would be purchased if not donated.

***Sale of Goods***

Revenue from the sale of goods is recognised (net of returns, discounts and allowances) when control of the goods passes to the customer and specified conditions associated with the sale have been satisfied.

***Rendering of Services***

Revenue from rendering services is recognised on a stage of completion basis.

***Interest Revenue***

Interest revenue is recognised as it accrues, taking into account the effective yield on the financial asset.

***Goods and Services Received Free of Charge***

Goods and services received free of charge are recognised as revenue when a fair value can be reliably determined and the resource would have been purchased if it had not been donated. Use of the resource is recognised as an expense.

***Disposal of Assets***

A gain or loss on disposal of assets is included as a gain or loss on the date control of the asset passes to the buyer, usually when an unconditional contract of sale is signed. The gain or loss on disposal is calculated as the difference between the carrying amount of the asset at the time of disposal and the net proceeds on disposal.

***Contributions of Assets***

Contributions of assets and contributions to assist in the acquisition of assets, being non-reciprocal transfers, are recognised, unless otherwise determined by Government, as gains when the Department obtains control of the asset or contribution. Contributions are recognised at the fair value received or receivable.

**(h) Repairs and Maintenance Expenses**

Funding is received for repairs and maintenance works associated with Departmental assets as part of Output Revenue. Costs associated with repairs and maintenance works on Department assets are expensed as incurred.

**(i) Interest Expenses**

Interest expenses include interest and finance lease charges. Interest expenses are expensed in the period in which they are incurred.

**(j) Cash and Deposits**

For the purposes of the Balance Sheet and the Cash Flow Statement, cash includes cash on hand, cash at bank and cash equivalents. Cash equivalents are highly liquid short-term investments that are readily convertible to cash.

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

**(k) Receivables**

Receivables include accounts receivable and other receivables and are recognised at fair value less any allowance for impairment losses.

The allowance for impairment losses represents the amount of receivables the Department estimates are likely to be uncollectible and are considered doubtful.

Accounts receivable and other receivables are generally settled within 30 days.

**(l) Property, Plant and Equipment**

***Acquisitions***

All items of property, plant and equipment with a cost, or other value, equal to or greater than \$5,000 are recognised in the year of acquisition and depreciated as outlined below. Items of property, plant and equipment below the \$5,000 threshold are expensed in the year of acquisition.

The construction cost of property, plant and equipment includes the cost of materials and direct labour, and an appropriate proportion of fixed and variable overheads.

***Complex Assets***

Major items of plant and equipment comprising a number of components that have different useful lives, are accounted for as separate assets. The components may be replaced during the useful life of the complex asset.

***Subsequent Additional Costs***

Costs incurred on property, plant and equipment subsequent to initial acquisition are capitalised when it is probable that future economic benefits in excess of the originally assessed performance of the asset will flow to the Department in future years. Where these costs represent separate components of a complex asset, they are accounted for as separate assets and are separately depreciated over their expected useful lives.

***Construction (Work in Progress)***

As part of the *Financial Management Framework*, the Department of Planning and Infrastructure is responsible for managing general government capital works projects on a whole of Government basis. Therefore appropriation for the Department's capital works is provided directly to the Department of Planning and Infrastructure and the cost of construction work in progress is recognised as an asset of that Department. Once completed, capital works assets are transferred to the Department.

***Depreciation and Amortisation***

Items of property, plant and equipment, including buildings but excluding land, have limited useful lives and are depreciated or amortised using the straight-line method over their estimated useful lives.

Amortisation applies in relation to intangible non-current assets with limited useful lives and is calculated and accounted for in a similar manner to depreciation.

The estimated useful lives for each class of asset are in accordance with the Treasurer's Directions and are determined as follows:

	<u>2008</u>	<u>2007</u>
Plant and Equipment	10 Years	10 Years

Assets are depreciated or amortised from the date of acquisition or from the time an asset is completed and held ready for use.

## **NOTES TO THE FINANCIAL STATEMENTS**

### **For the year ended 30 June 2008**

#### ***Impairment of Assets***

An asset is said to be impaired when the asset's carrying amount exceeds its recoverable amount.

Non-current physical and intangible Department assets are assessed for indicators of impairment on an annual basis. If an indicator of impairment exists, the Department determines the asset's recoverable amount. The asset's recoverable amount is determined as the higher of the asset's depreciated replacement cost and fair value less costs to sell. Any amount by which the asset's carrying amount exceeds the recoverable amount is recorded as an impairment loss.

Impairment losses are recognised in the Operating Statement unless the asset is carried at a revalued amount. Where the asset is measured at a revalued amount, the impairment loss is offset against the Asset Revaluation Reserve for that class of asset to the extent that an available balance exists in the Asset Revaluation Reserve.

In certain situations, an impairment loss may subsequently be reversed. Where an impairment loss is subsequently reversed, the carrying amount of the asset is increased to the revised estimate of its recoverable amount. A reversal of an impairment loss is recognised in the Operating Statement as income, unless the asset is carried at a revalued amount, in which case the impairment reversal results in an increase in the Asset Revaluation Reserve.

#### **(m) Leased Assets**

Leases under which the Department assumes substantially all the risks and rewards of ownership of an asset are classified as finance leases. Other leases are classified as operating leases.

##### ***Finance Leases***

Finance leases are capitalised. A leased asset and a lease liability equal to the present value of the minimum lease payments are recognised at the inception of the lease.

Lease payments are allocated between the principal component of the lease liability and the interest expense.

##### ***Operating Leases***

Operating lease payments made at regular intervals throughout the term are expensed when the payments are due, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased property. Lease incentives under an operating lease of a building or office space is recognised as an integral part of the consideration for the use of the leased asset. Lease incentives are to be recognised as a deduction of the lease expenses over the term of the lease.

#### **(n) Payables**

Liabilities for accounts payable and other amounts payable are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Department. Accounts payable are normally settled within 30 days.

#### **(o) Employee Benefits**

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and recreation leave. Liabilities arising in respect of wages and salaries and recreation leave and other employee benefit liabilities that fall due within twelve months of reporting date are classified as current liabilities and are measured at amounts expected to be paid. Non-current employee benefit liabilities that fall due after twelve months of the reporting date are measured at present value, calculated using the Government long term bond rate.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken is less than the entitlement accruing in each reporting period.

Employee benefit expenses are recognised on a net basis in respect of the following categories:

- wages and salaries, non-monetary benefits, recreation leave, sick leave and other leave entitlements; and
- other types of employee benefits.

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

As part of the *Financial Management Framework*, the Central Holding Authority assumes the long service leave liabilities of Government Agencies, including the Department and as such no long service leave liability is recognised in agency financial statements.

**(p) Superannuation**

Employees' superannuation entitlements are provided through the:

- NT Government and Public Authorities Superannuation Scheme (NTGPASS);
- Commonwealth Superannuation Scheme (CSS); or
- non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The Department makes superannuation contributions on behalf of its employees to the Central Holding Authority or non-government employee nominated schemes. Superannuation liabilities related to government superannuation schemes are held by the Central Holding Authority and as such are not recognised in agency financial statements.

**(q) Contributions by and Distributions to Government**

The Department may receive contributions from Government where the Government is acting as owner of the Department. Conversely, the Department may make distributions to Government. In accordance with the *Financial Management Act* and Treasurer's Directions, certain types of contributions and distributions, including those relating to administrative restructures, have been designated as contributions by, and distributions to, Government. These designated contributions and distributions are treated by the Department as adjustments to equity.

The Statement of Changes in Equity and Note 11 provide additional information in relation to contributions by, and distributions to, Government.

**(r) Commitments**

Disclosures in relation to capital and other commitments, including lease commitments are shown at Note 14 and are consistent with the requirements contained in AASB 101, AASB 116 and AASB 117.

Commitments are those contracted as at 30 June where the amount of the future commitment can be reliably measured.

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2008

**3. OPERATING STATEMENT BY OUTPUT GROUP**

	Note	Ombudsman		Health and Community Services Complaints Commission		Total	
		2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
<b>INCOME</b>							
Output Revenue		1 463	1 267	405	587	1 868	1 854
Sales of Goods and Services		52	37	-	-	52	37
Goods and Services Received Free of Charge	4	286	287	20	19	306	306
Other Income		31	5	-	-	31	5
<b>TOTAL INCOME</b>		<b>1 832</b>	<b>1 596</b>	<b>425</b>	<b>606</b>	<b>2 257</b>	<b>2 202</b>
<b>EXPENSES</b>							
Employee Expenses		1 292	1 096	346	428	1 638	1 524
<i>Administrative Expenses</i>							
Purchases of Goods and Services	5	232	184	57	74	289	258
Repairs and Maintenance		13	1	2	-	15	1
Depreciation and Amortisation	8	11	9	-	-	11	9
Goods and Services Received Free of Charge	4	286	287	20	19	306	306
<b>TOTAL EXPENSES</b>		<b>1 834</b>	<b>1 577</b>	<b>425</b>	<b>521</b>	<b>2 259</b>	<b>2 098</b>
<b>NET SURPLUS/(DEFICIT)</b>	11	<b>(2)</b>	<b>19</b>	<b>-</b>	<b>85</b>	<b>(2)</b>	<b>104</b>

*The Operating Statement by Output Group is to be read in conjunction with the notes to the financial statements.*

**4. GOODS AND SERVICES RECEIVED FREE OF CHARGE**

Corporate and Information Services

**Total Goods and Services Received Free of Charge**

	2008 \$'000	2007 \$'000
Corporate and Information Services	306	306
<b>Total Goods and Services Received Free of Charge</b>	<b>306</b>	<b>306</b>

**5. PURCHASES OF GOODS AND SERVICES**

The net surplus/(deficit) has been arrived at after charging the following expenses:

**Goods and Services Expenses:**

Consultants <sup>(1)</sup>	3	7
Advertising <sup>(2)</sup>	1	2
Marketing and Promotion <sup>(3)</sup>	2	5
Document Production	15	15
Legal Expenses <sup>(4)</sup>	38	6
Recruitment <sup>(5)</sup>	-	1
Training and Study	33	20
Official Duty Fares	21	14
Travelling Allowance	4	3

(1) Includes marketing, promotion and IT consultants.

(2) Does not include recruitment advertising or marketing and promotion advertising.

(3) Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.

(4) Includes legal fees, claim and settlement costs.

(5) Includes recruitment related advertising costs.

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2008

	2008 \$'000	2007 \$'000
<b>6. CASH AND DEPOSITS</b>		
Cash on Hand	1	1
Cash at Bank	141	183
<b>Total Cash and Deposits</b>	<b>142</b>	<b>184</b>
<b>7. RECEIVABLES</b>		
<b>Current</b>		
Accounts Receivable	1	7
Less: Allowance for Impairment Losses	-	-
	<b>1</b>	<b>7</b>
Interest Receivables		
GST Receivables	4	2
	<b>4</b>	<b>2</b>
<b>Total Receivables</b>	<b>5</b>	<b>9</b>
<b>8. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Plant and Equipment</b>		
At Cost	121	83
Less: Accumulated Depreciation	(42)	(31)
	<b>79</b>	<b>52</b>
<b>Total Plant and Equipment</b>	<b>79</b>	<b>52</b>

**Plant and Equipment Reconciliations**

A reconciliation of the carrying amount of plant and equipment at the beginning and end of 2007-08 and 2006-07 is set out below:

	Plant & Equipment		Total	
	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
<b>Carrying Amount as at 1 July</b>	52	54	52	54
Additions	38	-	38	-
Depreciation and Amortisation	(11)	(9)	(11)	(9)
Additions/(Disposals) from Asset Transfers	-	7	-	7
<b>Carrying Amount as at 30 June</b>	<b>79</b>	<b>52</b>	<b>79</b>	<b>52</b>



**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2008

	2008 \$'000	2007 \$'000
<b>9. PAYABLES</b>		
Accounts Payable	14	23
Accrued Expenses	21	30
<b>Total Payables</b>	<b>35</b>	<b>53</b>
<b>10. PROVISIONS</b>		
<b>Current</b>		
<i>Employee Benefits</i>		
Recreation Leave	120	149
Leave Loading	17	19
Other Employee Benefits	10	2
<i>Other Current Provisions</i>		
Other Provisions	14	22
	<b>161</b>	<b>192</b>
<b>Non-Current</b>		
<i>Employee Benefits</i>		
Recreation Leave	35	-
	<b>35</b>	<b>-</b>
<b>Total Provisions</b>	<b>196</b>	<b>192</b>
<p>The Department employed 19 employees as at 30 June 2008 (19 employees as at 30 June 2007).</p>		
<b>11. EQUITY</b>		
<p>Equity represents the residual interest in the net assets of the Department. The Government's ownership interest in the Department is held in the Central Holding Authority as described in Note 2(b).</p>		
<b>Capital</b>		
<b>Balance as at 1 July</b>	<b>(91)</b>	<b>(98)</b>
<i>Equity Injections</i>		
Equity Transfers In	-	7
<b>Balance as at 30 June</b>	<b>(91)</b>	<b>(91)</b>
<b>Accumulated Funds</b>		
<b>Balance as at 1 July</b>	<b>91</b>	<b>(13)</b>
Surplus /(Deficit) for the Period	(2)	104
<b>Balance as at 30 June</b>	<b>89</b>	<b>91</b>
<b>Total Equity</b>	<b>(2)</b>	<b>-</b>

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

	2008 \$'000	2007 \$'000
<b>12. NOTES TO THE CASH FLOW STATEMENT</b>		
<b>Reconciliation of Cash</b>		
The total of Departmental Cash and Deposits of \$142 000 recorded in the Balance Sheet is consistent with that recorded as 'cash' in the Cash Flow Statement.		
<b>Reconciliation of Net Surplus/(Deficit) to Net Cash From Operating Activities</b>		
<b>Net Surplus/(Deficit)</b>	<b>(2)</b>	<b>104</b>
<i>Non-Cash Items:</i>		
Depreciation and Amortisation	11	9
<i>Changes in Assets and Liabilities:</i>		
Decrease/(Increase) in Receivables	4	(5)
(Increase) in Prepayments	(3)	-
(Decrease)/Increase in Payables	(19)	27
Increase in Provision for Employee Benefits	13	17
(Decrease) in Other Provisions	(8)	-
<b>Net Cash From Operating Activities</b>	<b>(4)</b>	<b>152</b>

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

**13. FINANCIAL INSTRUMENTS**

A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Financial instruments held by the Ombudsman for the NT include cash and deposits, receivables and payables. The Ombudsman for the NT has limited exposure to financial risks as discussed below.

**(a) Credit Risk**

The Agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to Government, the Agency has adopted a policy of only dealing with credit worthy organisations and obtaining sufficient collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents the Agency's maximum exposure to credit risk without taking account of the value of any collateral or other security obtained.

**(b) Net Fair Value**

The carrying amount of financial assets and financial liabilities recorded in the financial statements approximates their respective net fair values. Where differences exist, these are not material.

**(c) Interest Rate Risk**

The Ombudsman for the NT is not exposed to interest rate risk as Agency financial assets and financial liabilities are non-interest bearing.

	Weighted Average interest rate %	Variable Interest \$'000	Fixed Interest Maturity			Non- Interest Bearing \$'000	Total \$'000
			Under 1 year \$'000	1 to 5 years \$'000	Over 5 years \$'000		
<b>2008 Financial Assets</b>							
Cash and Deposits						142	142
Receivables						5	5
<b>Total Financial Assets</b>						147	147
<b>Financial Liabilities</b>							
Payables						31	31
<b>Total Financial Liabilities</b>						31	31
<b>Net Financial Assets</b>						116	116

	Weighted Average interest rate %	Variable Interest \$'000	Fixed Interest Maturity			Non- Interest Bearing \$'000	Total \$'000
			Under 1 year \$'000	1 to 5 years \$'000	Over 5 years \$'000		
<b>2007 Financial Assets</b>							
Cash and Deposits						184	184
Receivables						9	9
<b>Total Financial Assets</b>						193	193
<b>Financial Liabilities</b>							
Payables						54	54
<b>Total Financial Liabilities</b>						54	54
<b>Net Financial Assets</b>						139	139

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2008**

	2008 \$'000	2007 \$'000
<b>14. COMMITMENTS</b>		
<b>Operating Lease Commitments</b>		
The Department leases property under non-cancellable operating leases expiring from 1 to 5 years. Leases generally provide the Department with a right of renewal at which time all lease terms are renegotiated. The Department also leases items of plant and equipment under non-cancellable operating leases. Future operating lease commitments not recognised as liabilities are payable as follows:		
Later than one year and not later than five years	-	13
	<u>-</u>	<u>13</u>

**15. CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

The Department had no material contingent liabilities or contingent assets as at 30 June 2008 or 30 June 2007.

**16. EVENTS SUBSEQUENT TO BALANCE DATE**

No events have arisen between the end of the financial year and the date of this report that require adjustment to, or disclosure in these financial statements.

**17. WRITE-OFFS, POSTPONEMENTS AND WAIVERS**

The Department had no write-offs, postponements or waivers in 2007-08 and 2006-07.

## HOW TO CONTACT THE OMBUDSMAN

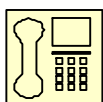
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This report is available at our website at <http://www.ombudsman.nt.gov.au>

Copies are also available upon request.