



The Honourable Clare Martin MLA
Chief Minister
Parliament House
DARWIN NT 0801

January 2005

Dear Chief Minister

In accordance with the provisions of Section 28(1) of the *Ombudsman (Northern Territory) Act 1978*, it gives me great pleasure to submit to you the Annual Report on the activities and operations of the Office of the Ombudsman for the year ending 30 June 2004.

I advise in respect of my duties as an Accountable Officer, 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 her knowledge and belief, proper records are kept of transactions undertaken by DCIS on my behalf, and the employees under her 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.

Yours sincerely

PETER A BOYCE
OMBUDSMAN



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Obtaining copies of the Annual Report

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

Copies are also available upon request.



2. INTRODUCTION AND OVERVIEW

PURPOSE OF THE REPORT

This Annual Report provides the Northern Territory Legislative Assembly with a report on the exercise and performance of my functions and duties as Ombudsman for the Northern Territory during the 12 months ending on 30 June 2004.

In doing so, I have prepared this report so as to also provide all of our diverse stakeholders including the community, Territory Government agencies, police and local government councils with information about the activities, achievements and initiatives of the Northern Territory Ombudsman.

This report is also one of our major accountability mechanisms as it provides the Northern Territory Legislative Assembly with an account of performance against the approved budget as published in the 2003-04 Budget Paper No. 3.

OMBUDSMAN'S FOREWORD

This is the 26th Annual Report of the Ombudsman for the Northern Territory and my 10th as Ombudsman. On a more personal note, this is my last report as Ombudsman as my current term of appointment as Ombudsman for the Northern Territory finishes on 25 March 2005. It has been my privilege and honour to have served as the Ombudsman for the Northern Territory for the past 10 years.

As Ombudsman I have focused on my role as being a genuine alternative process (as opposed to the courts) for the resolution of complaints. That is, focusing on the most appropriate outcomes dependent on the merits of issues of complaint identified and not on the more adversarial approach of determining there is a winner and a loser.

Where necessary I have pursued systemic issues with a view to achieving meaningful change to policies, procedures, processes and on occasion statutory provisions if they are the basis of unfair, unreasonable or discriminatory outcomes.

I complete my term in the knowledge that there is a very healthy level of respect for and awareness of the role of the Ombudsman. However, there has been little scope in my terms to seriously promote awareness and accessibility beyond the major population centres. This has been despite ongoing strategies to do so. The main hindrance has been a lack of resources coupled with a high workload. The fact that, despite these issues, the Office continues to receive increased complaint levels speaks for the profile of the office in the community. I finish my term as Ombudsman confident that the Office is



relevant, is highly respected and is seen as having independence and integrity. I am also confident that this extends not only to the public but also to the public sector.

I am somewhat disappointed that I will complete my term as Ombudsman in what may be viewed as a controversial manner and certainly in an adversarial manner in regard to the development of the new Ombudsman legislation. It is, however, my role to express my views independently and without fear or favour and thus I will do so.

My comments are made in the public interest. I would, however, stress that they are not directed at government agencies specifically and I would note that I have enjoyed, and continue to enjoy effective relationships with individual agencies. My comments are to be confined to the processes that have been followed with regard to developing new legislation

This is my last opportunity to reflect, in an Annual Report, on my 10 years as Ombudsman.

1995

When I commenced as Ombudsman for the Northern Territory on 27 March 1995 the office was in a state of flux, the previous Ombudsman having left after completing 3 years of a 5 year term and as a result, an acting appointment had been in place for some 6 months. In addition, the office had moved from Paspalis Centrepoint Building to its current location on the 12th Floor, NT House. This shift was not planned and was primarily to reduce the impact of the move by Ministers to the new Legislative Assembly. This resulted in the need to find suitable tenants for NT House, as it was leased by the government for 10 years and there was 7 years to run on the lease. The Ombudsman's Office's then current lease at Paspalis Centrepoint Building had just expired and the move provided an opportunity for cost savings to government.

The accommodation in NT House was not designed specifically for the Office of the Ombudsman and there was a need to make do with the fit out that was in existence. Relocation to NT House, whilst very pleasing as a working environment, was not as desirable in terms of accessibility to the public. The move, however, was a *fait accompli* upon my arrival and it was a case of having to make do with what was provided.

Over the years we have gradually adapted the accommodation at NT House, making it more suitable for our work. We have also accommodated the co-location of the Health and Community Services Complaints Commission and a representative of the Commonwealth Ombudsman's Office in the premises.

I have, on several occasions, pursued the possibility of relocating with a view to establishing a shop front office. Different options have also been considered but the cost has meant that the government has not yet supported such a move at this time. There remains the possibility of establishing a shop front location for receiving complaints from members of the public in conjunction with other statutory agencies such as the Anti-Discrimination Commission and the Information Commissioner.

1994/95 also saw the ending of the long term agreement with the Commonwealth Ombudsman whereby the Northern Territory Ombudsman acted as the agent for the



Commonwealth Ombudsman in the Northern Territory. I was pleased, however, to be able to negotiate an arrangement which resulted in the co-location of a Commonwealth Ombudsman's representative in the Ombudsman's Darwin Office, thus maintaining a one-stop-shop approach. This co-location arrangement has, over the past 10 years, been extremely successful and I am confident it will continue to be so.

1995/96

In 1995/96 I commissioned an independent review of the Office by the Commissioner for Public Employment. This was the first occasion in some 18 years that the Office had been significantly reviewed.

The review of the Office was necessary in order to stabilise the organisational structure of the Office which, over the previous 3 years, had been temporarily funded for a number of positions and ongoing funding had been uncertain. The review resulted in a new organisational structure which was subsequently accepted and funded on a permanent basis by the government.

In my 1995/96 Annual Report I referred to the fact that I was of the view that the Office enjoyed a prominent place in the structure of government but I indicated that I suspected there was a hint of complacency emanating both from within the Office and without. I have focused on raising the profile of the Office in a positive manner and to a great extent believe this has been achieved. There have been occasions when the Office has been the subject of negative comment but this is not to be unexpected. I have commented elsewhere on aspects of this.

I also stated in that report, that:

Government agencies, local government bodies, the police, Government Ministers and Parliament as a whole, must avoid denigrating the office to the role of protagonist and be conscious of the need to promote the image of, and the advantages which, the Office of the Ombudsman can offer. The office is independent, objective and impartial and these attributes are the key to its success and must be protected.

These words are as relevant today as they were in 1995/96. In recent times I have been particularly perturbed at the lack of understanding as to the role of the Office demonstrated on the part of Government, Government Ministers, Elected Members of the Legislative Assembly and other entities. Whilst I believe that the institution of the Ombudsman is alive and well in Australia, I am concerned with the situation as it pertains to the Northern Territory. I will comment further on this in regard to the review of the Ombudsman legislation.

1995/96 was also important in that the re-organisation of the Office and the commitment by the government to funding the new organisational structure meant that the Office was able to retain its Alice Springs Office. The Northern Territory Ombudsman has always had the unique status and benefit of having a further Office established outside the capital city of the State or Territory.



The Alice Springs Office of the Northern Territory Ombudsman has always played an important role, particularly in regard to receiving and resolving complaints in the Central Australian region. Funding difficulties always create pressure on retaining the Alice Springs Office simply because a centralised office is more cost effective in the long run. The government's commitment (on both sides of government) to providing services to the Central Australian region has been an important and ongoing commitment and one that I have worked strongly to ensure remains intact. In this regard I would note that I have successfully negotiated a memorandum of understanding with the Anti-Discrimination Commission which sees my Alice Springs Office act as their agent, in the absence of that office having a separate office in Alice Springs.

1996/97

1996/97 saw a year of consolidation for the Office, given the implementation of the new organisational structure. There had been an increase of complaints in the previous year and this trend continued in 1996/97. Despite this, a significant reduction in a backlog of work, particularly long outstanding complaint files, was achieved.

The other significant development in 1996/97 was the decision of the then CLP Government to give the responsibility for the development of a health complaints jurisdiction to the Ombudsman. The original Cabinet Decision in this regard was very brief and merely determined that it would be the Ombudsman's responsibility to deal with health complaints in public hospitals. No provision was made for funding this activity and no parameters or guidelines were given.

It is appropriate to note here that the obligation to establish an independent health complaints mechanism arose from the then existing Medicare agreement. That agreement only required States and Territories to establish an independent complaints mechanism for the public health system (it also did not include the mental health component of the public health system). As a result, most of the States and the ACT, by 1997, had established an independent statutory entity for dealing with health complaints with jurisdiction extending not only to the public health sector but also the private health sector.

As a result of a project conducted within the Office of the Ombudsman, submissions were made to the then Minister for Health, the Hon. Denis Burke, MLA which proposed the option of establishing an independent Health and Community Services Complaints Commission with jurisdiction in both the private and public health sectors and also extending the jurisdiction to complaints concerning the aged and people with disabilities. The Minister supported this proposal and subsequently gained Cabinet support for legislation to be developed along these lines and for funding to be made available for the new Commission. It is appropriate I acknowledge the role of and outcomes achieved by the Hon. Denis Burke in this regard as it was a significant change in direction from what was originally proposed.

1997/98

In 1997/98 the new legislation for the Health and Community Services Complaints Commission was developed and ultimately that legislation came into effect on 24 June 1998. The Health and Community Services Complaints Commission commenced operation, co-located with the Office of the Ombudsman, on 1 July 1998. I had the honour



of being appointed the first Health and Community Services Complaints Commissioner on 24 June 1998.

In what was a very busy year for the Office, the Office also hosted the 1997 annual Australasian and Pacific Ombudsman Conference. Over 30 delegates from over 10 countries attended this conference.

The year was also significant in that it was the 20th year of operation of the Ombudsman for the Northern Territory. As a result of this, a number of events were held to commemorate the occasion and particularly to promote the Office to the community. The then Chief Minister hosted a function in honour of the occasion. It is fair to say that in 1997/98 the Office obtained a high profile within the community and this was reflected, to some extent, in the increased level of complaints which continued through to the next financial year.

1998/99

As noted above, 1998/99 saw a significant increase in complaints from the previous year making it the third year in a row where complaints had increased. The Office was extremely busy dealing with the workload and, in my case, I spent a significant amount of time establishing the new Health and Community Services Complaints Commission and dealing with the complaints received.

1999/2000

1999/2000 saw my being reappointed as Ombudsman for a second 5-year term on 27 March 2000. I thus became the first Ombudsman to be appointed for a second term in the Northern Territory.

The year also saw, for the first time, a small decrease in the number of approaches to the Office. There was continued focus on reducing the timeframes for dealing with complaints and addressing issues pertaining to promoting access and awareness to the Office, particularly in Aboriginal communities. In this regard I would note that, for the first time, specific funding was set aside for an access and awareness program and staff were allocated to go out and visit communities to take complaints and to promote the Office's role. The program had initially been trialed in the previous year and was fully implemented in the 1999/2000 year. An important focus of the program was to allocate staff to visit particular communities and to establish a rapport with that community.

2000/01

2000/01 saw a 34% increase in approaches to the Office. This created a significant impact on the resources available for dealing with the workload of the Office.

There was also an increasing budgetary shortfall in the baseline funding for the Office which was making it difficult, particularly in regard to operational funding, to initiate any discretionary spending. The impact of the shortfall was also significant in that when staff vacancies were occurring positions were held vacant for periods of time in order to generate sufficient savings to meet budget. Because the budgetary shortfalls were ongoing it was also necessary to make temporary appointments for short term periods so as to be able to reduce costs as and when needed, dependent upon budget constraints.



This strategy was very disruptive to staff, impacting on morale and diverting existing staff to training new staff. As is often the case in such situations, turnover of staff was high.

It is perhaps also important to observe that a lot of the budget pressure around this time arose as a result of government mandated information technology contracts which imposed costs which had not previously been funded in terms of the Ombudsman's Office or the Health and Community Services Complaints Commission.

As a result of the increasing level of baseline budget shortfall a further review of the Office was conducted, at my request, by Risk Management Services, Department of the Chief Minister. The review focused particularly on the effect of co-location of the Health and Community Services Complaints Commission with the Office of the Ombudsman, the effect of the mandated information technology contracts and other significant issues arising as a result of increased workload.

2001/02

2001/2002 is immediately significant due to the fact of the election of a Labor Government for the first time in September 2001.

One of the stated policy objectives of the new Labor Government was expressed to be to strengthen the independent statutory offices of the Ombudsman and the Auditor-General.

In November 2001, Risk Management Services completed its report as a result of reviewing the Office. The report made a number of recommendations, most importantly it recommended an increased level of baseline funding for the Office in the sum of \$114,000 (it is noted that this money was for both the Ombudsman's Office and the Health and Community Services Complaints Commission).

I note that the government subsequently approved the increased funding but the impact of that was immediately reduced by the imposition of a productivity savings which, in 2001/02 saw \$65,000 of the increased funding taken away as a productivity saving. Over the next 2 years productivity savings negated almost entirely the additional funding provided.

On 7 November 2001, at my request, the Chief Minister, the Hon. Clare Martin, MLA, approved a general review of the *Ombudsman (Northern Territory) Act 1978*. I had been seeking a review of the Act over a number of years but it had not, until this time, been seen as a priority of government. The terms of reference were drawn up and a review committee was established by the Chief Minister. Prime responsibility for the project was allocated to the Department of the Chief Minister and members of the committee were drawn from key stakeholder agencies. I was also appointed as a member of the review committee.

I will make further comment in regard to the review process separately but it is appropriate to record here that initially I was quite comfortable with the way in which the review proceeded. The committee prepared a discussion paper raising a series of discussion points with regard to proposed legislation and invited public comment in regard to those matters. The relevant submissions received were considered, summarised and discussed by the review committee.



The final report of the review committee was completed and forwarded to the Chief Minister in April 2003.

A significant amount of my time in the relevant year was spent on preparing submissions to the review committee on the relevant discussion points raised in the discussion paper and addressing matters raised within the context of the review.

I note in that year the number of approaches to the Office dropped by 14%. My Annual Report for the year noted that the reduction in workload was possibly due to a number of factors, including minimal funding available for access and awareness programs, reduced staffing, improved internal complaint handling processes within agencies and the possible impact of the change of government and other external factors.

What is pleasing to note is that despite significant pressures both of a resource and budgetary nature, the Office was able to finalise a significant number of cases and the timeframes for dealing with complaints were mainly kept to a manageable level. There were, however, signs that timeframes were becoming stressed, particularly in the more serious complex complaints under investigation.

2002/03

2002/03 saw a 27% increase in approaches to the Office.

A new computerised case management system was introduced in the Ombudsman's Office which enabled more accurate tracking of files and case management as to the timeliness of action and recording of relevant case information. Also, as indicated above, the final report of the review committee on the proposed legislation was provided to the Chief Minister, the Hon. Clare Martin, MLA in April 2003.

I would note that in conjunction with the review of the Ombudsman legislation there was also a full review of the *Health and Community Services Complaints Act* commenced as required by the relevant legislation. I and other staff had to divert significant time from core responsibilities and focus on responding to a discussion paper and making submissions as to relevant changes in the legislation. As with the review of the *Ombudsman (Northern Territory) Act*, no additional funding was initially made available to carry out these tasks.

The year was a busy one, focusing on dealing with the existing caseload and addressing resource issues.

2003/04

In 2003/04, with the completion of the review of the *Ombudsman (Northern Territory) Act* and the subsequent review of the *Health and Community Services Complaints Act*, focus was given in the current reporting year to addressing a backlog of workload, particularly in the police complaints area. Strategies were introduced to deal with the backlog of work.

A major problem, however, arose in October 2003 when it became apparent that the Commissioner of Police no longer supported the initiatives proposed, in respect to the



complaints against police, in the review committee report forwarded to the Chief Minister in April 2003. I will comment further on this in regard to the review of the Act.

I was, however, very disappointed with the delays that followed and the processes that were followed by the Department of the Chief Minister to address the issues raised by the Commissioner.

Despite the development of a draft bill not coming within the context of the current reporting year, I have referred to it in this current Annual Report, particularly given the fact that I will be completing my term as Ombudsman in March 2005. My concerns about the process are such that I feel it is necessary to make specific comment. It is therefore appropriate that these comments be made in the context of this Annual Report although outside of the normal timeframe, so that they are relevant and current.

I have referred to the additional baseline funding provided for the office in 2001 and the effect that subsequent productivity savings have had. The situation is now (in 2004/05) such that there is a significant projected shortfall. This shortfall is not unexpected, given the identified need for increased baseline funding which was accepted by the government and then negated by productivity savings.

In the current reporting year the Office was able to come within budget but only after making substantial savings as a result of cuts to the access and awareness program, reducing training and development costs and diverting discretionary funding to core business activities, namely, complaint handling. Additional savings were identified as a result of reduced employee entitlements which arose due to staff changes.

The matter has not, however, been ignored. I have informed the Chief Minister of the situation and advised that I approached Risk Management Services, Department of the Chief Minister during the year seeking assistance in regard to addressing budget difficulties. I was particularly concerned that it has been difficult to convince Treasury not to impose productivity savings on a small independent statutory office in a climate of increasing complaint levels and where there is no real capacity to make the appropriate productivity savings envisaged. In reality, productivity savings for an office such as the Office of the Ombudsman and the Health and Community Services Complaints Commission have the effect of being budget cuts.

The situation is difficult in that the Office of the Ombudsman and the Health and Community Services Complaints Commission is funded primarily on the basis of its staffing. In other words, some 82% of funding is allocated to the personnel budget. In contrast 18% of the budget is for operational expenses. It is significant to note that of the 18% operational budget, some 75-80% is non-discretionary. That is, it is expenditure mandated as a result of the operation of the Office and this includes expenses relating to information technology, communication, vehicle expenses and other normal costs associated with running an office.

The discretionary funds available to the Office are minimal and primarily relate to funding to carry out training and development, access and awareness programs and other similar activities. The cumulative effect over the last 3 years is therefore significant.



A report has been received from Risk Management Services on budget management for the Office. The report recognised that the new Ombudsman legislation may well impact on the resourcing of the Office depending upon what new initiatives are incorporated within the legislation (this is particularly so with regard to proposals relating to the police complaints). The report recommended that the budget for the Office of the Ombudsman and the Health and Community Services Complaints Commission be reviewed upon implementation of new legislation. That recommendation was accepted as being appropriate but, unfortunately, it was not envisaged that there would be such significant delays in the introduction of new legislation (it will be 2 years since the final report of the review committee was provided to the Chief Minister to when the new legislation is proposed to be enacted in March 2005).

Addressing budget issues has been deferred by all parties as a result of the above. I can understand this approach but there must be a long term solution given to the budget issues identified.

I would note that at the time of writing this report I have submitted a budget proposal to the government identifying the likely impact of new legislation and the future budgetary needs of the Office. I can only encourage the government to give careful consideration to the submission made to it, as the effectiveness of the Office very much depends on it being adequately resourced and funded.

As can be seen from my above observations, the Office has been busy throughout my 10 years as Ombudsman. My focus throughout the 10 years has been as much as possible to improve the internal processes for handling complaints, introducing efficient and effective methods for dealing with complaints, particularly focusing on alternative dispute resolution processes (both within my own Office and within public sector agencies) where appropriate as opposed to lengthy and time consuming investigations. The computerised case management system has also enabled the Office to be more focused in managing individual complaints, particularly those of a more serious and complex nature.

Unfortunately, I have struggled to reduce the timeframes in dealing with complaints under investigation due to resource and budget issues. In some years gains have been made and the timeframes have been reduced considerably. This was particularly the case in regard to complaints against police which saw the timeframe reduce from periods of 2-3 years which were not uncommon when I commenced as Ombudsman, to periods of less than 12 months (in relation to those complaints raising serious issues).

Unfortunately, there is clear evidence that the timeframes are beginning to blow out again despite our best efforts. It is clear that, to some extent, the diversion of resources and staff to initiatives such as reviews of legislation and the development of draft bills has contributed to an increasing backlog of work.

However, in regard to police complaints I do not believe that a lack of resources is entirely the issue. Increasingly the complexity and seriousness of complaints has meant an increasing level of workload in reviewing investigations and commenting on investigations carried out. There is clearly a need to establish a separate Police Complaints Unit within the Office to deal with complaints against police.



This is particularly important in view of the fact that there is, within the *Police Administration Act*, a requirement that any disciplinary action taken against a police officer be commenced within six months from the date the incident occurred and came to the knowledge of the Commissioner of Police. When the *Police Administration Act* was amended to incorporate this statutory time limit, little consideration was given to the prescribed processes for dealing with complaints against police under *Ombudsman's Act*.

It has not been surprising that, over the past few years, there have been a number of instances where, as a result of the complaint process taking longer than 6 months, the Commissioner of Police has ultimately been unable to take disciplinary action even where that disciplinary action has been recommended by the Ombudsman and the Commissioner of Police has accepted that recommendation. I have raised this issue in previous reports.

I can well understand the desire to resolve complaints against police in a timely manner. The processes under the *Ombudsman's Act*, however, do not necessarily permit that to occur within the context of a specific timeframe. There are a number of reasons why this has occurred which I do not intend to expand upon at length. Suffice to say that in the absence of any amendment to the *Police Administration Act* there is a need to ensure that both the police and the Ombudsman's Office are sufficiently resourced so as to ensure that that timeframe can be met. This is not the case currently, at least in regard to the Ombudsman's Office.

It is therefore absolutely necessary, in my view, that additional resources be made available to the Office of the Ombudsman in particular for dealing with complaints against police. There is no doubt that there will be some resistance to a proposal for increased resources for the Office of the Ombudsman but it is entirely consistent with criticisms, regarding timeliness, made of the Office over time by the Police Association and, indeed, by complainants. Whilst all best efforts have been made to deal with complaints in a timely manner it is simply not possible with the current resources available and the existing workload. The proposed processes under the new bill will further increase the need for the Office to be better resourced.

I certainly do not advocate that the Ombudsman can intervene in processes under the *Police Administration Act*, however, equally, I must strongly argue that processes under the *Police Administration Act* should not defeat the purpose of independent oversight of police complaints by the Ombudsman. The current situation is unacceptable and has the potential to render the Ombudsman's role ineffective and obsolete unless additional resources are made available and/or there is some legislative change to remove this concern.

I believe that the role of the Ombudsman has been misunderstood in the Northern Territory context. Indeed, I would go further and state that there is a risk of marginalisation of the Ombudsman for the Northern Territory as a result of this lack of understanding. I can only stress the fundamental importance of the Office to the community and strongly encourage the government to recognise the role of the Office, understand it, give proper



effect to it and not to marginalise it through a lack of understanding and attention to the significance of its role.

I would stress that the government must avoid a minimalist approach to an entity such as the Ombudsman and by this I mean it must not fall into the trap of appearing to promote the Office as part of its commitment to open, accountable and democratic government, only to limit its impact by not giving it the flexible and unrestricted legislative mandate necessary to carry out that task or the resources to effectively achieve the task.

The current Northern Territory Government stated, on taking up Office in late 2001, that it intended to strengthen the role of the Ombudsman. It has also stated that it wishes to focus on alternative dispute resolution processes as the preferred choice for resolving disputes rather than the adversarial processes of the courts.

The Ombudsman is the classic alternative dispute resolution process and is a genuine alternative to the courts. Despite this, the current draft bill attempts to remove the Ombudsman's jurisdiction where there are rights of review or appeal to the courts. This is despite the fact that, in reality, such rights are not available to the majority of normal members of the public. Put simply, they cannot afford to access the courts and the risks in utilising the courts are such that they are not encouraged to access the courts.

Governments have focused on improving the legal system and increasing access to disputants in already crowded courts and to provide better means of accessing the legal system for the resolution of disputes. However, there is a feeling that the institution of the Ombudsman is being overlooked as a resource for the speedy and economical resolution of disputes.

I cannot understand how the government can accept the argument that the Ombudsman jurisdiction should be excluded because a party may have a right to take a matter to the courts. This seems to deny the concept of alternative dispute resolution and therefore the role of the Ombudsman.

I also would question why the government would accept a proposal that would see any party with a grievance being denied access to the Ombudsman unless they had a right of review to the courts which is also a stated intention of the new proposed legislation.

It has been proposed, in regard to the Development Consent Authority, that third parties who do not otherwise have a legitimate right of review under planning legislation cannot go to the Ombudsman to have a grievance heard. Under the current Act, third party objectors are able to do so and as a result, over the last 2-3 years I have written several reports critical of the planning process.

This is, in my view, a deliberate attempt to remove the Ombudsman's jurisdiction in this respect, not for any valid reason, but as I perceive the situation, due to the effectiveness of the Ombudsman in this important area. I am concerned that the proposed changes in draft legislation go much further than intended and have the potential to impact much more widely. I have thus sought legal advice on the matter from senior counsel.



There have been suggestions that the government will introduce a limited third party right of appeal with regard to the planning process. However, this is only a proposal and has not yet eventuated. The problem with this is twofold, it forces complainants to rely upon expensive legalistic processes for resolving disputes, if they have such a right. It then completely removes any ability for a third party, who is not otherwise able to rely upon a right of review, to have grievances considered by the Ombudsman. This is despite the fact that they might be able to lodge an objection and that objection is meant to be taken into account in the planning process.

The Ombudsman was created to provide all citizens with equal access to having their legitimate grievances considered. It is abhorrent to think that the current government is considering a proposal which prohibits some members of the community from having their grievances independently considered with a view to determining whether they have been given fair and reasonable administrative process. This does not accord with the principles of democratic government based on transparency and openness, it is government by exclusion.

Sir Brian Elwood, former Chief Ombudsman for New Zealand and the former President of the International Ombudsman Institute stated the following:

I go further to say that those who have the burden of governance should gain comfort from an Ombudsman with credibility, independence and flexibility taking the lamp of scrutiny and without prejudice or self-interest, looking into what has taken place and where what has been done, has been done lawfully, fairly, reasonably and without improper discrimination, being prepared to say so. But when the lamp of scrutiny suggests that what has been done or not done appears to have been contrary to law, unfair, unreasonable or improperly discriminatory, the Ombudsman should have the courage to say so and to recommend a means of resolution. Good government should not fear the light of the lamp of independent scrutiny...All that is needed is the willingness to embrace the time honoured notion that it is to the governor's ultimate advantage that there be an independent check on the conduct of the governor's own bureaucracy.

I can but echo Sir Brian Elwood's words and urge the Northern Territory Government and the Northern Territory Legislative Assembly, in considering any legislation pertaining to the role of the Ombudsman in the Northern Territory, to ensure that such legislation upholds the fundamental principles enunciated by Sir Brian Elwood.

If government allows the legislation to limit the role and deny or unduly restrict access to the role by ordinary citizens or to marginalise the Office, then the Ombudsman's effectiveness and independence will be seriously and fatally eroded. If this occurs, then ultimately the government will face the consequences, as the electorate will quickly come to appreciate their inability to utilise the Office.

It would be wrong of me not to complete my foreword without thanking my staff for all their wonderful efforts over the last year and previous years. I can say that the last year has been challenging, stressful and, at times, it has been a thankless task. It has not been



without some controversy. Much of my attention, and that of senior members of my Office, has been diverted from the ordinary every day work of the Office by the need to address ongoing reviews and the development of legislation. All my staff have stepped into the breach and supported each other in an extremely collegiate manner. This has enabled the Office to continue to function at a high level and provide a quality service despite the pressures in providing that service in a timely manner.

Whilst I am leaving the Office, I am confident that I am leaving it in extremely capable hands and the Office will continue to function effectively regardless of whoever takes over the role of Ombudsman. I have put in place over the past years a program of multi-skilling and succession planning. I am confident that the Office is well served for many years to come with the quality of its staff and the dedication and loyalty of the staff to the task at hand. It would, however, be inappropriate if I did not give special thanks to some members of staff.

To Marian Trobbiani, who has been my Executive Assistant from the beginning, I can only express my appreciation and gratitude for her support, dedication and loyalty over the years. Marian has been the Executive Assistant to all previous Ombudsmen since the establishment of the office in 1978. She has carried out her responsibilities with the same focus and professionalism from the day she started in her position. She has been an example to all staff and I regret that my leaving will mean that our working relationship comes to an end. I have indeed been lucky to have Marian to support me.

My thanks and appreciation to Vic Feldman, who joined the office as a Project Officer for the establishment of the Health and Community Services Complaints Commission and who was instrumental in the establishment of the Commission and its initial years of operation. Vic was appointed the Deputy Commissioner and later, with the merging of the two deputy positions, became the Deputy Ombudsman and the Deputy Commissioner. Vic has been a true confidante and has supported me throughout many challenging and difficult times. I thank Vic for his support, hard work and dedication, again noting that I am leaving the Office in good hands.

Cindy Bravos joined the team some 3 years ago and quickly established herself, as Director Investigations, as a highly skilled and professional operator. Cindy has contributed enormously as part of the management team to numerous initiatives and improvements in the Office, particularly case management and investigative techniques. Cindy has also taken on a huge workload and has contributed significantly to the process of developing the new legislation. I thank Cindy for her hard work, her diligence and professionalism which, has set an example to all in the Office.

Karen Lewis, the Business Manager, took over the role at a particularly difficult time and quickly demonstrated a work ethic that is second to none. Karen is truly multi-skilled and without her the Office would quickly grind to a halt. Karen has contributed not only in regard to her own duties and responsibilities but as an important component of the management team. I thank her for her hard work and support over the past 2½ years.



Whilst I have singled out particular staff for comment, I would like to acknowledge the efforts of all staff who have been with the Office during my term as Ombudsman. I have no doubt that current staff will continue to uphold the principles of the Office upon completion of my term. I am certain that my successor will find an Office that, subject to resourcing issues, has dedicated professional staff who can and will do the job that is required. More importantly perhaps, the Northern Territory community and the NT Public Sector can be assured that the staff are aware of the nature of the role of the Ombudsman and will deal with any matter independently, impartially, fairly and with the objective of achieving meaningful outcomes.

CRITICISM OF THE OMBUDSMAN'S ROLE WITH RESPECT TO POLICE COMPLAINTS

During the year the Ombudsman's Office has been the subject of what I consider to be negative publicity with regard to its role in oversighting complaints against police.

Responding to this criticism is particularly difficult in that the Ombudsman is bound by legislation not to comment on specific cases unless that matter is made public through specific processes under the relevant legislation.

Media comment and statements, attributed to the Police Association, have been inaccurate and have misrepresented the role of the Ombudsman in regard to a number of cases. Where the process in regard to handling complaints against police has been misrepresented in the media, I have endeavoured to correct the misunderstanding but this has not always been effective.

I do not wish to dwell on the negative publicity at any great length other than to note that my legislation requires certain statutory processes to be complied with, and these have always been complied with. There is also a perception that it is the Ombudsman who investigates most complaints against police but, in reality, this is not the case. Under the current legislation it is the police who carry out almost all investigations into complaints against police. Despite this being a fact well known to the Police Association, they have continually alluded to the fact that I have been responsible for the investigation of complaints against police and am therefore at fault for matters pertaining to the process of investigation. This is not so.

My role, in a limited number of cases where a complaint against police is of a serious nature, is to review the investigation carried out by the police and, in conjunction with the police, reach a joint view as to the appropriate outcome. This is referred to as the Joint Review Committee process. Invariably, before a report is released to the Commissioner recommending action, there needs to be a consensus. Where there is no consensus, then I report separately to the Commissioner on those matters not agreed to. This is not a common occurrence. The Commissioner is not bound by any recommendations made and is specifically responsible for any matters pertaining to discipline.



Following on from the above comments there has been a suggestion that I am anti-police. Media reporting suggests that this is commonly known amongst police circles. Interestingly, there have been no details as to what constitutes my anti-police behaviour.

It is not perhaps surprising that these concerns, which have never been alleged against me in the previous 9 years as Ombudsman, are made in the context of a Review of the Ombudsman's legislation being conducted.

As Ombudsman, I am an independent statutory officer charged to deal with complaints against police without fear or favour. Where it is appropriate and necessary, I am obliged to criticise the actions of police. My criticisms are not determinations of guilt; they are expressions of opinion, based upon a detailed consideration of any information available to me. Invariably the information available to me is not known publicly. It is not that parties cannot disagree with my views but, again, it is completely inaccurate, inappropriate and disrespectful to the Office of the Ombudsman for anyone to suggest that the Ombudsman is anti-police because he/she is carrying out the very role for which they are charged under legislation to carry out.

There is absolutely no basis or substance to the allegation that I am anti-police. It is one easily made and equally difficult to refute where given credence by poor, inaccurate and sensationalist reporting.

I will complete my term in Office confident and proud that I have carried out my role and responsibilities as Ombudsman impartially, fairly and independently.

I hold our police in the highest regard but it is my job, when I am dealing with complaints, to express my opinion where the police or individual police members have not acted properly or where there is *prima facie* evidence of misconduct. The public expect me to do my job and properly comment on the available information as I see it.

I am confident that any Ombudsman will continue to uphold these traditions regardless of any ill founded politically or otherwise motivated suggestion that they may be anti-police, simply because they have the temerity to make adverse comment where it is appropriate to do so.



OVERVIEW

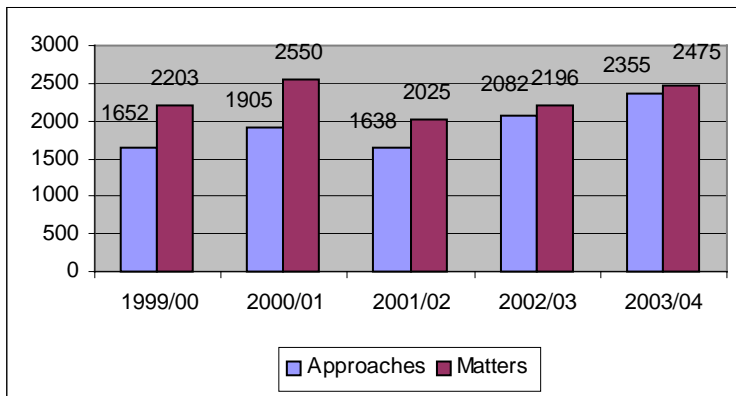
- Overall Performance

WORKLOAD

Number of Approaches Received and Matters Raised

'Approaches' are the number of contacts made by individuals or entities to the Office seeking our assistance and include enquiries and complaints. 'Matters raised' are the specific issues raised in a complaint and can be more than one per complaint.

Graph 1: Comparison of total approaches and matters over past 5 years

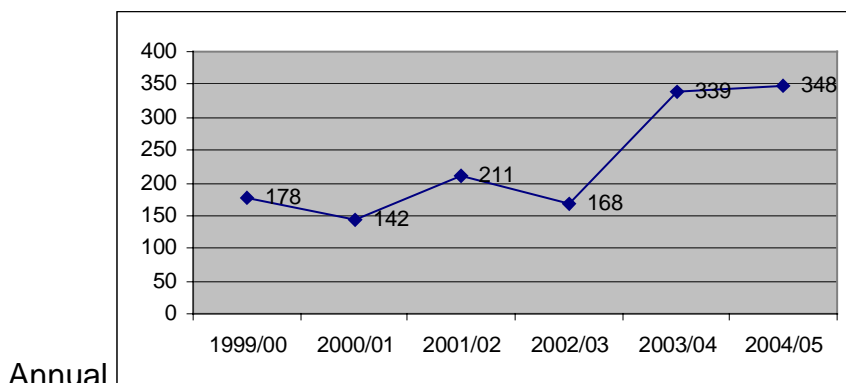


During this financial year, the Ombudsman's Office received 2355 approaches which consisted of 2475 matters of complaint. When comparing these figures to the last financial year, there has been an increase of 13% (273) in the number of approaches and 13% (279) in the number of matters of complaint.

Number of Approaches Carried Forward to Next Year

Graph 2 below depicts the number of complaints carried forward from one year to the next; i.e. 348 complaints remained open at the end of 2003/04 and have therefore been carried forward to the 2004/05 financial year.

Graph 2: Complaints carried forward from the previous five years



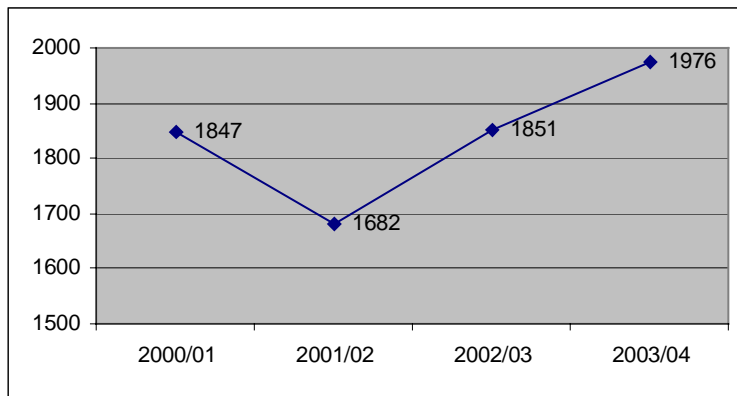


Although there were more approaches finalised this financial year than in the previous year, the number of approaches carried forward has increased because it was not possible to finalise approaches at the same rate they were being received, i.e. there was a 13% increase in workload. The Office received 2355 approaches and finalised 1976.

Approaches finalised during the year

Graph 3 depicts the number of approaches finalised over the past three financial years. It can be seen from this that there has been an increase in the number of approaches finalised this year (1976) compared to last year (1851). This represents an overall increase of 7% in the output of the Office.

Graph 3: Approaches finalised over the past three years



EFFICIENCY

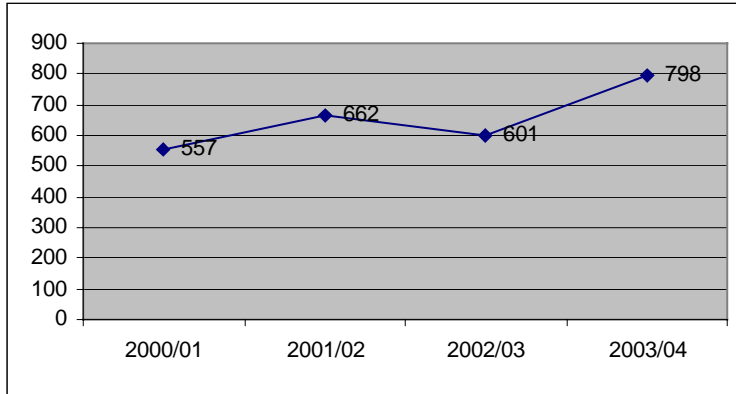
Table 1 and Graph 4 provide measures of the Ombudsman's overall efficiency in finalising complaints. Table 1 relates to the time taken to close complaints and Graph 4 to the cost per matter.

Table 1: Time taken to close complaints

Performance Benchmark	2003/04 Performance
General complaints: 60% of complaints should be finalised within 90 days.	% of complaints meeting target – 63%
Police complaints: 60% of complaints should be finalised within 180 days.	% of complaints meeting target – 66%



Graph 4: Cost per finalised approach over three years (General and Police)



For the purposes of this comparison, the cost per finalised approach is calculated by dividing the total funds expended on the complaint resolution activity (refer to page 62) by the number of approaches made to the Office that were finalised during the year. It can be seen that there has been an increase from \$601 in 2002/03 to \$798 in 2003/04, which represents a 33% increase in the overall cost of finalising an approach. This can be attributed to the recognition of the cost of services received free of charge from the Department of Corporate and Information Services.

ACHIEVEMENT AGAINST OBJECTIVES SET FOR 2003/04

No	Objective	Achievement
1	Implement the outcomes that ensue as a result of any decisions made by Cabinet in relation to the review of the <i>Ombudsman (Northern Territory) Act</i> .	Implementation of this objective has not been possible due to the significant delay in the review of the legislation.
2	Develop and implement some form of feedback survey that can be used by government agencies to assess their satisfaction with the complaint process.	Implementation of this objective has been delayed due to the impending changes that are expected to arise from the enactment of the new Ombudsman legislation.
3	Finalise, implement and monitor the complaint handling protocols that have been developed for Corrections, PowerWater Corporation and Territory Housing.	Implementation of this objective has been delayed due to the impending changes that are expected to arise from the enactment of the new Ombudsman legislation.

- Budget Snapshot

The 2003/04 budget for the Agency of the Ombudsman was divided into two separate programs. It should be noted that for budget purposes, Treasury has determined that the 'Agency' of the Ombudsman is one activity with two separate programs. This ensures the



separate budget allocations for the Office of the Ombudsman and the Health and Community Services Complaints Commission are able to be administered together, but maintained as separate statutory entities in accordance with the legislation. The total expenditure for the year was **\$2,166,000**. This expenditure was divided between the two programs as follows:

- the Office of the Ombudsman **\$1,614,000**
- the Health and Community Services Complaints Commission **\$552,000**

FUTURE OBJECTIVES

The objectives I have set for 2004/05 are as follows:

1. Implement the outcomes that ensue as a result of any decisions made by Cabinet in relation to the review of the *Ombudsman (Northern Territory) Act*.
2. Develop and implement a feedback survey that can be used by government agencies to assess their satisfaction with the complaint process.
3. Finalise, implement and monitor the complaint handling protocols that have been developed for Corrections, PowerWater Corporation and Territory Housing.
4. Develop and implement a flexible Work Life Balance Policy for all staff.
5. Develop and implement a quality induction program for all new staff.



3. IMPORTANT ISSUES

REVIEW OF LEGISLATION AND DEVELOPMENT OF NEW OMBUDSMAN LEGISLATION

The review of the *Ombudsman (Northern Territory) Act 1978* was completed and a final report was forwarded by the Review Committee to the Chief Minister, the Hon. Clare Martin, MLA on 30 April 2003.

I have been somewhat surprised that the report has never been released publicly given that it relates to such important and significant public benefit legislation. In my view the report would have informed public debate and allowed the public to participate in the development of legislation pertaining to the role of the Ombudsman. I have been given no explanation for this situation.

With the advent of the final report being handed to the Chief Minister on 30 April 2003, I had hoped that legislation would be developed and available by the end of 2003. Unfortunately this did not eventuate and the primary reason for this was because of problems that arose with regard to the chapter relating to the police complaints' process and the nature of the recommendations made.

I should note that when the final report was provided to the Chief Minister on 30 April 2003, it was as a result of 18 months of consultation and consideration of issues by the review committee. The Commissioner of Police had a senior police officer represented on the Review Committee, specifically for the purpose of dealing with complaints against police. Throughout the process there was direct consultation between myself, the Commissioner and the Review Committee as to the composition of the police chapter in the final report. The final report was signed off by all members of the Review Committee.

In October 2003 I became aware that the Commissioner of Police had changed from his previous agreed position, as set out in the review report and had formed concerns with regard to the content of the final report and, in particular, the chapter relating to complaints against police. As a result of this, a meeting took place in October 2003 between the Commissioner, the Deputy Commissioner and myself. At this meeting I was advised that the police now had a number of significant issues relating to complaints against police which was contrary to positions they had previously agreed to within the context of the review report. I was subsequently provided with a lengthy position paper by the Commissioner of Police outlining their areas of concern. Fundamentally the position paper represented a departure from a number of outcomes which had been agreed as between me and the Commissioner of Police.



As a result of this situation arising, I prepared a response to the issues raised by the Commissioner and it became necessary for the chapter relating to police complaints in the review report to be rewritten to reflect the changes in position that had occurred. This process took place in November - December 2003 and January 2004. A new draft chapter was completed and forwarded to members of the Review Committee in late January 2004. I would note that this task was in fact primarily carried out by me and a member of my staff.

It was intended that the new draft chapter would be considered and discussed by the Review Committee in early February 2004.

Primarily the new draft chapter set out a number of areas upon which there was now disagreement between the Commissioner and the Ombudsman as to a process for handling complaints against police. I would hesitate to add, there also remained substantial areas where we were in agreement as to an appropriate process.

The proposed meeting of the Review Committee in February 2004 did not occur. This was because the Commissioner, upon considering the draft report, formed the view that he required independent legal advice in regard to the new draft chapter.

Subsequently, in April 2004, I was provided, by the Commissioner, with the relevant legal advice which, in reality, became a third position paper by the Northern Territory Police in regards to a complaint against police process. I must say that by this time the situation was somewhat confusing given that we had a chapter contained in the final report dated 30 April 2003, a position paper of October 2003, a new draft chapter prepared in January 2004 and a position paper of April 2004, all with differing areas of concern and a lack of clarity as to the Commissioner's final position on a number of relevant issues.

As a result of the situation that arose and concerns that I expressed directly to the Chief Minister, a direction was issued by the Chief Minister that the Review Committee was to meet and reconsider the issues pertaining to the police complaints component of the review. Unfortunately a meeting of the Review Committee never took place. What occurred was that there was a series of meetings between myself and the representatives of the Commissioner of Police under the auspices of the Department of the Chief Minister with a view to trying to reach some form of resolution to the issues that had arisen.

The reason for the Review Committee never meeting was that government directed that, as a matter of priority, it wished to consider the proposals for a new Ombudsman Act. In this regard I would note that, in April 2004, Cabinet considered recommendations relating to the final report of the Review Committee dated 30 April 2003 as they related to the general jurisdiction of the Ombudsman. Based upon these recommendations Cabinet approved drafting of the relevant legislation. The police component of the proposed legislation went to Cabinet in June 2004, hence the inability of the Review Committee to meet and consider the issues that had arisen. It was therefore the Department of the Chief Minister who provided Cabinet with relevant recommendations with respect to the police component of the proposed legislation.



As a result of the Cabinet Decisions in April 2004 and June 2004, the Department of the Chief Minister issued instructions to Parliamentary Counsel for the preparation of a new draft Ombudsman Bill.

Given the expertise and practical experience of my office in administering the current legislation, I was somewhat surprised that the Department of the Chief Minister did not actively consult with me in regard to the preparation of draft instructions for a new bill. Indeed, we were given no information whatsoever in regard to the drafting of the new bill.

On 6 September 2004 a draft bill, which in fact had been prepared in July 2004, was made available to my Office (at this time I was overseas attending a conference). The Department of the Chief Minister advised that comments were required on this initial draft bill by no later than 15 September 2004. I was very surprised at this state of affairs occurring as it was common knowledge that I was absent overseas and was not in a position to attend to the relevant comments myself. A very time consuming and convoluted process had to occur whereby I needed to provide comments to my Office in Darwin from overseas. The timeframes and the circumstances that arose were less than satisfactory. It was particularly so when I note that the draft bill that was forwarded to my office on 6 September 2004 had been prepared on 19 July 2004 and could have been provided to me to consider and comment upon up to 1½ months before it was actually sent to my Office, with a 9 day time limit for response.

Whilst preparing our comments on the first draft bill dated 6 September 2004, a second draft bill was forwarded to us which contained provisions relating to the police complaints component. In regard to that second draft, we were informed that comments were required by 20 September 2004. Again, the timeframes were very short and created considerable difficulties for the reasons I have outlined above.

In my Foreword I expressed concern about the process that has been followed in the development of the new bill. The Department of the Chief Minister, which has had carriage of the process, has not followed a process which I consider to be reasonable and transparent. At times I have been asked to comment on a draft bill and, whilst doing so, have received another draft bill with substantial changes. Comparing and identifying the changes has been a nightmare as there was no specific process of identification of changes that had been made from draft to draft. Nor were we initially given access to instructions which were the basis for any changes. In many cases we found changes had occurred based upon submissions that we had not been advised had been received and for which we had not been asked to make comment on. Some of these changes were also made contrary to Cabinet's decisions. I and my staff had to peruse each and every draft bill with a fine tooth comb to ascertain what changes had been made and, when we discovered those changes, to seek an explanation as to why the changes had been made.

It must be noted that, primarily, the changes were generated by the Department of the Chief Minister consulting with other government agencies and obtaining their feedback and submissions. What concerned me in regard to this process was that these changes were conflicted in that they were from agencies over which the new bill would be operating. It is therefore not surprising that some agencies sought to make submissions that would limit the effectiveness and the scope of the Ombudsman in some situations. The fact that



these submissions were made, and generated changes in draft bills, without any consideration, discussion, debate or assessment of any contrary view my Office might have, as to whether it was appropriate or not, was both frustrating and, in my view, disrespectful to the Ombudsman.

As a further example of the difficulties experienced in the process, I would refer to the fact that one of the Cabinet Decisions in regard to drafting the new legislation was to commission an independent review into certain aspects of jurisdiction with regard to the Ombudsman. This review was briefed out by the Department of the Chief Minister to a barrister at the bar. I was interviewed on one occasion in regard to this review. I was informed that I would be contacted again to discuss further issues. This never occurred. Subsequently, when considering a draft bill forwarded to me, it was discovered that significant changes had been made. We had never been consulted or been given an opportunity to make submissions in regard to these particular changes. It appeared that these changes had arisen as a result of the review required by the Cabinet Decision referred to above.

The Department of the Chief Minister was approached and a copy of the relevant report was requested. Initially this request was refused on the basis that it was not yet a completed and final report. This is despite the fact that the report was the basis for significant changes in the draft bill and that draft bill had been provided to my Office for comment.

Subsequently, after some further queries and passage of time, a final report was provided to my Office. The report made a number of recommendations directly applicable to the Ombudsman's role and the content of any new legislation. I was not asked to comment on the report, it was merely given to me so that I could address the content of draft legislation.

I was particularly perturbed to note that the draft report had in fact been circulated to a number of government agencies for comment, yet it had not been considered proper for the Ombudsman to consider the report in its draft format.

To say the process for the development of new legislation has been problematic is to understate the case. The process has lacked structure and fairness, in my view, particularly in regard to participation by my Office.

The process that has been followed has been unnecessarily acrimonious and adversarial in its nature. We have constantly had to address changes proposed and included in the draft legislation based upon unconsidered submissions of various stakeholders over whom the legislation would apply. We have been informed, on occasion, that changes have been generated as a result of legal advice, yet when we have asked to see the legal advice to consider and comment upon it, such advice has not been forthcoming or we have been advised it was given orally. When we have asked for reasons for changes and access to submissions we have been offered, after constant pressure, an opportunity for an oral briefing. The difficulty with this situation is that often the Department of the Chief Minister has had no real understanding of the issues and has not been in a position to resolve the complex issues in dispute.



A discussion draft for a proposed Ombudsman Act was released by the Chief Minister for limited public consultation on 15 October 2004. Comments on this discussion draft were required by Thursday 28 October 2004.

The first point I would make is the short timeframe provided for public comment. I am aware that a number of organisations/entities to whom a copy of the discussion draft was sent did not make comment or felt they were unable to make adequate comment because of the limited timeframe provided. I am strongly critical of this given that this is public benefit legislation. The discussion draft had over 170 sections, whereas the current Act has only 32 and this was the first time there had been any public consultation whatsoever in regard to the proposed legislation.

The other point I would make is in respect to the limited nature of the consultation that occurred. Initially it was only intended to consult with parties who had made submissions to the Review Committee during the public consultation phase of the review of the Act. Subsequently, at my instigation, public consultation was extended at least to entities that I identified may have an interest in responding, including all my interstate colleagues.

In regard to the limited public consultation I was particularly disappointed that there had not been an opportunity for the public at large to understand the nature of the proposed legislation and to have the opportunity to comment upon it in a form that clearly outlined the possible direction government might take.

The other factor I would comment on is that the discussion draft was clearly released prematurely given there was subsequently a strong level of criticism of the discussion draft generally but also particularly, as it related to the police complaints process, both by me and the Commissioner of Police. This resulted in all the provisions in the discussion draft being abandoned, as they related to the police complaints process and a completely new process was instigated for drafting legislation based on a corroborative and collaborative approach between myself, members of staff in my Office, the Commissioner of Police and representatives of the Commissioner. This meant that a number of parties, including the Police Association, have been asked to comment on provisions in the Discussion draft, which were no longer relevant. This effectively denied the Association and other entities with a realistic and meaningful opportunity to comment upon proposed legislation.

This leads to my final and perhaps most important concern in that, during the course of the preparation of the new bill, there have been a number of very significant changes proposed. I consider that these proposed changes have impacted directly upon the concept of the independence of the role of the Office and the scope of the role in terms of providing a vital and effective process for members of the public to resolve their grievances. Despite the fact that significant changes of policy with regard to the Ombudsman's role should require the approval of Cabinet, this has not occurred. Indeed, it appears that it has been considered appropriate, on the part of the Department of the Chief Minister, to propose significant change. It is unclear to me how Cabinet will be advised that such changes have occurred, that they are significant, what impact they will have and that they do require a fundamental consideration of the policy applicable to the Ombudsman's role. It has been particularly difficult to deal with these issues because, in



some cases, the mere changing of a word in a section can bring about a significant limitation on the Ombudsman's role which was not previously in existence.

There has, in my view, been a very negative approach to the manner in which the new draft bill has been drafted. It is difficult to pinpoint a specific issue that highlights this but in an overall sense the language of the legislation is negative and restrictive rather than being open and embracing of the concept of the Ombudsman's role and jurisdiction. In many cases the language of the legislation is unduly restrictive, formalistic and procedurally bound. I am concerned that there will be many challenges to the Ombudsman's role if the legislation remains in such a form. Rather than being inclusive in its jurisdiction the focus has been more exclusive to the detriment of the public and the public interest.

At the time of writing this report I have not seen or been provided with a copy of the final bill that is to go to Cabinet and upon which, ultimately, the legislation will be based through the legislative process. I am therefore not able to comment in any detail as regards any specific areas of concern I have and I will need to leave this until I have seen a copy of the bill and able to comment in detail upon it.

I, however, believe it is appropriate to make the comments I have made above in order to make it clear that I do not consider the process for reviewing and developing the new legislation, which is essentially for the public benefit, has been properly conceived and carried out. One only needs to contrast the processes used in this instance to those used in the development of the new *Electoral Act* and, indeed, for the development of the new Community Welfare legislation to see that there are major differences and in my view, deficiencies in the processes that have occurred. Much of this, I believe, is due to the fact that the Department of the Chief Minister has failed to allocate appropriate significance to the issue and has failed to understand the nature of the legislation under review.

There appears to be a view that the Ombudsman's Office should be kept at a distance from the process of developing new legislation and this has very much detracted from the process in my view. Our expertise and skills have been marginalised and, as a result, the legislation is not what it could be. I certainly do not believe it evidences best practice and it could well be a lot better than it will be.

I hope that, should the legislation again be reviewed, my comments will be seen as a warning to my successors, to politicians and to bureaucrats that the development of such legislation should not occur in the manner in which it has occurred in the present circumstances. This has been a controversial, unnecessarily contentious and adversarial process

Finally, I would conclude by noting that, whilst I have expressed many views as to the content of the legislation in my submissions, I do recognise that it is ultimately a matter for the government to determine matters of policy with regard to the proposed legislation. However, being public benefit legislation, it is not sufficient to sit back and allow the Office to be marginalised by poor processes and by a process which does not allow for full public participation in what ultimately is a vitally important public institution. I also would question the contestability of some of the advice given. In my view no government can assert to be



giving effect to the principles of open, transparent and accountable government in the true democratic sense if it does not provide for an open and transparent process for the development of legislation pertaining to an independent statutory officer such as the Ombudsman. I am gravely concerned that this has not been the case.

CONFLICTS OF INTEREST

INTRODUCTION

In recent times my Office has dealt with a number of complaints that have given rise to issues relating to conflicts of interest. In dealing with these matters I have been somewhat surprised at the lack of understanding shown on the part of public officials and public officers as to what constitutes a conflict of interest and what actions they should take where there is a conflict of interest or where a conflict of interest can reasonably be perceived to exist.

In some of the cases I have dealt with, the individual public officer concerned has not understood that it is the perception of a conflict of interest when the matter is viewed objectively that can cause the entire transaction to become tainted and subject to disputation.

Whilst I have dealt with the individual matters concerned, I feel it would be useful to set out what a conflict of interest is and how it can be dealt with. The most important point I would make is that all public sector agencies should have a written policy on conflict of interests and as part of that policy there needs to be a description of how to manage a conflict of interest and most importantly agencies need to identify the risks that might arise in the course of their business and ensure all staff are made aware of how to deal with such matters.

The important point to understand is that it is not unusual or to be unexpected that a public official will, from time to time, be faced with a conflict of interest. There is nothing wrong, *per se*, in a conflict of interest arising. The key to the issue is being able to properly identify when a conflict of interest exists and then bring it to the attention of the appropriate official so that it can be managed. In some cases it may be that the public official involved will need to withdraw from the relevant transaction so as to prevent any tainting of the process. In other cases it may be possible to appropriately manage the transaction so as to enable all parties to be satisfied and for the matter to be dealt with accordingly.

I should also note that, in the Northern Territory, where there is often different private interests apart from public responsibilities and duties, it may well be necessary to consider, at the end of the day, whether the doctrine of necessity applies, in that there is no other person or mechanism available to carry out the relevant duty imposed upon the public official and, in such a case, they must manage the conflict of interest to the best of their ability so that it can be seen that all actions taken are transparent and proper.



Public officials should avoid situations in which their private interests conflict or might reasonably be perceived to conflict with the impartial fulfillment of their official duties and the public interest. As noted above, conflicts of interest are not wrong in themselves. Public officials are also private individuals and there will be occasions when their private interests come into contact with their duty to put the public interest first at all times – but such conflicts must be disclosed and effectively managed.

Public sector organisations must also ensure that conflicts of interest are seen to be managed in a transparent and accountable manner. The perception that conflicts of interest are not being managed properly can undermine confidence in the integrity of the public officials and public sector organisations.

The scope of actual, perceived or potential conflicts of interest is arguably greater than in the past, as public-private sector partnerships and complex inter-agency relationships become increasingly common.

In this context, public sector organisations need to recognise that conflicts of interest will occur in the course of a public official's work. They must work to create a workplace culture that encourages and supports the identification and declaration of conflicts of interest. Managing conflicts of interest properly brings a range of benefits for public sector organisations. First and foremost, opportunities for corruption or improper conduct are reduced. Secondly, effective policies and procedures for identifying, disclosing and managing conflicts of interest mean that unfounded accusations of bias can be dealt with more easily and efficiently. Thirdly, the organisation can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct.

A transparent system that is observed by everyone in an organisation as a matter of course will also demonstrate to members of the public who deal with an organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

MEANING OF THE TERM 'CONFLICT OF INTEREST'

The term 'conflict of interest' refers to a situation where a conflict arises between public duties and private interests which could influence the performance of official duties and responsibilities. Such conflict generally involves opposing principles or incompatible wishes or needs.

The Organisation for Economic Cooperation and Development (OECD) has developed the following simple and practical definition:

A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private...interests which could improperly influence the performance of their official duties and responsibilities.

Conflicts of interest can involve pecuniary interests (ie. financial interests or other material benefits or costs) or non-pecuniary interests. They can involve the interests of a public



official, members of the official's immediate family, relatives or friends of the official (where the interests are known), all business partners and associates. Enmity, as well as friendship, can give rise to an actual or perceived conflict of interest.

An **actual conflict of interest** involves a direct conflict between a public official's current duties and responsibilities and existing private interests. Thus deciding on the awarding of a tender to a company in which you have a direct financial interest is a direct conflict of interest.

A **perceived, apprehended or apparent conflict of interest** can exist where it could be perceived, or appears, that a public official's private interests could improperly influence the performance of their duties whether or not this is in fact the case. It is important to stress that a perceived or apparent conflict of interest is no less important as a real conflict of interest. This is primarily because the consequences can be the same and a transaction can be so tainted that the outcome cannot be sustained even if it is a valid one. An example of a perceived conflict of interest may arise if a public official has previously expressed personal views on an issue which conflicts with their duties as a public official. Their role in any subsequent decision on the matter may be challenged due to the perception of bias.

A **potential conflict of interest** arises where a public official has private interests that could conflict with their official duties in the future. An example of a potential conflict of interest can arise if a public official is responsible for awarding government building contracts and a family member or relative is a builder who tenders for government work and the public official knows that sometime in the future he will need to consider a tender from that relative.

PRIVATE INTERESTS

The term 'private interests' includes not only the personal, professional business interests that each of us has, but also the personal, professional or business interests of the individuals or groups we associate with. This might include relatives, friends or even rivals and enemies. Whether we wish to see them benefit or be disadvantaged, we have a private interest in relation to such people.

Private interests then, are those interests that can bring benefit or disadvantage to us as individuals, or to others who we may wish to benefit or disadvantage.

Many conflicts of interest and management policies divide private interests into two types - pecuniary and non-pecuniary.

PECUNIARY INTERESTS (KNOWN AS 'MATERIAL PERSONAL INTERESTS' IN SOME CASES)

Pecuniary interests involve an actual or potential financial gain or loss.

Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative or other close associate) own property, hold shares,



have a position in a company bidding for government work, or receive benefits (such as concessions, discounts, gifts or hospitality) from a particular source.

Statutory provisions exist for declaring and managing pecuniary interests in many areas of the public sector. It is important that public sector organisations ensure that their staff are aware of relevant statutory provisions and adhere to them.

NON-PECUNIARY INTERESTS

These interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

OTHER PRIVATE INTERESTS

Private interests are not limited to pecuniary interests or non-pecuniary interests as set out above. They can also include many social and professional activities and interests. For example, a public official might be a member of a club, or have personal affiliations or associations with individuals or groups, including family and friends. Any of these relationships could be the source of interest that could conflict with the public interest in a particular situation.

Moreover, we all have our own personal opinions, prejudices and attitudes, which we are expected to set aside when performing our official duties. However, if personal values are likely to impact upon the proper performance of public duty, then these can also lead to a conflict of interest.

CONFLICT OF DUTIES

A distinction can be drawn between 'conflict of interests' involving actual, potential or reasonably perceived conflicts between public duty and private interests, and 'conflict of duty' involving a conflict between competing or incompatible public duties.

In some circumstances a conflict of duty is acceptable, or at least unavoidable, for example, where the holding of one public sector position or office is a prerequisite of qualifications for the holding of another position or office.

In most other circumstances, as a matter of principle, a conflict of duty is either unacceptable and to be avoided, or at the least a problem to be disclosed and carefully managed. These circumstances would include where a public official holds positions in or otherwise performs duties for more than one public sector agency:

- where those agencies have interests or objectives that are, or are likely to be, competing or incompatible;
- where issues concerning one agency or position are or are likely to be considered or decided by the other agency or the holder of the other position, and such consideration or decision-making is required to be impartial; or



- where the activities of one agency are, or are likely to be, regulated or subject to review or oversight by the other agency.

PUBLIC DUTY

All public sector officials and officers have a duty to always put the public interest above their own personal and private interests and carry out their official duties.

However, it is important to note that this principle applies to anyone engaged to deliver government programs and services, whether for remuneration or not.

The public interest can be defined as the interests of the community as a whole. It is not the sum of individual interests nor the interest of a particular group, but the collective interest of the entire community.

Determining the public interest in a particular situation can be complex, even problematic, but on a practical day to day level public officials can best fulfil their duty to the public interest first by:

- carrying out their prescribed official duties fully and effectively
- carrying out their official duties within established ethical standards and framework
- identifying any actual, perceived or potential conflicts of interest that they have in ensuring that these are managed effectively.

IDENTIFYING A CONFLICT OF INTEREST

It is not always easy to decide when private interests and public duty are, or might be, in conflict with each other. The key test is whether an individual public official could be influenced, or appear to be influenced, by a private interest in carrying out their public duty.

This is an objective test – when applied it should focus on the official role and the private relationships and interests of the person concerned and whether a reasonable disinterested person objectively would think these relationships and interests could conceivably conflict or appear to conflict with the person's public role.

There is little distinction between an actual or real conflict of interest and one that is a potential or perceived conflict of interest. Both are equally capable of causing harm if they are not identified and managed. In my experience potential or perceived conflicts of interest are often too easily dismissed on the basis that a private official claims that they will not impact upon them in their decision making. What the public official fails to realise is that, from an objective viewpoint, whatever action they take will be tainted as a result of the over-riding potential of perceived conflict of interest. It does not matter whether or not the public official acts totally correctly and reasonably, the process is tainted and therefore the outcome is not sustainable, even if correct.

Decision-makers and people advising or reporting to decision-makers should promptly, fully and appropriately disclose any actual or potential conflicts of interest they may have in a matter under consideration. Where this conflict involves the interests of a public official's



family or friends, those interests should be disclosed to the extent which they are known to the public officials.

Public officials should also bring to notice any circumstances that could result in a third party reasonably perceiving a conflict of interest to exist (ie. wherever a reasonable person could perceive that an official may not bring an impartial and unprejudiced mind to the making of a decision due to any actual or perceived conflict of interest or bias).

The rule of thumb should be that, if in doubt, a disclosure is appropriate so that an appropriate public official can consider the matter and determine whether there is any actual, real, potential or perceived conflict of interest that needs to be managed. Public officials who are queried as to whether there is a perceived conflict of interest in regards to their duties, often fall into the trap of being dismissive of perceived conflicts of interest or bias issues. They are often offended at the suggestion that they would act in conflict of interest or with bias and therefore dismiss the claim without considering what the impact of failing to deal with it and manage it has on their subsequent decision making.

Such disclosures must be made at the first opportunity to an appropriate senior officer of the agency for a decision as to what action should be taken to avoid or deal with the conflict.

ISSUES TO BE CONSIDERED IN ASSESSING WHETHER THERE IS A CONFLICT OF INTEREST

In assessing whether a public official has an actual, potential or reasonably perceived conflict of interest, it may be helpful to ask the following questions:

- how serious is the matter and does it directly impact upon the rights or interests of any person or of the general public?
- does the official have a current or previous personal, professional, or financial relationship with an interested party and, if so, how significant is or was the relationship (eg. is the relationship one of simple acquaintance, previous work experience, close friendship, business partnership)?
- would the official, or anyone associated with the official, benefit from or be detrimentally affected by a decision or finding in favour of, or adverse to, any interested party?
- what does any relevant code of conduct require in relation to conflicts of interest?

I would note here that all public officials should be aware of the requirement of **the Code of Conduct** which is comprised in Employment Instruction No 13 issued by the Commissioner for Public Employment. That code of conduct does not specifically deal with the concept of conflicts of interest. This in fact may be a deficiency in the current code as I believe it would be more appropriate for there to be a clear policy statement applicable to all government sector organisations as to the identification of conflicts of interest and their management.

The Northern Territory Code of Conduct identifies a number of specific issues which fall within the ambit of conflict of interest and it is important that public officials are aware of



the nature of the requirements set out in the code and can inform any staff as to how they would apply.

OPTIONS TO AVOID OR DEAL WITH A CONFLICT OF INTEREST

Where disclosure of an actual, potential or reasonably perceived conflict of interest (including a pecuniary interest) is made to an appropriate officer, depending on the circumstances of a case, the options available include:

- taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision
- informing likely affected persons that a disclosure has been made, giving details in the agencies view that there is no actual conflict or the potential for conflict is minimal
- appointing a 'probity auditor', or independent third party to review or oversee the integrity of the process/decision (this will be particularly appropriate where there is a reasonably perceived – but not actual – conflict of interest or the conflict is only identified at or near the conclusion of the process or after the making of the decision)
- appointing further persons to a panel/committee/team to minimise the actual perceived influence or involvement of the person with the actual or reasonably perceived conflict
- where the persons likely to be concerned about a potential, actual, or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the person having any, or any further, involvement in the matter
- restricting the access of the person to relevant information that is sensitive, confidential or secret
- directing the person to cease supporting a party whose actions may conflict with the agency's interests (for example a person or organisation taking legal proceedings against the agency)
- requesting the person to relinquish or divest the personal interest which creates the 'conflict' (where the position of such an interest is not prescribed as a qualification for the person's official position)
- requesting the person to make arrangements for the relevant private interest to be held and managed in a 'blind' trust
- removing the person from duties or from responsibility to make decisions in relation to which the 'conflict' arises and reallocating those duties to another officer (who is not supervised by the person with the 'conflict')
- transferring the person to some other area of work within the agency, or some other task or project
- transferring the person to some other agency
- persons with a 'conflict' who are members of boards, committees or councils absenting themselves from or not taking part in any debate or voting on the issue (in most cases relevant legislation will prescribe the requirements for statutory appointed members of boards or councils or elected members of councils as to how they should deal with conflict of interest)



- in serious cases, requesting or directing the person to resign, or terminating the person's employment or appointment (having complied with the rules of procedural fairness).

DEVELOPING SYSTEMS, POLICIES AND PROCEDURES TO MANAGE CONFLICTS OF INTEREST

1. Protect the public interest

Serving the public interest is central to the public duty of public sector employees. Ensuring that the public interest is not compromised should be the over-riding objective of any conflict of interest management strategy.

Public officials should only make decisions and provide advice based on relevant law and policy. In doing so, they should act within the limits of their proper roles, and focus on the merits of each case without regard to private interests, personal attitude or opinion. In particular, decisions that apply policy to individual cases should be impartial and not prejudiced by religious, professional, party-political, ethnic, family or other personal preferences, alignments, or enmity.

In order to meet their public duty obligations, public officials must not only act within the law but must also apply broader public service values such as impartiality, integrity, and serving the public interest.

2. Support transparency and accountability

Conflicts of interest must be seen to be managed fairly and effectively. To achieve this, the processes for identifying, disclosing and managing conflicts of interest must be transparent – that is, the processes should be open to scrutiny and help maintain accountability.

Strategies such as the registration of interests, and removal of officials from tasks or duties that involve a conflict of interest are useful in this context. Disclosure of private interests or affiliations that could compromise, or be seen to compromise, the unbiased performance of an official's work is the first step towards the effective management of the conflict.

By taking a consistent open approach to resolving and managing conflicts, organisations will encourage staff to follow policies and procedures. If members of the public, stakeholders, partner agencies and client groups are aware of the organisation's policies and procedures for managing conflict of interest they can be more confident that the organisations and its employees will not act prejudicially or improperly.

3. Promote individual responsibility and personal example

Resolving or managing conflicts of interest in favour of the public interest demonstrates the integrity and professionalism of individuals as well as organisations.



Managing conflict involves input from all levels of an organisation. The management of an organisation is responsible for establishing systems and policies. Because private interests are usually known only to individuals, it is equally important for employees to take responsibility for identifying and acknowledging their own conflicts of interest.

All public employees are individually responsible for arranging their private affairs as far as reasonably possible to prevent conflicts of interest arising. Managers have an additional role in setting an example to their staff by demonstrating commitment to established policies and procedures.

4. Build a supportive organisational culture

Public sector managers are always responsible for providing and implementing a policy environment that helps encourage effective decision making when conflicts of interest arise.

Organisations can provide, implement and promote management policies, processes and practices that create and sustain a culture of integrity by:

- assisting staff with guidance and training to promote understanding of the established rules and practices, and their application to the working environment
- encouraging open communication and dialogue so that staff are comfortable disclosing and discussing conflicts of interest in the workplace
- protecting information about disclosed conflicts of interest from misuse by others
- including staff in any development or change in organisational policies and procedures, to encourage ownership and adherence.

The purpose of systems to manage conflicts of interest is to maintain the integrity of official policy and administrative decisions, and support public confidence in government. Individual public sector organisations can help to achieve this outcome by developing:

- specific standards for promoting integrity set in codes of conduct and elsewhere
- processes for identifying risk and dealing with emerging conflicts of interest
- appropriate external and internal accountability mechanisms
- management approaches (including sanctions) that aim to ensure that public officials take personal responsibility for complying with both the letter and spirit of such standards.

FRAMEWORK

No single set of guidelines can address every conceivable situation this is because conflicts of interest arise in many different ways.

The Guidelines developed by ICAC (NSW) and the CMC (QLD) identify 7 steps for developing and implementing a comprehensive conflicts of interest policy.

1. **Identify** the different types of conflicts of interest that typically arise in the organisation



2. **Develop** an appropriate conflict of interest policy, management strategies and responses.
3. **Educate** staff, managers and the senior executive and publish the conflicts of interest policy across the organisation
4. **Lead** the organisation through example
5. **Communicate** the organisation's commitment to its policy and procedures for managing conflicts of interest to stakeholders, including contractors, clients, sponsors and the community
6. **Enforce** the policy
7. **Review** the policy regularly

RESOURCES IN RELATION TO CONFLICT OF INTEREST

Much of the material upon which my comments are based come from the following resources:

1. A fact sheet prepared by the New South Wales Ombudsman (Public Sector Agencies fact sheet No. 3) relating to conflicts of interest.
2. Guidelines relating to 'Managing Conflicts of Interest in the Public Sector prepared by the Independent Commission Against Corruption (ICAC) (New South Wales) and the Crime and Misconduct Commission (CMC) (Queensland)
3. The Organisation for Economic Co-operation and Development (OECD) Guidelines for Managing Conflict of Interest in the Public Service.

The above resources provide a comprehensive basis for understanding what constitutes a conflict of interest, how to identify them and how to manage them.

APOLOGIES BY PUBLIC OFFICIALS AND AGENCIES

BACKGROUND

Many complaints received by the Ombudsman involve a request by a complainant for an apology. This outcome can, however, be problematical for government agencies and public officials because there is a fear that when an apology is given it can be construed by a complainant as an admission of fault or, in a legal sense, an admission of liability for an action that has occurred or harm that has been caused to the complainant.

It is my experience that the lack of an early apology can escalate a complaint far beyond its actual merits and level of seriousness. This is because a complainant, upon not receiving an early and genuine apology, perceives the government agency or public official involved as not being genuine in their attempts to resolve their complaint. It does not then matter what efforts are made to appease the complainant, the lack of an early and sincere apology creates a significant barrier and parties are often backed into corners from which there is no basis to negotiate outcomes of a sensible and commonsense nature.



WHY APOLOGISE

When things go wrong, many complainants demand no more than to be listened to, understood, respected and, where appropriate, provided with an honest explanation and apology. Where an apology is warranted it can have great impact if given immediately and in a sincere and genuine manner. Even in unclear situations, the act of apologising can be a potent way to appease an aggrieved person. Regardless of who is in the wrong, a prompt and genuine apology for any misunderstanding or perceived adverse outcome is likely, in my experience, to be extremely effective and, indeed, unexpected outcomes can occur. It often will avoid the escalation of a dispute and the significant cost in time and resources that can be involved.

I have often encountered resistance from agencies and public officials when I have recommended that they apologise to a complainant and I am therefore concerned as to whether there is a proper understanding of the law in the Northern Territory.

The *Personal Injuries (Liabilities and Damages) Act 2003* which is part of the tort law reform package introduced by the Northern Territory Government, provides for an expression of regret without liability.¹ Section 11 of that Act headed 'Purpose of Division' states –

The purpose of this division is to enable a person to express regret about an incident that may have caused a personal injury without being concerned that the expression of regret may be construed or used in a proceeding as an admission of liability or negligence.

Section 12 goes on to state – Meaning of 'expression of regret' –

An expression of regret is an oral or written statement by a person –

¹ Some types of claims for personal injury are excluded in section 4 from all parts of the Act other than the structured settlement Division. These exclusions are as follows:

- (a) a claim for benefits in respect of a death or an injury as a result of an accident within the meaning of the *Motor Accidents (Compensation) Act* ;
- (b) a claim for compensation within the meaning of the *Work Health Act* ;
- (c) a claim for damages for a personal injury that is a dust-related condition;
- (d) an application for an assistance certificate under the *Crimes (Victims Assistance) Act* ;
- (e) a claim, in relation to the supply of certain goods, in respect of loss or damage in the nature of a personal injury that is referred to -
 - (i) in section 26, 31, 37 or 39 of the *Consumer Affairs and Fair Trading Act* or in a substantially similar provision of consumer protection and fair trading legislation of a State or another Territory of the Commonwealth; or
 - (ii) in [section 65C](#), [65D](#) or [65H](#) of the *Trade Practices Act 1974* of the Commonwealth.



- (a) *that expresses regret for an incident that is alleged to have caused a personal injury; and*
- (b) *that does not contain an acknowledgment of fault by that person.*

Section 13 headed '*Expression of regret not admissible as evidence*' –

An expression of regret about a personal injury made at any time before the commencement of a procedure in respect to that injury is not admissible as evidence in that proceeding.

On my reading of the relevant provisions of the Act there is no barrier to an apology which is couched in the terms of an '*expression of regret*' provided there is no specific admission of liability such that it would constitute an admission of liability for legal purposes.

It is perhaps to some extent disappointing that the legislation in the Northern Territory is framed as it is rather than use the common language that ordinary members of the public would recognise, that is, the words '*an apology*'. An expression of the term '*expression of regret*' in my experience when it has been used is often seen as a watering down of an apology and one that is not seen as genuine and sincere.

The Northern Territory approach contrasts with most other Australian jurisdictions where the legislation makes apologies inadmissible in any civil proceedings, as opposed to the NT where the protection for expressions of regret only extends to incidents alleged to have caused a personal injury.

In many of the complaints made to the Ombudsman the complainant often has no intention or capacity to pursue the matter before the courts. It also needs to be noted that the tort law reform process has resulted in the capping of damages to certain levels, depending upon the nature of the damages alleged. The end result is that it is significantly more difficult to bring small damages claims before the courts and it is unlikely that this will occur in the context of a complaint made to the Ombudsman and where an apology is sought.

ARE APOLOGIES AN ADMISSION OF LIABILITY?

In the past public sector agencies and public officials were reluctant to give apologies as that could be taken as an admission of liability, leaving them open to action through the courts from a person seeking compensation. As noted, the tort law reform process and, more specifically, the *Personal Injuries (Liabilities and Damages) Act 2003* which came into force on 1 May 2003 has meant that an apology or, more correctly '*an expression of regret*' does not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with liability for personal injuries. Furthermore, evidence of an '*expression of regret*' will not be admissible in a court hearing as evidence of fault or liability unless it is coupled together with a specific admission of liability. Apologies for other kinds of loss or damage are not afforded the same protections and one might assume that public officials will remain reluctant to give apologies on the basis of legal issues concerning liability.



Also, in certain circumstances, an apology given within the context of a complaint to the Ombudsman's Office would, in fact, be privileged and could not be used or introduced in evidence by way of evidence in any other proceeding. Thus, for instance, a matter that is conciliated by the Ombudsman's Office, which involved a specific apology for any action or harm, could not be introduced in any court of law under the general provisions of the relevant Ombudsman legislation.

HOW SHOULD AN APOLOGY BE WORDED?

As stated previously, an expression of regret is defined pursuant to section 12 of the *Personal Injuries (Liabilities and Damages) Act 2003* as being –

an oral or written statement by a person

- (a) *that expresses regret for an incident that has alleged to have caused a personal injury; and*
- (b) *does not contain any acknowledgment of fault by that person.*

For the purposes of a complaint to the Ombudsman I would expand the definition in line with what is common sense and a proper understanding of the concept of an apology. For my purposes an apology is an expression of sympathy or regret, or a general sense of benevolence or compassion, in connection with any matter whether or not the apology (or expression of regret) admits or implies an admission of fault in connection with the matter.

There are many different ways to make an apology. In my view the most appropriate form and method of communication of an apology or '*expression of regret*' would depend upon the circumstances of the particular case, the detriment suffered, and what is hoped to be achieved by giving the apology or '*expression of regret*' (for example, restoration of reputation, acknowledgment of the wrong done, reconciliation, assurance the problem has been addressed or will not recur).

In principle, the most effective apologies are given promptly, sincerely and genuinely and incorporate the following elements –

- **Scope**
 - a description of the relevant Act or omission to which the apology applies.
- **Detriment**
 - recognition that the affected person has suffered some detriment (which could include embarrassment, damage, loss, loss of access to a service, detriment as a result of a service). An acknowledgment of the type of detriment suffered (including both detriment immediately caused by the act or omission and any consequential detriment).



- **Cause**

- an explanation as to how the act or omission came about.

I would add here that some care needs to be exercised in relation to any statements as to how an act or omission occurred because, although the protection extends to the apology, and information obtained in the apology would not therefore be admissible, the apology may convey information that can be used to obtain information in an admissible form in other ways for use in later court proceedings.

- **Responsibility**

- acceptance of fault, responsibility or accountability (which could include a statement as to whether the act or omission was discretionary or unintentional).

- **Apology (or '*expression of regret*')**

- an expression of sorrow, sympathy or regret, or of a general sense of benevolence or compassion.

- **Action taken or proposed**

- a statement of the action taken or specific steps proposed to address the grievance or problem and to ensure it will not recur.

It is strongly urged that if there is any concern in a particular case as to whether an apology or '*expression of regret*' may not be appropriate then legal advice should be obtained to ascertain whether or not there would be a loss of any protection to proceed with an apology or an '*expression of regret*'.

In my opinion this would normally only occur in more serious cases where there is an obvious risk and potential liability.

I would stress, however, that when legal advice is sought by an agency in such circumstances, the agency should clearly ask its legal adviser to consider whether a '*without prejudice*' offer of an apology could still be made, as it may facilitate an agreement between the parties that settles the matter. In this regard I would stress that, in many cases, even where a complainant may have a valid basis for legal action, an offer of an apology in such circumstances may be all that is necessary to bring the matter to a resolution. In my experience, the offer of an apology is often made far too late in the process so that it becomes meaningless to the complainant and is not accepted.

Where even an expression of sympathy or regret is considered too sensitive to issue, subject to legal advice, a statement could still be offered that –

- describes or explicitly acknowledges the grievance or alleged problem (but only in general terms without referring to causation or acknowledging liability), and



- states the action taken or the specific steps that are proposed to help address the grievance or alleged problem.

It should also be recognised that the giving of the apology or expression of regret does not absolve the person or body from any potential liability.

WHAT DOES THIS MEAN FOR PUBLIC OFFICIALS AND AGENCIES?

The most common instances where it would be appropriate for a public official to give a prompt and genuine apology or make an expression of regret will be where a member of the public has been given wrong information, or provided with a poor service where the conduct of the public official falls within the domain of maladministration. This is the most likely scenario arising from a complaint to the Ombudsman.

An apology may also be made in circumstances where a member of the public alleges that they were defamed. In such cases, however, an apology should not be made until an agency has obtained legal advice as there are many technical issues that apply and the manner and expression of the apology could affect any potential future proceedings.

Despite the provisions of the *Personal Injuries (Liabilities and Damages) Act 2003* in practice the Act will have little relevance to the vast majority of day-to-day interactions between public officials and members of the public.

OTHER OPTIONS FOR REDRESS

Guidance on other options for dealing with persons who have been detrimentally affected by maladministration can be discussed with the Ombudsman's Office. There are several alternatives which can be considered which may avoid the necessity for expensive and resource intensive litigious processes. Alternative dispute resolution processes should be seen as a first resort before allowing a matter to proceed to the adversarial processes that occur within the court context. Conciliation, mediation and negotiation are all methods which can provide satisfactory and timely resolution of grievances.

ACKNOWLEDGMENT - Much of my comments in regard to this topic have come from a fact sheet prepared by the New South Wales Ombudsman (Public Sector Agencies fact sheet No 1)

REGULATORY ROLES FOR GOVERNMENT SECTOR ORGANISATIONS

THE OBLIGATION

Agencies with a regulatory role in the Northern Territory are obliged to properly deal with allegations about unlawful activities, which include activities that are prohibited or unauthorised, or contrary to the terms of a consent, licence, approval or other instrument or permission issued pursuant to lawful authorities. Failing to properly deal with such allegations, quite apart from being poor administrative practice, could expose an agency to liability for compensation and the expense of litigation.



I have, in a number of cases, made comment on the failure by public sector authorisations with a regulatory role to give proper effect to that role due to the proper identification of resource issues and focus on that role. It is in my view, appropriate to make some comment upon the nature of the regulatory role and what should occur when a complaint is made.

RESPONDING TO COMPLAINTS ABOUT UNLAWFUL ACTIVITY

When a complaint about an unlawful activity or breach of regulation is received, it should be assessed and a decision made and documented as to whether investigation is required. Not every complaint will need to be investigated, however, where a decision is made not to investigate, the reasons for that decision should be clear and recorded. If the reason is that there are insufficient resources available to carry out an investigation, despite the fact that an investigation would otherwise be necessary, then this should be the appropriate explanation provided and put on the record. The importance of this is that if the agency is subsequently criticised for not taking action, it can demonstrate that it has been transparent in its reason and it can make its case for the need for additional resources.

Importantly, an agency that has identified a lack of appropriate resources to carry out a regulatory role that is specified by legislation, must at every reasonable opportunity, ensure that the responsible Minister is aware of the lack of resources and is given an opportunity to consider whether or not those resources will be made available. This appropriately, in my view, places the responsibility for decision making at the level where budget decisions and priorities are made.

It is also important that agencies take adequate steps to properly respond to complainants, for example:

- manage expectation to ensure the complainant is realistic about what can and cannot be achieved
- provide regular feedback to the complainant on progress
- advise the complainant of the outcome of the investigation and what, if any, action the agency intends to take.

In my experience, agencies have very poor processes in place to case manage a complaint once it is received. All too often a complainant approaches my Office to complain about inordinate delay in receiving a response from the agency and a lack of any realistic action on the part of the agency. Often by the time the agency identifies the problems that have arisen the time that has elapsed makes any action that can be taken irrelevant due to possibly the expiration of statutory time limits or the complainant no longer feels that there is any likelihood of a meaningful outcome. In other cases the complainant's position has been prejudiced and any action taken cannot reverse or change that situation.



DETERMINING WHETHER AN INVESTIGATION IS WARRANTED

Not every complaint will need to be investigated. Many complaints can be resolved informally by providing prompt and accurate advice. This could be, for example, by advising that an activity or work is lawful.

In deciding whether a complaint requires investigation, a range of matters could be considered, including:

- is the matter within the jurisdiction of the agency
- is the matter premature, eg. does the complaint relate to some unfinished aspect of work still in progress
- does the activity or work require permission, and if so, is an approval in place
- is the complaint trivial, frivolous or vexatious
- has too much time elapsed since the event the subject of the complaint took place
- is another agency more appropriate to investigate or otherwise deal with the matter
- is the activity having a significant detrimental effect on the environment or does it constitute a risk to public safety
- does the complaint suggest a systemic problem, eg. if a complaint is one of a series, could there be a pattern of conduct or a more widespread problem?

In my experience agencies with regulatory roles have not sufficiently set in place policies and procedures for handling complaints when they are received. Often individual staff are unaware of the scope of the regulatory role and have not been trained in how to assess a complaint once it is received. All too often the processing of a complaint is delayed while it is referred for legal advice. Often the legal advice is simplistic in nature and relates to matters that should have been within the normal knowledge of a public official charged with receiving and dealing with such complaints. The cost to the agency in terms of seeking such legal advice is obvious. The delay and frustration experienced by members of the public does not do the agency any credit.

DETERMINING WHETHER ENFORCEMENT ACTION IS REQUIRED

Agencies have a discretion in deciding whether to take enforcement action on the basis of evidence of unlawful or unauthorised activities. However, agencies are obliged to uphold the law (including compliance with relevant administrative law principles) and to act in the 'public interest'.

In determining whether to take enforcement action, some of the issues to be considered include –

- is the unlawful activity likely to affect a significant number of people
- is it likely to have a serious negative impact on any person
- has the activity attracted sustained public controversy and no alternative resolution has been proposed or is likely
- will the circumstances of the activity unreasonably impact on certain population groups, particularly disadvantaged or marginalised groups



-
- does the activity raise an issue that is individual in nature but occurs unreasonably often
 - is the activity indicative of a systemic flaw – possibly the result of a deficiency in policy or procedures
 - does the activity raise an issue that is individual in nature but occurs unreasonably often
 - has there been a blatant attempt to flout the law or inappropriately delay action
 - are the identified breaches of a technical or inconsequential nature, with no aggravating circumstances
 - could the unlawful activity be carried out lawfully if consent had been sought
 - could the non-compliance be easily remedied by some action on the part of the person responsible
 - will there be reasonable proportionality between the ends to be achieved by enforcement action and the means that will have to be used to achieve them?

A further consideration is that any obligation to comply with the law does not relieve agencies of the moral obligation to take lawful steps to mitigate the effects of rigid adherence to the letter of the law if that results in, or is likely to result in, manifestly inequitable or unreasonable treatment of an individual or organisation.

CONFLICT OF DUTIES

In my experience many agencies in the Northern Territory have multiple functions and responsibilities and these functions and responsibilities are often in conflict with a regulatory role. Thus, for instance, agencies will often see themselves as being required to promote and foster a particular activity and will be reluctant to take regulatory action which may seem to act contrary to this particular purpose. This is not an appropriate explanation or excuse for failing to take regulatory action per se. The legislation clearly imposes the responsibility to undertake the regulatory role and any complaint must be considered on its merits. An agency must be consistent, fair, reasonable and objective in its consideration of any complaint and it must not allow competing interests or duties to prevent them carrying out what would otherwise be a requirement arising from the regulatory role.

OPTIONS FOR ACTION

There are a range of possible outcomes to address unlawful activity, including:

- referring the matter to a relevant agency for further action
- counseling the person investigated to educate them on the relevant requirements
- negotiate resolution of the complaint between the parties or to obtain undertakings to address the issues of concern
- issuing a warning or caution to the offender, requiring work to be done or activity to cease in lieu of more formal action
- issuing a notice of intention to serve an order or notice requiring work to be done under relevant legislation



- taking proceedings in a relevant court for an order to remedy or restrain a breach of the relevant Act or regulation or for an injunction
- issuing a penalty notice of starting proceedings for an offence against a relevant Act or regulation.

In my experience, agencies often lack a proper understanding of the requirements of their specific legislation in terms of their regulatory roles. As a result they often commence regulatory action without a proper understanding of the specific legal obligations imposed upon them by the relevant legislation. This often renders the processes and procedures they follow contrary to legislation and can result in an adverse outcome.

Similarly, in many cases, agencies have made no attempt to develop a proper understanding of the requirements of their legislation and invariably, when they receive a complaint that requires them to consider their regulatory role, they immediately refer it to their lawyers for action. This may well be appropriate in a situation where an agency really expects to receive complaints of a regulatory nature. However, it is incumbent upon the agency to understand the nature of its responsibilities and to ensure that its staff are adequately trained to recognise complaints as being relevant and within their jurisdiction and recognise how to properly respond to the complaint so as not to infringe any specific legislative or procedural requirement.

PREVENTION STRATEGIES

Prevention strategies can be a positive and cost effective way of dealing with unlawful activity and may include such things as avoiding delays in responding to complaints, imposing sensible and forceful conditions, keeping proper records, educating the community, exercising powers reasonably and undertaking regular inspections and checks or on compliance.

One aspect of this is that I have dealt with several complaints concerning agencies with a regulatory role who have only acted upon that regulatory role if a specific complaint has been made to them. When one has examined the specific legislative scheme and place, it is clear that the agency has a compliance responsibility beyond that of simply waiting for complaints to come to them. Where there is clearly an obligation to maintain standards of practice or professional competency, an agency should ensure that it develops an appropriate audit capacity over and beyond merely receiving and acting upon specific complaints. Failure to do this creates the impression that the process lacks balance, fairness and targets individuals who are unlucky enough to be the subject of complaint whilst others are able to work in compliance with prescribed standards of conduct or practice.

ACKNOWLEDGMENT - Much of my comments in regard to this topic have come from a fact sheet prepared by the New South Wales Ombudsman (Public Sector Agencies fact sheet No 5)



4. ABOUT THE OFFICE OF THE OMBUDSMAN

As Ombudsman I operate under the *Ombudsman (Northern Territory) Act 1978*.

VISION

To have:

- a Northern Territory public sector that is recognised and respected as providing a fair, efficient and quality administrative service to the public; and
- the Office of the Ombudsman evidencing best practice in the provision of its service.

MISSION

The mission of the Office of the Ombudsman is to:

- resolve complaints in an appropriate, fair, just and independent manner;
- assist Parliament in safeguarding the public interest; and
- work in co-operation with NT public sector agencies for improvement in quality of service to the public.

GOALS

1. Complaints are resolved in a timely and effective manner.
2. Government agencies act and deliver services in a fair, equitable and impartial manner.
3. The public are aware of, able to access, and are educated and informed about the role and functions of the Ombudsman.
4. The Office of the Ombudsman meets all its legislative and employment responsibilities.

SERVICE STANDARDS

I believe that the services provided by the Ombudsman should be of the highest quality, open to scrutiny and accountable. As such, the Office of the Ombudsman has developed service standards against which it can be judged. These service standards are provided in detail at Appendix A, page 105.

FUNCTIONS OF THE OMBUDSMAN

The functions of the Ombudsman are:

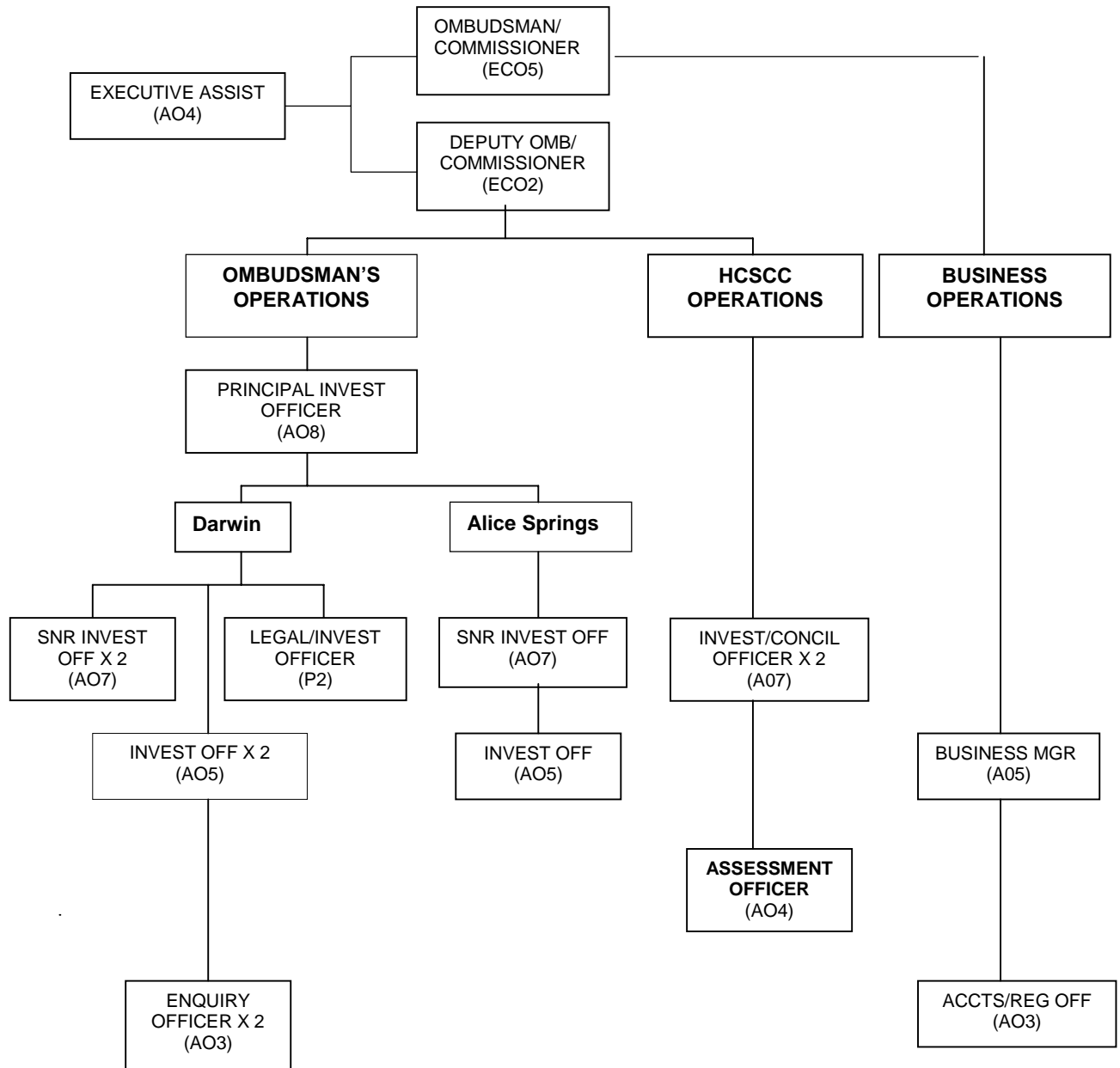
1. To investigate any administrative action by, in, or on behalf of, any Northern Territory Government Agency or Local Government Council to which the *Ombudsman (Northern Territory) Act* applies.



-
2. To investigate 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. Pursuant to Section 9 of the *Health and Community Services Complaints Act* the Ombudsman was appointed, on 24 June 1998, to be the Commissioner for Health and Community Services Complaints. As such, the Ombudsman is responsible for carrying out the powers and functions of the Commissioner under that Act. This appointment runs for the term of the appointment of the Ombudsman.
 4. 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 Darwin.
 5. Pursuant to Section 48 of the *Legal Practitioners Act 1974* and by virtue of my role as Ombudsman for the Northern Territory, act as a Statutory Member of the Legal Practitioners Complaints Committee.
 6. To act as a member of the Northern Territory Law Reform Committee.
 7. To consider requests from the Law Society of the Northern Territory for assistance in carrying out its functions.



ORGANISATIONAL STRUCTURE



Notes:

I have included in the organisation chart reference to the Health and Community Services Complaints Commission (HCSCC) to illustrate the relationship between relevant positions in the Ombudsman's Office.



STAFFING

Table 2: Ombudsman's establishment

Position Level	Estab
Ombudsman ²	1
Deputy Commissioner ECO2 ³	1
Administrative Officer 8	1
Administrative Officer 7	3
Professional Level 2	1
Administrative Officer 5	4
Administrative Officer 4	1
Administrative Officer 3	3
Total	15

FINANCES

Detailed and signed financial statements are provided at Appendix B, page 107. These statements show that the Office of the Ombudsman had a reasonable financial result during the year and, importantly, did not exceed budget allocation. The total expenditure by the Ombudsman's Office for the year 2003/04 was **\$2,166,000**.

EXPENDITURE AGAINST LOCATION

The Office of the Ombudsman has offices located in Darwin and Alice Springs. The total expenditure for 2003/04 was \$2,166,000 and this was expended against each office as follows:

- Darwin Office \$1,949,000 (90%)
- Alice Springs Office \$216,000 (10%)

FINANCIAL ITEMS OF SIGNIFICANCE

The following items were of significance in relation to the Ombudsman's 2003/04 budget:

- One-off funding for IT outsourcing costs \$25,000.
- Productivity savings of \$17,000 were imposed for the financial year.
- On going funding for IT outsourcing amounting to \$60,000.

² The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints.

³ The Deputy Ombudsman is also the Deputy Commissioner for Health and Community Services Complaints.



LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

I am appointed, pursuant to section 48 of the *Legal Practitioners Complaints Act, 1974*, as a statutory member of the Legal Practitioners Complaints Committee by virtue of my holding the statutory position of Ombudsman for the Northern Territory.

The role of the Legal Practitioners Complaints Committee is to hear complaints of professional misconduct made against legal practitioners.

In 2003/04 I have not been involved in any complaints concerning legal practitioners.

NORTHERN TERRITORY LAW REFORM COMMITTEE

The Northern Territory Law Reform Committee is chaired by the Hon. Austin Asche, AO, QC. In my 2002/03 Annual Report I noted my involvement in a reference to the Committee by the Attorney-General, the Hon. Peter Toyne, MLA in relation to an inquiry 'Towards Mutual Benefit', an inquiry into Aboriginal customary law in the Northern Territory.

The sub-committee, of which I was a member, completed its draft report and referred it to the full committee which finalised the report and subsequently made it available to the Attorney-General in September 2003.

The Attorney-General has accepted the report and publicly announced that the Northern Territory Government will implement virtually all of the recommendations set out within the report. This is a particularly significant outcome and I am hopeful that the report will generate some positive changes and reform with respect to incorporating Aboriginal customary law within the legal processes in the Northern Territory to the extent that this can occur.

During the year I was also involved directly in another reference from the Attorney-General relating to whistleblower protection legislation. I assisted the Chairman, the Hon. Austin Asche, in the preparation of a report as to the appropriate format of possible whistleblower protection legislation in the Northern Territory. I note that, as a result of this report the Northern Territory Government has moved to prepare legislation for the Territory and during the year under review, a discussion paper was prepared and circulated for comment. This discussion paper is the basis for the preparation of a draft bill for whistleblower protection and is currently being considered by the Northern Territory Government.

A further reference was given to the Committee by the Attorney-General relating to the establishment of an Administrative Appeals Tribunal. The Reform Committee had previously considered and reported upon this issue in 1995. A sub-committee was established to review the previous report, update it and make appropriate recommendations for the establishment of an Administrative Appeals Tribunal within the



current context. I participated as a member of the sub-committee and a final report was submitted to the Attorney-General in August 2004.

I found this reference particularly interesting as it could lead to the introduction of an Administrative Appeals Tribunal which would have the jurisdiction to determine matters of an administrative nature within the context of government agencies. This contrasts with the role of the Ombudsman who can only consider matters and make recommendations. I do not see there being any contradiction or difficulties arising from the possible introduction of an Administrative Appeals Tribunal as it will compliment the Ombudsman's role rather than detract from it. I strongly support the introduction of an Administrative Appeals Tribunal in the Northern Territory as it would be a prime mechanism for the improvement of administrative decision making at the highest level. Critically, it is important that any access to such a tribunal is not beyond the reach of ordinary citizens. Tribunals are only effective if they provide citizens with a realistic mechanism and are user friendly without being costly and overly legalistic in their process.

The report to the Attorney-General has considered a number of different models and I believe that the Committee has focused on recommendations which would see the establishment of an accessible model if the government follows the course of recommendations made.



5. THE COMPLAINT PROCESS

COMPLAINT PROCESS

WHO CAN MAKE A COMPLAINT

Anyone can make a complaint to the Ombudsman. A person can also have a friend, relative, community group or legal organisation assist them in making a complaint to the Ombudsman.

If you don't speak English very well, we can get a translator to help you lodge your complaint. If you are hearing, sight or speech impaired we can get the right person to help you make a complaint. You do not have to pay for this. **Making a complaint to the Ombudsman is free.**

Ideally, the complaint should be lodged within 12 months of becoming aware of the matter which is the subject of the complaint.

WHAT SHOULD A PERSON WITH A COMPLAINT DO FIRST?

Anyone who is concerned about the decision or action of any Northern Territory Government Agency or Local Government Council should first approach the agency concerned and genuinely try to resolve the complaint with the agency. Many agencies have very good complaint handling processes. It is a good idea to keep a record of discussions with the agency concerned.

If you are concerned about an action or failure to take action by a member of the Northern Territory Police Force, you can make a complaint at any Police Station or directly to the Ombudsman. The Commissioner of Police and the Ombudsman must tell each other about any complaint that they receive.

HOW DO PEOPLE MAKE A COMPLAINT TO THE OMBUDSMAN?

Making a complaint is simple and can be made in a number of ways –

- * by telephone
- * in person (Darwin and Alice Springs)
- * in writing
- * by fax
- * via email
- * over the internet through our website



WHAT HAPPENS TO THE COMPLAINT?

The complaint will be assessed to see whether the Ombudsman should investigate the matter or not.

If the Ombudsman cannot investigate the complaint, the complainant will be advised why.

In many cases, we will telephone or write to the agency concerned and ask for a response to the complaint. We will then tell the complainant about that response and our view of it. Many complaints are resolved at this stage.

In other instances, the Ombudsman may determine to investigate the matter using the formal investigative powers available to him. This may include examining agency files or interviewing people. This process may take some time to complete.

If the complaint is justified, the Ombudsman will report his opinion and recommendations for correcting the problem to the agency and its relevant Minister. The complainant is also advised of the Ombudsman's opinions and recommendations.

The Ombudsman cannot force an agency to act upon his recommendations, however, in most cases an agency does accept the recommendations. If an agency does not act upon the Ombudsman's recommendations and the Ombudsman believes that it is in the public interest to do so, he may provide a report to be tabled in the Legislative Assembly.

DO COMPLAINTS MAKE A DIFFERENCE?

Yes – if complaints are not made about something that may not be being done right, than the agency processes or procedures will not be fixed and someone else may go through the same experience.

OMBUDSMAN INVESTIGATION PROCESS

ROLE AND RESPONSIBILITIES OF THE OMBUDSMAN

• Role

Under the *Ombudsman (Northern Territory) Act*, the Ombudsman has legislative responsibility to:

- Investigate maladministration by agencies (departments, local government councils and government owned corporations), normally in response to a complaint by a member of the public, but we can also investigate on our own initiative or at the request of the Legislative Assembly.
- Make recommendations to an agency to assist it in improving its practices and processes.

We look at the actions and decisions of agencies and their staff to determine if there was maladministration in the sense that the actions and decision were:



- Contrary to law;
- Unreasonable, unjust, oppressive, or improperly discriminatory;
- In accordance with a rule of law or a provision of any law that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- Taken for an improper purpose, on irrelevant grounds, or which took into account irrelevant considerations;
- Decisions for which a reason should have been given but were not;
- Based wholly or partly on a mistake of law or fact; or
- Wrong.

The principle objective of the Ombudsman is to resolve matters for individual members of the public and to improve administrative systems for the general public, to ensure things will be better dealt with in the future.

- **Powers**

The Ombudsman Act gives us the power to:

- Make preliminary inquiries to decide whether a complaint may be determined without the need for an investigation.
- Formally investigate the complaint, using the powers available to us under the Act to obtain evidence.

The powers available to us under the Act include:

- Power to enter any buildings and to access any goods, books, documents and other papers relevant to the investigation and power to make copies of documents.
- Power to summon witnesses to give evidence upon oath and to produce any books, documents and writings in their possession.
- Power to override any obligations to maintain secrecy which may apply to agency employees.
- Power to require any information supplied to be verified by statutory declaration
- Power to require a person who obtains information in the course of an investigation to not disclose that information except for the purposes of the investigation.

Penalties apply to individuals who fail without reasonable excuse to comply with our requests made in the exercise of our powers.

HOW WE INVESTIGATE COMPLAINTS

- **Process**

A number of factors, such as the nature of the issue complained about, affects how an investigation is carried out. An assessment is made about what evidence is required, which normally involves reviewing agency files and which may or may not involve interviewing agency staff.

Under our Act we are required to notify the agency Chief Executive and the relevant Minister of our intention to conduct an investigation. The issues of complaint are forwarded to the Chief Executive so that the agency may prepare a response.



- **Impartiality**

Our role is to attempt to ascertain the truth of a matter by uncovering all the relevant facts. We do not act as an advocate for the complainant, nor do we defend an agency's actions.

In the event that an investigator assigned to the case discovers a possible conflict of interest, he or she is required to immediately notify the Ombudsman, who will decide whether the case needs to be reassigned.

- **Procedural fairness**

Investigations are conducted in accordance with the principles of procedural fairness, since the potential exists for an outcome to the investigation to affect the rights, interests or reputation of an agency employee.

Procedural fairness principles require us to:

- Inform people of the substance of any allegations against them;
- Inform them of the grounds for any proposed adverse comment in respect of them;
- Provide reasonable opportunity for people to put their case;
- Make reasonable inquiries and consider any submissions before making a decision;
- Act fairly and without bias;
- Conduct the investigation without undue delay.

- **Confidentiality**

We are bound by our Act to maintain confidentiality of all information that is received by us in the course of our investigation and to disclose information only for the purposes of the investigation. Agency staff are likewise bound by the same secrecy provisions.

In certain circumstances there may be a need to maintain confidentiality of specific facts such as the identity of the complainant, witnesses and so on. Where we deem this to be necessary, we will inform agencies of the reasons for the decision.

- **Standard of proof**

We are not bound by any rules of evidence and may inform ourselves about a matter in any manner as we think fit. It is our responsibility to obtain as comprehensive and high quality evidence as possible to ensure a high standard of decision making.

The civil standard of proof applies to investigations by the Ombudsman. This is a lower standard than that required in criminal matters, where allegations must be proved beyond reasonable doubt. This means that allegations must be proved according to the balance of probabilities, that is, it must be more probable than not that the allegations are substantiated.

- **Communication**

We ask the Chief Executive of an agency to provide us with a contact person with whom we can deal with during the investigation. We keep the agency informed of progress via the contact person.



We expect the person responsible for providing a response to us will keep relevant agency employees informed about the investigation.

HOW TO RESPOND

Many agencies view our involvement as an opportunity for them to identify and remedy any shortcomings in their services to the public. A positive approach to responding to the Ombudsman's inquiries is beneficial to all parties involved in the investigation.

An agency can assist us to achieve timely and appropriate outcomes by co-operating with our requests for information. In preparing a response agencies can assist by:

- Responding promptly;
- Using plain English
- Providing a clear, succinct and complete response
- Ensuring factual accuracy
- Arguing the case logically
- Supporting the argument with relevant facts
- Describing exemplary agency actions
- Admitting any error or mistake and considering making a fresh decision
- Acknowledging the complainant's argument
- Considering inadequacies of the agency's policies or procedures
- Offering a remedy if appropriate
- Avoiding repetition of the complaint by fixing matters promptly
- Ensuring that officers who deal with complaints have the power to make and change decisions.

If any member of the staff of an agency is required to attend before the Ombudsman and provide information or documents, we will advise them of their rights and obligations. Agencies can assist staff by advising them of the role of the Ombudsman and encouraging staff to contact us if they have any questions.

When we advise our intention to conduct interviews with agency officers, it will assist the investigation if the officers refresh their knowledge of the relevant actions by reviewing the agency file or their personal notes and by having handy relevant documents which can pinpoint key facts such as decisions and dates.

We recognise that an agency and some of its officers may find our investigation has a significant impact on them, either in terms of affecting their ability to conduct their core work or in personal terms.

Our investigators are mindful of the impact of our work and seek to minimise disruption to the agency workplace. The secrecy provision of our Act provides protection for agency officers by prohibiting information obtained during the course of our investigation being unlawfully disclosed. This provision applies to our staff as well as to agency staff.

Our commitment to agencies is that we will act with discretion, respect and confidentiality at all times.



OUTCOME OF THE INVESTIGATION

After our investigation is completed, we form an opinion about the administrative actions in question. Our Act defines 'administrative action' as:

- A decision or an act;
- A failure or refuse to make a decision or perform an act;
- The formulation of a proposal or intention;
- The making of a recommendation.

Our responsibility is to identify and make recommendations about any administrative action or inaction of an agency that involves maladministration. If we consider an agency's actions involve maladministration, we will provide a report to the Chief Executive of the agency, which may contain recommendations to rectify the instances of maladministration or to improve processes to avoid a recurrence of the problem. The principles of procedural fairness apply and responses provided will be considered before the report is finalised.

If no maladministration has been identified we will report this to the Chief Executive. In all cases a copy of the report is also provided to the relevant Minister.

The Ombudsman's report may be tabled in the Legislative Assembly:

- At the request of the Ombudsman if he or she considers that the agency has not taken appropriate action in response to the recommendations made as a result of the investigation;

On the authorisation of the Speaker of the Legislative Assembly, the Ombudsman may also seek authority to publish a report if the issues are in the public interest.

(ACKNOWLEDGEMENT - The Ombudsman for the Northern Territory acknowledges the assistance of the Queensland Ombudsman and the NSW Ombudsman in compiling the above information).



6. PERFORMANCE

The *Ombudsman (Northern Territory) Act* provides the Ombudsman with the power to investigate administrative actions, decisions, practices and procedures of government agencies, statutory bodies, local government councils and the NT Police.

As Ombudsman, it is my responsibility to ensure the Office of the Ombudsman's major initiatives and day to day services are in accordance with legislative provisions and aligned to client needs. I do this through an annual planning cycle, by ensuring that:

- the Ombudsman's Business Plan leads to the achievement of its corporate goals;
- staff performance is monitored to ensure they are working towards the objectives of the Business Plan; and
- regular feedback is provided to the public, stakeholders, the Chief Minister and the Legislative Assembly.

The activities the Ombudsman undertakes are:

1. To provide an independent, just, fair and accessible mechanism for resolving complaints.
2. To utilise the information gained through the complaint resolution process to improve the delivery of services provided by agencies.
3. To promote access and awareness of the role of the Ombudsman to the public and agencies.
4. To ensure the Office of the Ombudsman meets all its legislative and employment responsibilities.

OVERALL PERFORMANCE

The overall performance of the Ombudsman in undertaking these activities during 2003/04 (as stated in Budget Paper No. 3) follows:

Performance Measures	Unit of Measure	2000/01 Achieved	2001/02 Achieved	2002/03 Achieved	2003/04 Achieved
Quantity	1. Number of approaches	1905	1638	2082	2355
	2. Number of access and awareness visits.	46	30	37	36



Quality	1. Percentage of reviews of decisions requested	Not available	Not available	11	2.7%
	2. Percentage of consumer satisfaction feedback	Not available	Not available	Available from 01/01/04	74%
Timeliness	1. Percentage of complaints closed within 90 days.				
	a) General	71%	64%	62%	63%
	b) Police (180 days)	30%	14%	49%	66%
	2. Percentage of formal investigations resolved within 180 days	Not available	Not available	0%	0%

Note: A new case management system commenced at the beginning of 2002/03 and therefore some of these Performance Measures were not available under the previous computerised case management system. The benchmark for the resolution of Police Complaints increased to 180 days in 2003/04.

ACTUAL EXPENDITURE ON OMBUDSMAN ACTIVITIES

Actual expenditure to undertake the Ombudsman's activities for 2003/04 was:

Total expenditure by the Office of the Ombudsman \$1,614,000

I estimate that of the \$1,614,000 expended, the proportion spent against the corporate goals of the Ombudsman during 2003/04 were as follows:

Table 3: Expenditure of funds against corporate goals

GOAL	2000/01 \$	%	2001/02 \$	%	2002/03 \$	%	2003/04	%
1. Resolution of Complaints	1,029,000	75	1,203,000	77.5	1,114,060	77.5	1,266,990	78.5
2. Equitable and Impartial Delivery of Services	68,600	5	77,600	5	71,880	5	80,700	5
3. Access and Awareness	68,600	5	38,800	2.5	35,940	2.5	24,210	1.5
4. Management of the Office	205,000	15	232,900	15	215,620	15	242,100	15



ACTIVITY 1: RESOLUTION OF COMPLAINTS

DESCRIPTION

To provide an independent, just and accessible mechanism for resolving complaints against Territory Government agencies, police and local government councils.

OUTCOME

Resolution of complaints against Territory Government agencies, police and local government councils.

OUTPUTS

1. Accept enquiries 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.

COST

Total expenditure by the Ombudsman's Office on this activity was:

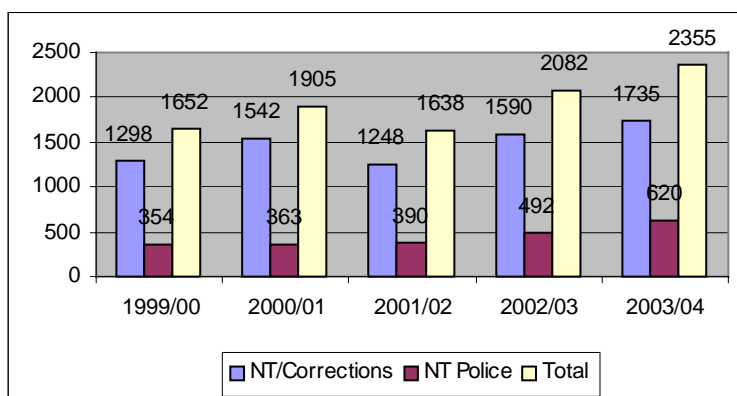
78.5% of Ombudsman's actual expenditure \$1,266,990

OVERALL HIGHLIGHTS

APPROACHES (ENQUIRY/COMPLAINT NUMBERS) OVERALL

Approaches to the Office are made up of enquiries and complaints received in person, by telephone or in writing. Many enquiries can and are handled quickly, without the need for the complainant to provide more detail.

Graph 5: *New approaches for NT Agencies, NT Police and combined*



There has been a significant rise in the number of approaches for both the police (26%) and general (9%) jurisdictions this year which has culminated in a 13% increase in the number of approaches overall.



A comparison between approaches received over the past four years broken down between enquiries and complaints is provided at table 4.

Table 4: Comparison between approaches received over past 4 years

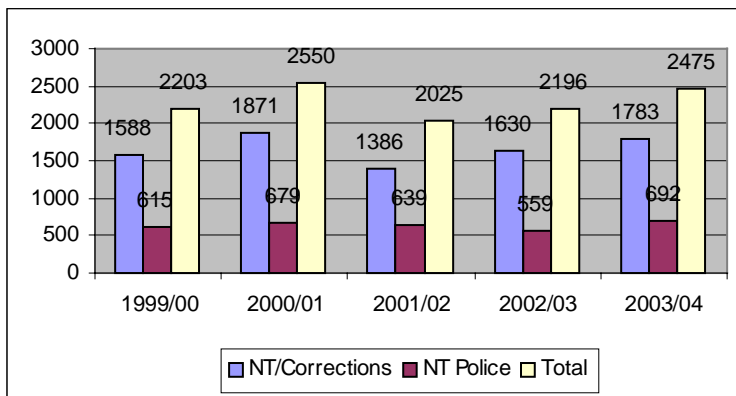
Approaches	2000/01	2001/02	2002/03	2003/04
Enquiries	1045	850	1472	1804
Complaints	860	780	610	551
Total	1905	1638	2082	2355

It can be seen from the above breakdown that during the year under review, of the 2355 approaches, 1804 were enquiries and 551 were complaints. Compared to last year there has been a 23% increase in the number of enquiries received while the number of formal complaints dealt with has reduced by 10%. Of all approaches to the Office this year only 23% needed to be dealt with as formal complaints under the Act. This is a significant change on previous years where 45% of all approaches were dealt with on a formal basis.

OVERALL MATTERS OF COMPLAINT

Many approaches that are made to the Ombudsman include more than one matter which is the subject of their complaint, ie, one complaint may have three matters. Refer to Appendix D, pages 124 to 135 for a detailed breakdown of the matters complained about.

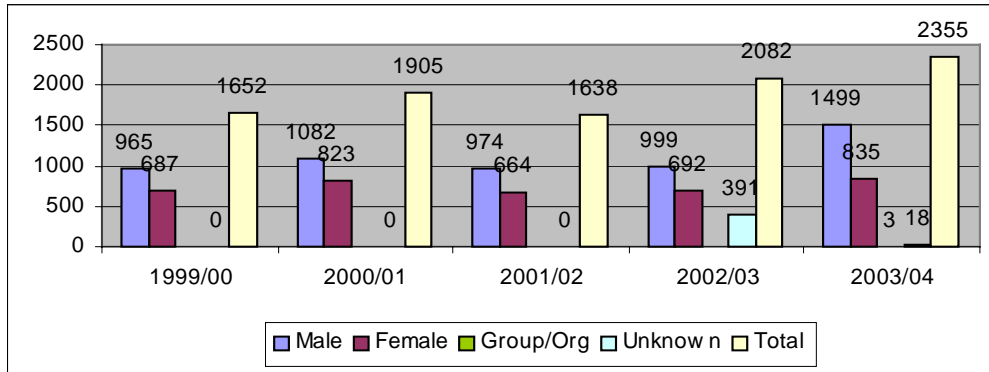
Graph 6: Total matters of Enquiries/Complaint





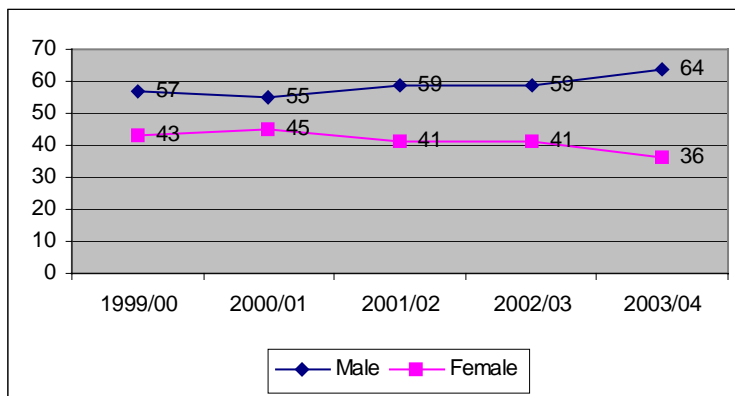
WHO COMPLAINS?

Graph 7: Gender Breakdown all Enquiries/Complaints



As Graph 8 shows, over the past five years the gender breakdown of people approaching the Office has only varied slightly. The above percentages can be compared with the overall male to female ratio in the Northern Territory which is 52:48, a somewhat different situation to that in other parts of Australia where the percentage is the reverse.

Graph 8: Gender percentage comparison over five years



A detailed statistical analysis of all enquiries and complaints received during 2003/04 can be found at Appendix D, pages 124 to 135 and examples of case studies are at Appendix E, pages 136 to 198.

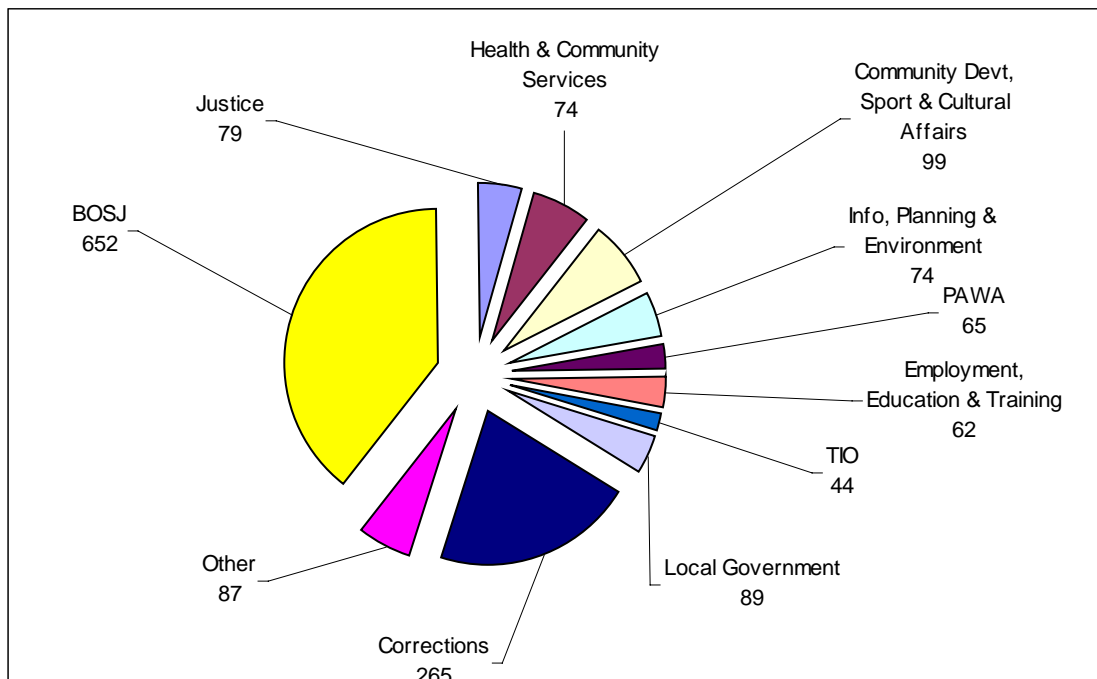


NORTHERN TERRITORY AGENCIES (INCLUDING NT CORRECTIONAL SERVICES)

WHICH AGENCIES DO PEOPLE COMPLAIN ABOUT?

Chart 1 below provides a breakdown of agencies that have been the subject of complaint, excluding complaints against Police, over the past year.

Chart 1: Agencies subject to complaints



Note: BOSJ refers to complaints made to the Ombudsman concerning bodies that are outside the jurisdiction of the Ombudsman and complainants were referred to appropriate bodies to action.

Agencies included in the Other category are: Anti Discrimination Commission (3); Batchelor Institute of Tertiary Education (5); Business, Industry and Resource Development (7); Charles Darwin University (9); Department of the Chief Minister (3); Police, Fire and Emergency Services (administrative actions only, 12); Department of Corporate and Information Services (12); Treasury (21); Legal Aid Commission (13); Development Consent Authority (9); Office of the Ombudsman (4).

The following table shows the variation between approaches to agencies over the past two financial years.



Table 5: Agency approaches over previous two years

Agencies	2002/03	2003/04	Variation %
Corrections	265	362	97
Health & Community Services	74	104	30
Community Development, Sport & Cultural Affairs	99	121	22
Other	87	98	11
Infrastructure, Planning & Environment	74	84	10
Justice	79	83	4
TIO	44	35	-9
Employment, Education & Training	62	51	-11
PAWA	65	44	-21
Local Government	89	66	-23
Out of Jurisdiction	652	687	35
TOTAL	1590	1735	145

Similar to 2002/03, the greatest number of approaches were from prisoners about the activities of Correctional Services. These approaches increased from the previous year by 36%, that is from 265 approaches to 362. This increase has occurred since prisoners have had greater access to a telephone line whereby they can contact the Ombudsman's Office directly and where this call is free and not monitored. In relation to the two major Corrections facilities, the variation over the two years is as follows:

Table 6: Approaches about Correctional Centres over previous two years

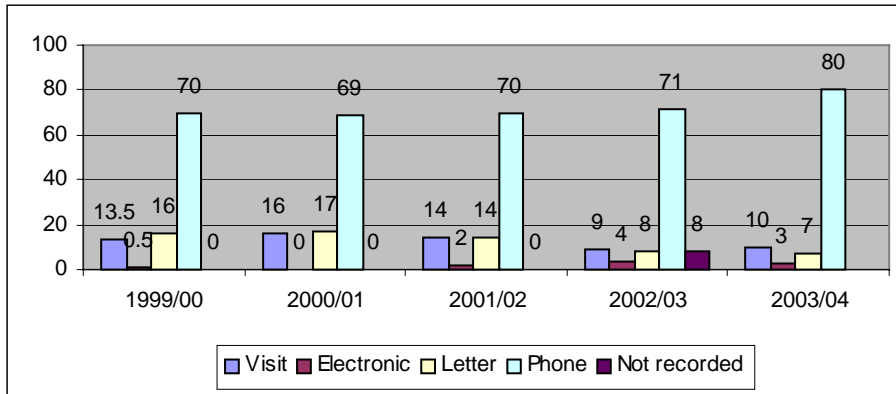
Facility	2002/03	2003/04	Variation
Alice Springs	81	185	104
Darwin	174	176	2



MANNER OF APPROACH

The Ombudsman's Office can receive complaints in a number of ways. As depicted in Graph 9, 80% of complaints were received via the telephone. This is an increase by 9 % on last financial year.

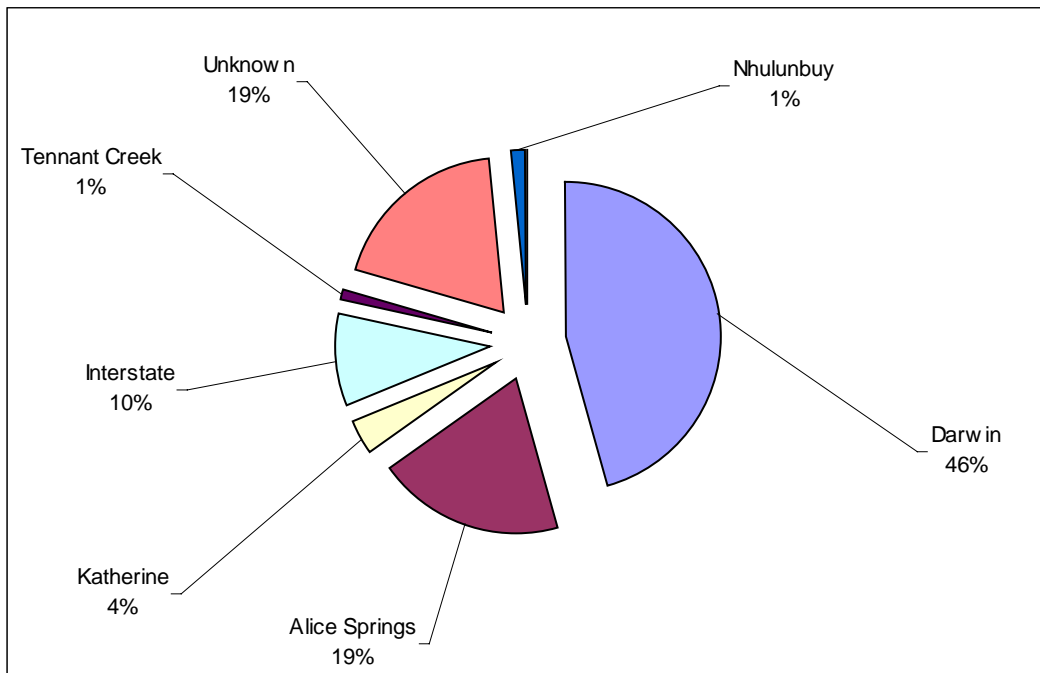
Graph 9: Manner of approach to the Ombudsman by %



The manner in which complainants approach the Ombudsman's Office has not significantly changed over the past four years. This financial year there were no approaches where the manner of approach was not recorded. This was due to modifications to the new case management data base.

GEOGRAPHIC SOURCE OF COMPLAINT

Chart 2: Geographic source of complaint





Of those that were recorded, not surprisingly, Darwin continues to be the area where the majority of complaints come from with Alice Springs being the next largest area.

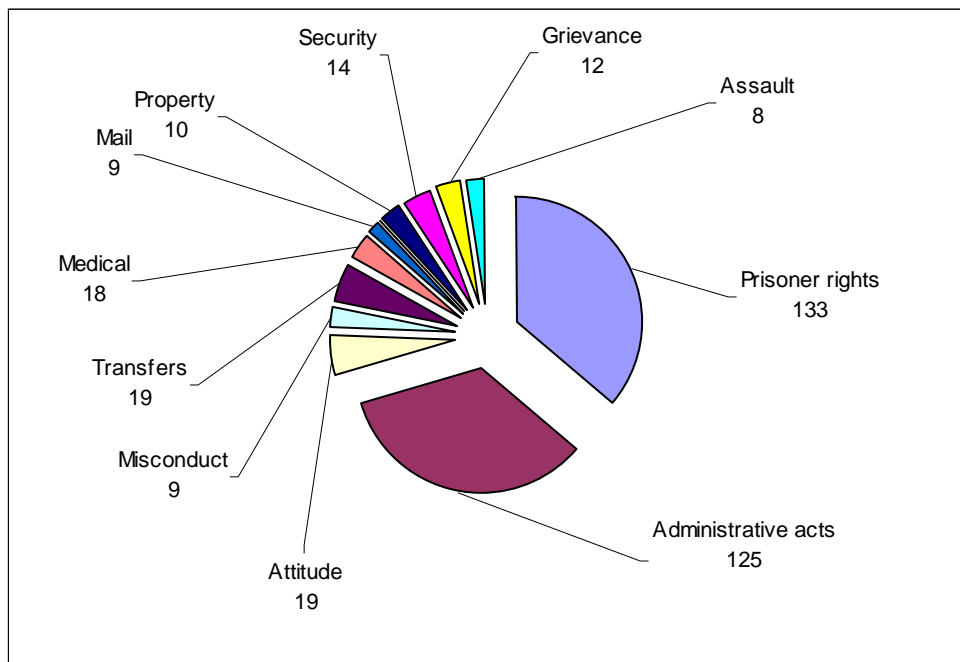
MATTERS COMPLAINED ABOUT

Information is recorded about the matters described in every enquiry and complaint. Different matters are identified for complaints against Correctional Services and those for the remainder of NT agencies, including local government.

The matters people complained about for these two areas were as follows:

Correctional Services

Chart 3: Matters Raised in Enquiries/Complaints for Correctional Services



There were 362 approaches in respect of NT Correctional Services (265 in 2002/03) raising 376 matters of complaint (277 in 2002/03).

As can be seen from Table 7, there has also been a marked change from last year in the major matters complained about.



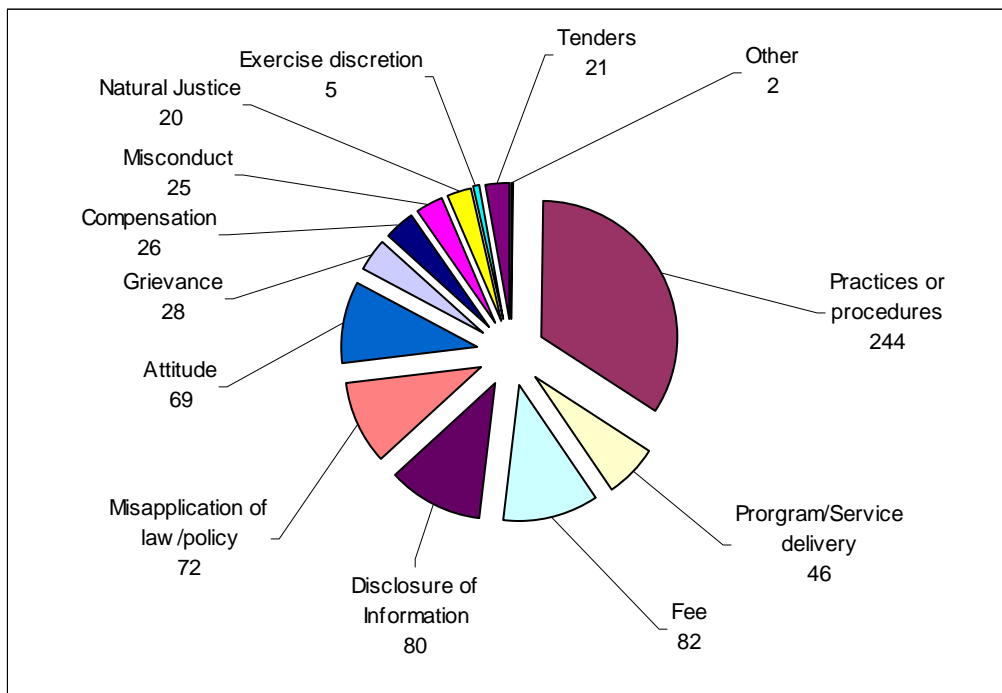
Table 7: Corrections matters most complained about – Three year comparison

Matter	2000/01		2001/02		2002/03		2003/04	
	No.	%	No.	%	No.	%	No.	%
Prisoner rights	84	35%	29	22%	75	27%	133	35%
Administrative acts	39	16%	22	17%	99	36%	125	33%
Attitude	25	10%	33	25%	33	12%	19	5%
Transfers	15	6%	5	4%	22	8%	19	5%
Medical	11	5%	13	8%	12	4%	18	5%

There has been a significant decline in complaints relating to attitude and significant increases in complaints about prisoner rights.

NT Agencies (excluding Correctional Services)

Chart 4: Matters Raised in Enquiries/Complaints for NT Agencies (excluding Correctional Services)



There were 696 approaches in respect of NT agencies, excluding those out of jurisdiction and NT Correctional Services (686 in 2002/03) raising 720 matters of complaint (713 in 2002/03).



Table 8: Matters most complained about – Four year comparison

Matter	2000/01		2001/02		2002/03		2003/04	
	No.	%.	No	%	No	%	No	%
Practices & procedures	332	20%	399	32%	201	28%	244	34%
Refusal to provide service	237	15%	99	8%	63	9%	46	6%
Fees	82	5%	52	4%	84	12%	82	11%
Disclosure of information	72	4%	36	3%	80	11%	80	11%
Misapplication of law/policy	54	3%	25	2%	67	9%	72	10%
Attitude	50	3%	57	5%	70	10%	69	10%

There has been a slight increase in complaints about agency practices and procedures (201 in 2002/03 compared to 244 in 2003/04). Complaints relating to agencies refusing to provide services has decreased (63 in 2002/03 compared to 46 in 2003/04). Matters associated with fees, disclosure of information, misapplication of law and attitude of staff have all remained constant.

OUTCOMES OF FINALISED COMPLAINTS

Outcomes Achieved

Chart 5: Outcomes achieved from finalised complaints (NT Agencies)

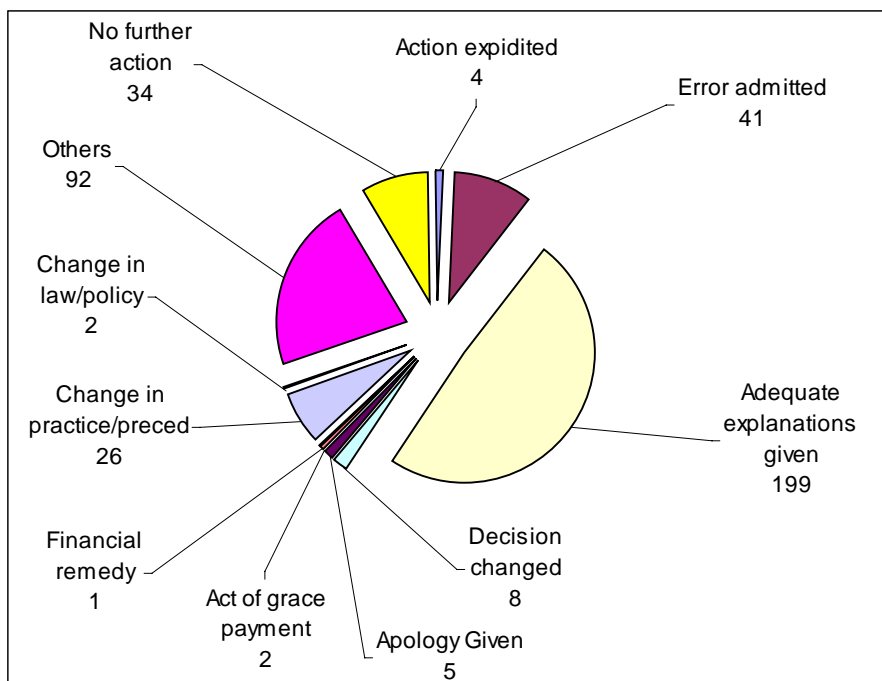


Chart 5 identifies the outcomes achieved from matters of complaint finalised in 2003/04. Of significance is the fact that:



- 48% (43% in 2002/03) of cases were resolved as a result of the complainant being provided with an adequate explanation;
- 10% (4% in 2002/03) of cases were resolved by the department admitting an error had occurred; and
- 6% (1% in 2002/03) of cases resulted in a change in practice or procedure being adopted.

Extent to which outcome favoured the complainant

Chart 6: *Extent to which outcome favoured the complainant (NT Agencies)*

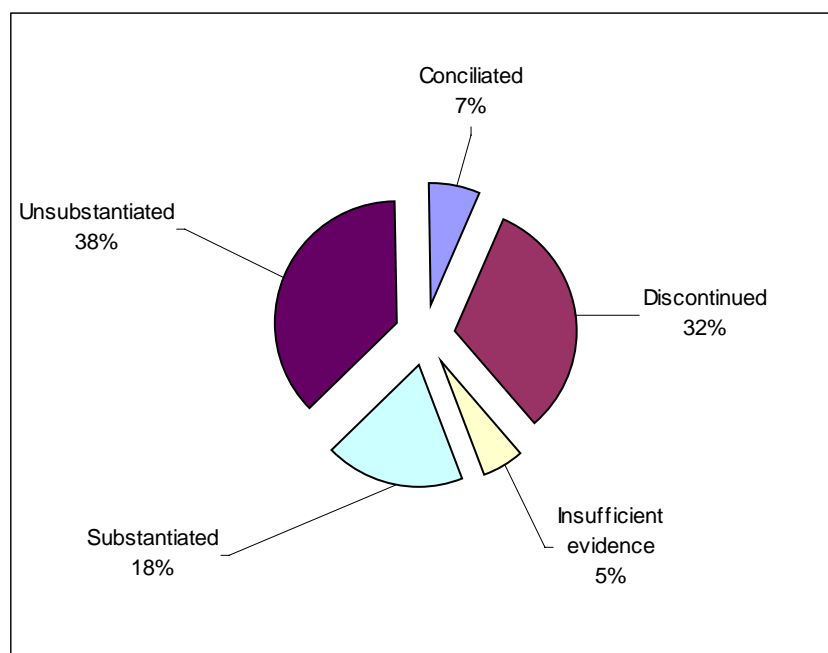


Chart 6 above sets out the practical outcome of complaints. This chart reflects an assessment made by the case officer as to whether the issues associated with each complaint were substantiated or not.

It can be seen from the above chart that 38% of all the issues of complaint were not substantiated and that 18% were substantiated.

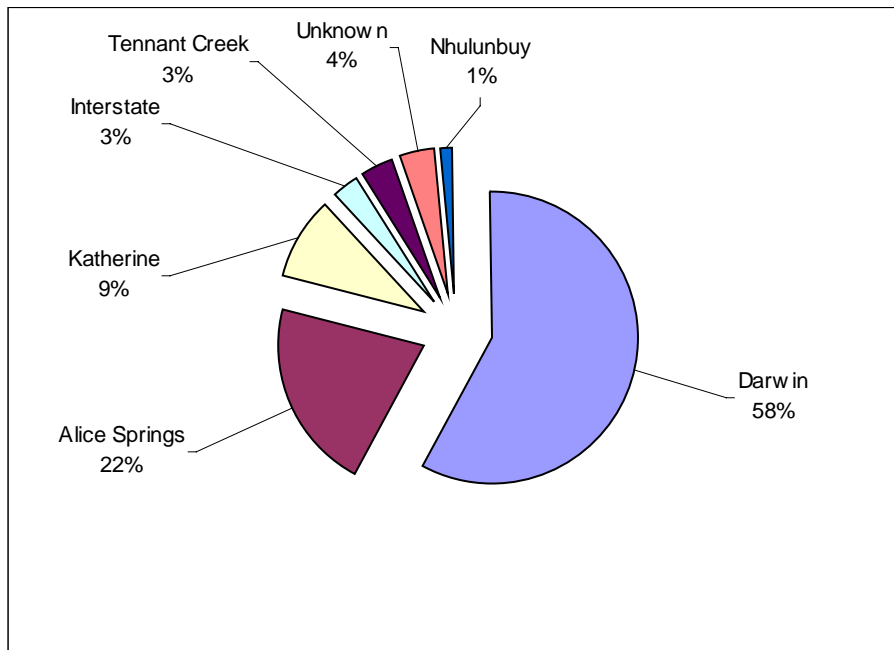
I would make one important observation here and that is, that the majority of complaints received by the Ombudsman are resolved by other than formal investigation processes. In effect, informal dispute resolution processes are utilised to generate, wherever possible, timely and relevant outcomes for both complainants and agencies. It is the encouragement of this process, which has resulted in 32% of issues being discontinued, often after some form of resolution has been received, and 7% being specifically conciliated by this Office.



NORTHERN TERRITORY POLICE

GEOGRAPHIC SOURCE OF COMPLAINT

Chart 7: Geographic source of complaint



As is the case with complaints against other NT agencies, Darwin continues to be the area where the majority of police complaints come from (58%) with Alice Springs being the next largest area (22%). 17% of approaches regarding police came from areas outside the major population centres.

These figures continue to reinforce to me the need to undertake access and awareness campaigns outside of the two major centres of Darwin and Alice Springs. Unfortunately, however, funding shortfalls and consequent staffing difficulties have impacted on the Access and Awareness Program.

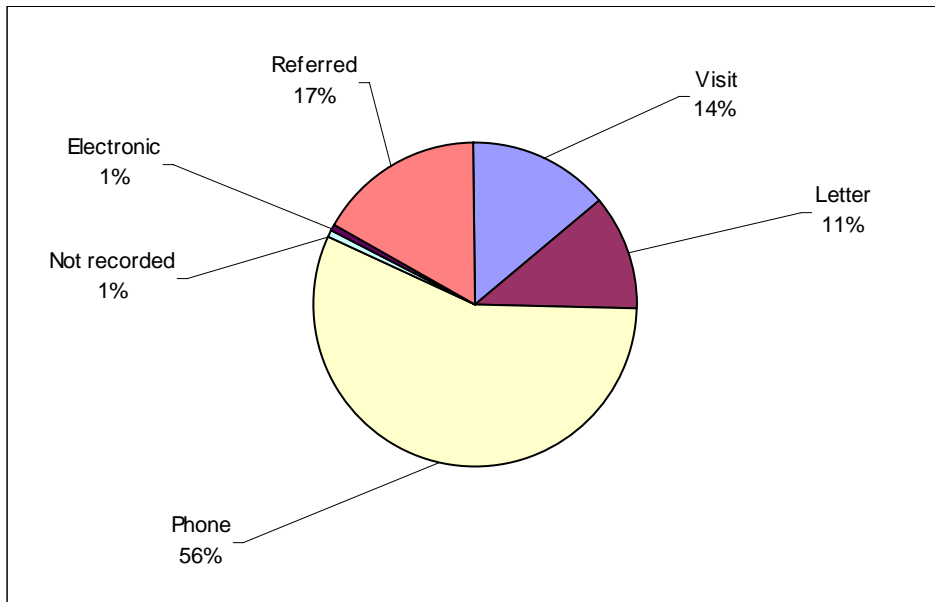
MANNER OF APPROACH

Persons making complaints against police may do so directly to my Office, to the Commissioner of Police or to a police station. The legislation requires that I notify the Commissioner of Police as to the receipt of such complaints and, similarly, the Commissioner of Police is required to notify me of complaints received by the NT Police.

Chart 8 shows, as in previous years, most people (56%) lodged their complaints against police to my office by telephone. 17% of complaints were lodged directly with police whilst 83% were lodged directly to my Office. 11% of complaints regarding police were received in a written form.



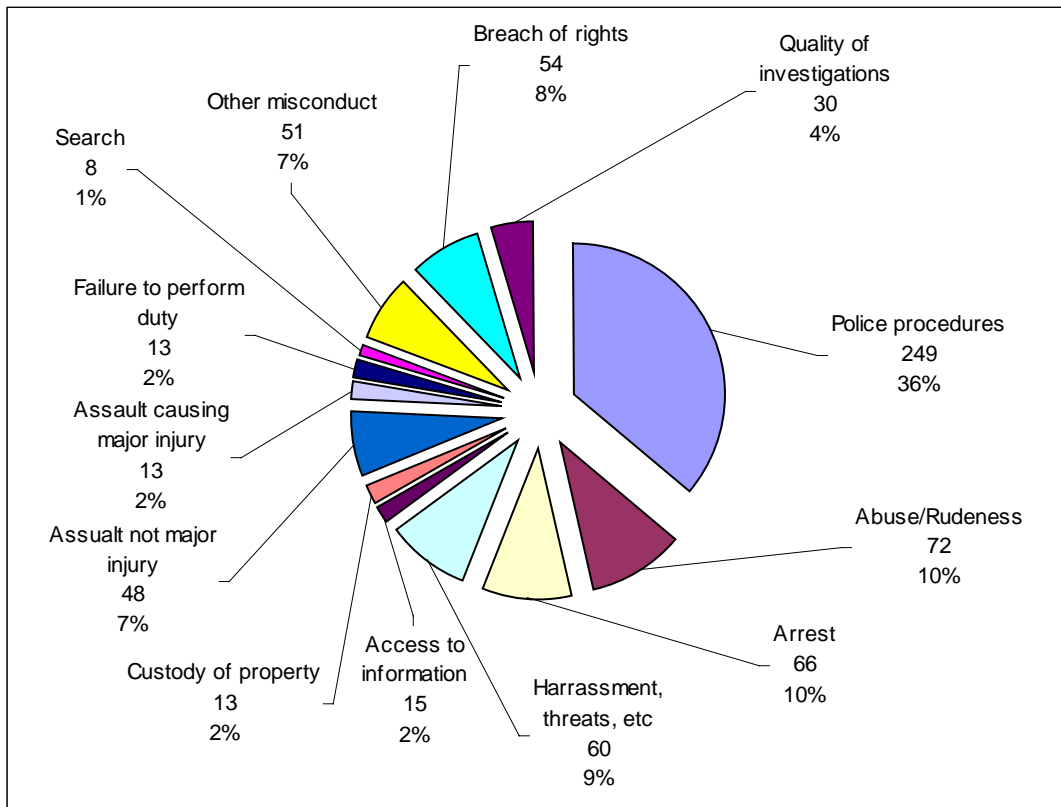
Chart 8: Manner of approach to the Ombudsman (Police)



MATTERS COMPLAINED ABOUT?

Information is recorded about the matters described in every enquiry and complaint received about police. The twelve matters most complained about are depicted in Chart 9.

Chart 9: Matters Raised in Complaints (Police)





In addition, complaints were also received in relation to the following matters:

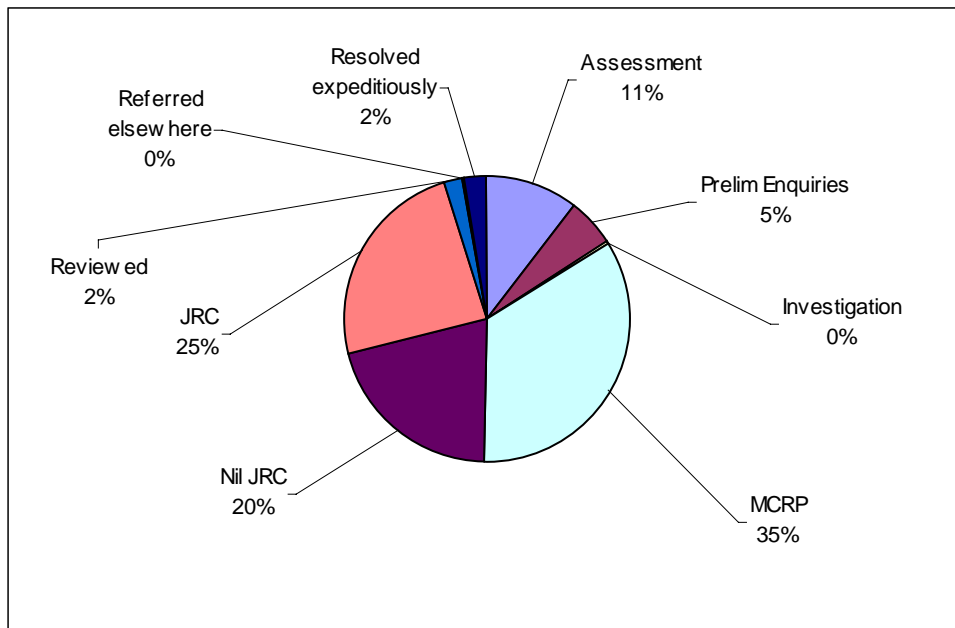
- Prosecutorial discretion (5)
- Inadvertent wrong treatment (5)
- Custodial/watchhouse/detention (14)
- Corruption (5)
- Traffic (2)
- Warrants (3)
- Seizure/use of firearms (3)

The three most common matters complained about concerned issues associated with police procedures (36%), abuse and rudeness (10%) and arrest (10%).

HOW COMPLAINTS WERE FINALISED

In all, 294 complaints were finalised in 2003/04.

Chart 10: Finalisation of complaints (Police)



Of the 294 complaints finalised, 160 complaints or 55% were referred to police to investigate and respond to directly in accordance with the guidelines, agreed to between the Commissioner of Police and the Ombudsman, for the handling of complaints against police. Of this, 100 were resolved through the Minor Complaints Resolution Process (MCRP) and 60 through the Nil JRC process.

71 or 25% of the complaints finalised were through the Joint Review Committee (JRC) process in which police investigate the complaint and provide a report to the Ombudsman for review, after which the JRC responds to the complainant. The JRC comprises of the



Deputy Ombudsman as a representative of the Ombudsman and the Commander of the Professional Responsibility Division of NT Police as a representative of the Commissioner of Police.

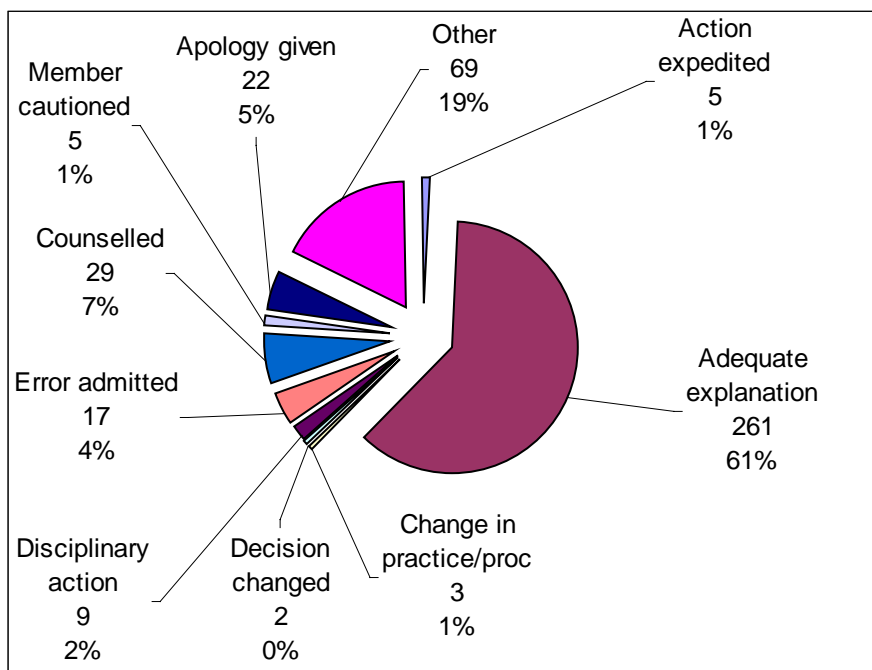
I am particularly pleased that of the 294 complaints finalised, 34% were resolved by utilising the MCRP process.

OUTCOMES OF FINALISED COMPLAINTS

Outcomes Achieved

Chart 11 below shows the outcome of complaints and the action taken by the NT Police to implement recommendations. As can be seen the outcome most achieved (61%) was to provide an adequate explanation to the complaint. This was followed by members of NT Police being counselled (7%) and the issuing of an apology by police (5%).

Chart 11: Outcomes achieved from finalised complaints



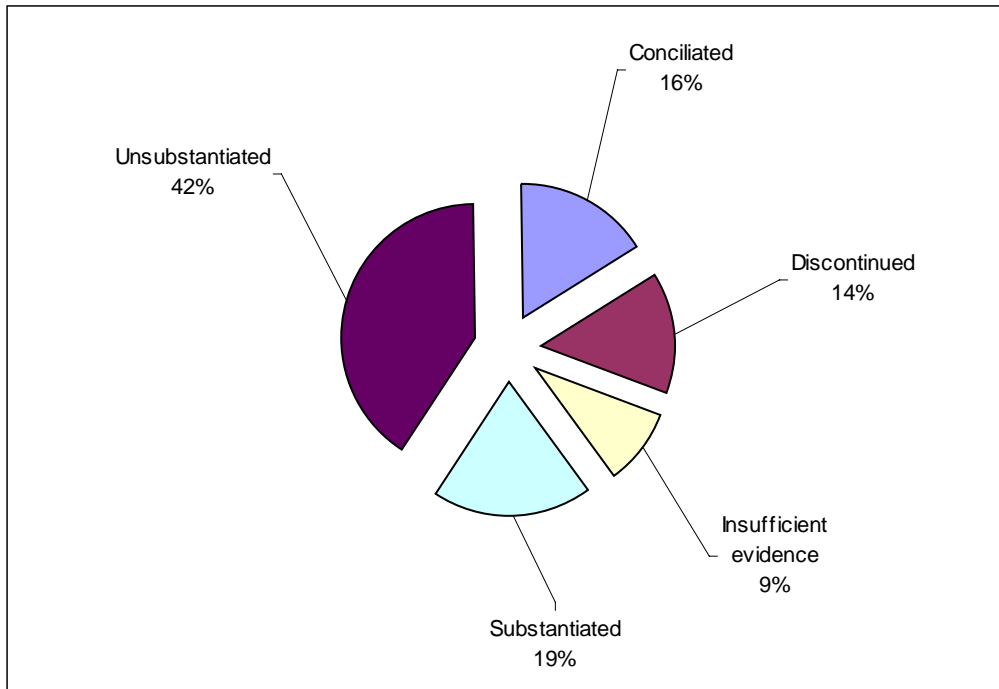
Extent to which outcome favoured the complainant

Chart 12 below sets out the practical outcome of complaints. This chart reflects an assessment made by the case officer as to whether the issues associated with each complaint were substantiated or not.

It is important to note that 42% of the issues of complaint were not substantiated. This is a decrease from last year when 56% of the issues of complaint did not favour the complainant. 9% of the issues of complaint could not be determined one way or the other as there was insufficient evidence to make such a decision.



Chart 12: Extent to which outcome favoured the complainant (Police)





ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES

DESCRIPTION

To utilise the information gained through the complaint resolution process to provide reports and make recommendations to address any defective administration and improve the delivery of services.

OUTCOME

Agencies improving the manner in which they deliver services to ensure they are fair, equitable and impartial.

OUTPUTS

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

COST

Total expenditure by the Office on this activity was:

5% of Ombudsman's actual expenditure	\$80,700
--------------------------------------	----------

HIGHLIGHTS

The number of complaints the Ombudsman receives and handles over 12 months and the time taken to conclude matters associated with those complaints is a measure of the efficiency of the Office. The Office's effectiveness is also to be considered and evaluated. One method of achieving this is by reviewing whether improvements to services have occurred or are likely to occur as a result of the complaint being addressed.

During the year, the Ombudsman made 60 recommendations to government agencies, local councils and the NT Police of which 55 were adopted in some form. This amounts to an adoption rate of 92%. Examples of the recommendations made that reflect the Ombudsman's achievements in improving services during 2003/04 include the following:

RECOMMENDATIONS IMPLEMENTED

1. Should I declare my interest? (Local Government Council)

I received a complaint relating to the sale of a property belonging to a local government council which had been offered for sale through two local based real estate companies. The complainant had made several offers for the property with these offers all being rejected by the Council. The complainant was advised by a real estate agent that his last offer had been rejected as the property had in fact been sold that same day. The thrust of the complaint was that the complainant had learned that the property had in fact been purchased by the Mayor of the Council and he was concerned that the processes followed for the sale by Council were not appropriate.



Given the seriousness of the allegations made, I determined to conduct an investigation into the matter.

My investigation revealed that the property was placed for sale by the Council two years prior to its eventual sale. The property had been valued several years before and was placed on the market for \$380,000 negotiable. The property had remained on the market at this price until it was sold to the Mayor.

There were two parties who submitted offers on the property in the two months leading up to its sale. Both these parties made their offers through separate real estate companies and their names were not disclosed. One of the parties making offers on the property was in fact the Mayor of the Council. The fact that he was making offers in respect to the property was not formally disclosed until the sale had been concluded.

In my view there was a real conflict of interest as regards the Mayor's personal actions in respect to the purchase of the property and his position as a member of Council and Mayor of the Council. The conflict of interest arose as soon as the Mayor began to actively consider purchasing the property. At this stage the Mayor should have, consistent with his obligations under section 20 of the *Local Government Act*, and as a matter of good administrative practice formally advised the CEO and Council of his interest, thus avoiding any suggestion that he would have had access to and the benefit of confidential information relating to the sale of the property from then on. It would have enabled Council to manage any conflict of interest albeit, I would observe, how well, is indeed speculative at best.

It is not a case that elected members must merely address real and actual conflicts of interest. They must also, at all times, be aware of the need to address any perceived conflict of interest which may reflect upon their position as a member or the integrity of Council. In the present case, that perception of a conflict of interest arose as soon as the Mayor formed a view that he was seriously considering purchasing Council property. I do not dispute that in his personal and individual capacity, the Mayor was entitled to consider purchasing the property. He, however, was obliged, when he determined to do so, to take appropriate steps to protect Council's position and to ensure that he was not in any way able to take advantage of his position in Council or would be likely to be perceived as able to do so. Contrary to an apparent belief that such personal interest was more important or of similar importance to his official responsibilities and duties, the Mayor was obliged to put the best interests of Council and the public interest as of paramount importance and act accordingly.

The Mayor was also obliged to ensure that Council staff were aware of his interest so that they did not inadvertently provide him with information which would be to his benefit or advantage. That information could have only come to him by virtue of his being a member of Council. No ordinary member of the public could have access to such information nor, indeed, any prospective purchaser. Such information must be seen as being to the benefit of, or advantage of, a person who was considering an offer on the property. At the very least, it would enable the person to make an offer at a higher amount.



The Mayor was privy to discussions concerning the sale of the property and this again was clearly to his personal advantage or benefit.

Once a conflict of interest has arisen, but is not addressed, it has the potential to taint all further transactions relating to the matter concerned. It is my view this is what has happened in the present case, despite the actions or good intentions of either Council staff or members of Council.

In regard to the suspicion of the CEO, which he formed as a result of the Mayor accessing keys to the property, it was incumbent upon him to approach the Mayor immediately and directly, and formally ascertain whether the Mayor had an interest in the property. Once this was confirmed, then there was clearly an obligation on the part of the CEO to ensure that the Mayor and, indeed, the Council generally, complied with the provisions of section 20 of the *Local Government Act*. This also would have directed Council's mind to the need to manage the conflict of interest properly and to protect Council's integrity and the public interest. This obligation to ensure that there is compliance with the relevant provisions of legislation is, in my view, imposed upon the CEO by section 142 of the *Local Government Act*.

To allow the members of the Council to consider offers relating to the purchase of the property despite the CEO's suspicions as to the fact that the Mayor was one of those making an offer was, in my view, inappropriate on the part of the CEO and was a breach of the CEO's responsibilities and duties to Council. He failed to appropriately act on a possible conflict of interest which constituted an obvious and significant risk to Council's interests and the public interest.

I would qualify my criticisms in regard to the CEO by noting that he did attempt to address his suspicions, albeit inadequately in my view, by not providing the Mayor with a copy of his confidential report. However, in order to be consistent with the legislation and his obligations and responsibilities as a public officer and, in particular, the requirements of section 142 of the *Local Government Act*, and in order to comply with the thrust of the Model Code of Conduct and to have evidenced good administrative conduct, the CEO should have advised members of the Finance and Planning Committee and the Council generally of the fact that he had a concern or suspicion that the Mayor was involved in making an offer for the property before allowing them to deliberate on the matter. This would have enabled the Committee and/or Council to consider whether it was appropriate to proceed in the manner they did or whether some other process would have been more appropriate. At the very least, it could have provided him with an opportunity to address the matter formally with the Mayor before proceeding to make any recommendations.

This is particularly significant in that, in reality, the recommendations of the Committee (despite not being decisions of ordinary Council) were acted upon and resulted in the sale of the property.

In regard to the actions of members of the Council, I also believe that they have failed to appreciate the significance of being informed that the Mayor was in fact believed, or suspected of being a person who has made an offer to purchase the property. In their evidence, most of the members of Council felt comfortable with the recommendations they



had made at a committee meeting because they made it not knowing then that the Mayor was involved personally in regard to the sale of the property and, in addition, they had not accepted the recommendation of the CEO as to the minimum purchase price. This, they asserted, showed an independence of action and protected Council's integrity.

Be that as it may, they do not appear to have understood the onerous nature of, nor indeed, the scope of the obligations that apply to them as elected Council members and, in particular, the need to act with probity and transparency. They do not appear to have understood the significance of section 20 of the *Local Government Act* or, indeed, of the terms of the Model Code of Conduct as it related to issues of conflict of interest and the use of information for personal benefit. None of the elected members questioned the possibility that the Mayor may have had access to information relating to the sale of the property as a result of his position on the Council and that he may have benefited or been advantaged from such information. Further, none of the Councillors later queried the Mayor's attendance at meetings of Council where recommendations of the Finance and Planning Committee were considered and, in particular, recommendations relating to the sale of the property. The Council members displayed a general lack of awareness of the basis upon which they needed to act with probity and the requirements for this to be achieved.

It is important, in summary, to note that the critical issue in regard to this particular investigation related to the failure by the Mayor to declare a conflict of interest or a potential conflict of interest at an appropriate time and in accordance with section 20 of the *Local Government Act*. Consequent to this was the issue as to how Council handled the sale of the property and whether or not it appropriately managed any real or perceived conflict of interest. As the CEO of the Council was effectively delegated responsibility for handling the sale on a day to day basis, the issue as to whether or not he was remiss in regards to the management of the process of sale in the context of any real or perceived conflict of interest, also arose. In this regard I reached the conclusion that they were not adequate.

It is important to stress that I primarily identified systemic failures with respect to Council's practices and procedures such that I was of the view that the sale of the property was not handled adequately. It would be inappropriate to suggest that any one member of Council was individually accountable for the systemic failings I identified in this regard. The responsibility lies with Council collectively and my recommendations were focused at that specific level of deficiency in their administration of this matter.

In summary, my investigation resulted in recommending the following:

1. I recommended that the Council review all its current processes and procedures relating to its Standing Committees and meetings of Ordinary Council to ensure that they meet the specific needs of the Council, and are in accordance with the provisions of the *Local Government Act*.



I am very pleased to report that Council have accepted this recommendation and actioned it. As a result the Finance and Planning Committee (the only Standing Committee of Council) now meets on the same day as Ordinary Council to ensure there is no delay in the consideration of recommendations of the Committee and that there is no possibility of those recommendations being acted upon before adoption by Ordinary Council. Council has also examined the processes and procedures of the committee generally to ensure they comply with other requirements of the Act

2. I recommended that Council instigate an appropriate ongoing training program for all Council staff and Council members to inform them of their respective obligations and responsibilities under relevant legislation, particularly the *Local Government Act*.

(a) In regard to Council staff, and in particular the CEO, there should be a proper understanding and awareness of the specific provisions of the *Local Government Act* so that Council staff and the CEO can properly advise Council members as to appropriate protocols and procedures that can be followed in regard to their carrying out their responsibilities and functions. For instance, there is scope for Council to delegate to Council staff certain responsibilities and functions. Thus when Council is requested to consider an action which requires some form of delegation, this should be addressed as a matter of appropriate procedure and protocol.

Similarly, in regard to any standing committee, Council needs to consider whether there is an appropriate basis to delegate any particular responsibilities, functions or ability to make decisions in order for that committee to operate effectively. Council staff, in particular, the CEO should be sufficiently informed as to the provisions of the *Local Government Act* so as to advise Council in this regard as and when needed.

(b) Council members should receive training as regards the nature of their responsibilities arising from the position they hold. In particular, a training package should be developed which provides Council members with an understanding of the nature of their responsibilities as elected members. Such training should place emphasis on how to make decisions that reflect probity in the public interest and for the need for them to be aware of a member's obligation to make decisions that reflect their fiduciary responsibilities.

Council in its response to my report indicated that elected members participate in courses run by the Local Government Association of the NT offered through the WA Local Government Association. Details of the modules were then provided to me and I determined that the Elected Members Development Program appears to address my recommendation and I am pleased to note Council's stated commitment to actioning any training needs of staff identified through the performance management process.



3. I recommended that Council develop, as a matter of priority, an appropriate code of conduct for all Council staff and Council members which reflect the key responsibilities that pertain to Council staff and members of Council. All Council staff and Council members should be required to sign an acknowledgment that they have received the relevant code and that they have read it and understood it. The Code should be an integral part of Council's performance management processes and the subject of regular ongoing review, training and education.

In response, the Council advised that Council had adopted a Code of Conduct for Employees and Members. A copy is given to each employee and member as part of their induction package, and its importance is explained. The Code is part of Council's continuous training program. Council has stated it is committed to ensuring the Code is followed and all staff have signed an acknowledgment that they have received and understood their obligations to comply with the Code.

I consider that Council has addressed my recommendation and I am pleased to note that the Code adopted appears comprehensive. The success of a Code will depend on Council incorporating the application of the Code within its performance management system and regularly reviewing and training to ensure the Code is reflective of Council's needs and is a part of employees and members everyday activities and deliberations.

4. I recommended that the Minister for Local Government consider the viability and value of amending the *Local Government Act* to incorporate a requirement that all local government councils and community councils (established under the Act) develop and implement a Code of Conduct for Employees and Elected Members. In conjunction with such a requirement I would also recommend that there should be a statutory obligation on all councils to give effect by way of ongoing review, training and education, to such Codes of Conduct.
5. I recommended that Council should implement an appropriate ongoing training process to familiarise Council's staff, the CEO and members of Council with the requirements and obligations of the *Local Government Act*. When any new staff or members are elected to Council there should be a process of induction which includes specific education and training in respect to the *Local Government Act* and its requirements.

In the response, reference was made to Council having a formalised induction process for both members and employees, which includes education and training on their responsibilities under the Act.

6. I recommended that in accordance with section 20 of the *Local Government Act*, the CEO should immediately establish a register, as envisaged by section 20, for the purposes of recording and documenting any conflict of interest or possible conflict of interest that a member of Council might have.

Council in its response has confirmed that a register of interests has been established in accordance with section 20 of the Local Government Act .



7. I recommended that there should be a complete review of Council policies in regard to the duties and responsibilities of Council staff, the CEO and Council members and, in particular, a Code of Conduct should be developed and formally implemented by Council. Consistent with this recommendation Council should:
- ensure that the notes and responsibilities of elected members and staff of Council are adequately identified and set out;
 - establish a framework which will see all staff and members of Council aware of the content of any Code of Conduct and their responsibility to comply with it;
 - Council should establish a framework which will enable an ongoing assessment as to whether or not staff and members of Council are complying with the Code;
 - all staff and members of Council should sign an acknowledgment that they have received a copy of any Code of Conduct, have read it and understood their obligation to comply with it.
 - where there is any new member of staff or any new member elected to Council the induction process should clearly cover the above.
8. I also recommended that consistent with the OECD Guidelines relating to managing conflict of interest issues, that Council prepare and implement, in conjunction with a Code of Conduct, a policy pertaining to the management of conflict of interest issues. Such policy should reflect the relevant legislative obligations applicable under the *Local Government Act* and establish a framework for implementation which involves all staff, members of Council, organisations and businesses that do business or have dealings with the Council.

In Council's response, Council has indicated it will comply with relevant legislation (including recent amendments). Council has advised that it will also, in conjunction with the Code of Conduct, develop a policy pertaining to managing any conflict of interest.

Council's response to these recommendations are very positive and I look forward to receiving advice as to a finalised policy in this regard in the near future.

9. During the course of my investigation I ascertained that there had been instances where minutes of Council committees and meetings of Council have been inadequate and have not properly and fully reflected events that have occurred during the course of meeting.

I accordingly recommended that Council review its processes in regard to recording of the minutes of meetings and ensure that such minutes reflect a full and proper account of matters discussed and are in accordance with relevant obligations under the *Local Government Act*.

In Council's response, it stated that relevant Council employees have attended the Agenda Preparation and Minute Taking course run by the Local Government Association. The course has identified best practice and this is being followed by Council.



I consider that Council has positively addressed my recommendation. I would stress that there needs to be constant vigilance by Council to ensure appropriate standards for recording minutes are maintained.

10. In regard to the issue of a conflict of interest, I recommended that Council immediately implement a practice of including on any agenda in respect to a meeting, a statement which highlights to members of Council their need to declare any actual or possible conflict of interest. A statement along the lines of:

‘Any member of Council who may have a conflict of interest, or a possible conflict of interest in regard to any item of business to be discussed at a Council meeting or a Committee meeting should declare that conflict of interest to enable Council to manage the conflict and resolve it in accordance with its obligations under the Local Government Act and its policies regarding the same’.

As an observation, the principle should be that if there is doubt whatsoever as to whether a member of Council has a conflict, then it should be discussed openly so that it can be identified and, if necessary, managed appropriately.

Council in its response, advises that Council is currently considering how best to give effect to this recommendation.

11. I also recommended the Council review its record management processes and ensure that there are adequate processes in place as to file management and the documentation and recording on file of essential information. This is particularly in regard to details as to business transactions, where such transactions may be subject to audit or scrutiny, as in the present case.

I consider Council has adequately addressed this recommendation, as in its response, Council indicated that it has designed ‘File Notes’ dedicated to the recording of information pertaining to Council business. Staff have been instructed to record all conversations and dealings of substance and to place file notes on the appropriate files. The need to keep comprehensive file notes and transactions has been reinforced by the current matter. Council has designed protocols for the use of the filing system. The important observation to make is that such steps will only be effective if Council ensures there is ongoing auditing for compliance with proper procedure in this area.



2. Curiosity! (Northern Territory Police)

Through a related matter, the complainant became aware that her former employers had obtained a detailed knowledge of her criminal history. The complainant was concerned that the information could only have come from an official source and claimed to know that her former employers were associates of a serving police officer.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The investigation included an audit of the PROMIS system to determine which members had accessed confidential information relating to the complainant during the relevant time frame. PRD interviewed several police members and a police auxiliary who had accessed the records and determined that each of those people had provided a legitimate reason for accessing the information. The complainant was advised that no further action would be taken in relation to her complaint.

The complainant's legal representative then wrote to me on her client's behalf, seeking a review of the matter. I reviewed the PRD investigation and substantiated the complaint. I took the view that one of the police officers (an associate of the complainant's former employers) and a police auxiliary had acted inappropriately and should be counseled.

By his own admission, the police officer had not accessed the complainant's information during the course of an official investigation but rather, out of curiosity. The limitations of the computer audit function meant that it could not be determined whether the officer printed off a copy of the complainant's criminal history record. That being the case, I was of the view that the police officer (who was a senior and experienced member) should not have exposed himself to the perception that he might have been acting for an unauthorised person. I recommended that the police auxiliary be counseled for allowing (whether inadvertently or not) a member of the public to view a confidential record relating to the complainant.

I concluded that this complaint highlighted deficiencies in the protocols and procedures in relation to confidential police information. I noted that experiences interstate showed that police officers were found to be accessing criminal history records, copying them and selling them to private investigators, insurance companies and the like. The lack of appropriate auditable processes facilitated this unlawful use of information.

When later questioned, the police officers simply gave the explanation that they had gained that access in the course of their duties and it was invariably impossible to verify that aspect, particularly after the passage of time. As a result, (as in NSW), there is now a requirement that when a police officer accesses any person's criminal history they must relate it to a specific aspect of their policing duties.

In summary, I recommended that the Commissioner of Police upgrade the audit function of the police computer system so that it is possible to precisely determine whether a particular member has printed a criminal history record. I also recommended that the Commissioner review the current policies and practices in relation to the access of



confidential information. I also reiterated that police members must ensure that members of the public are unable to view confidential information, (particularly on police computer screens).

In response to my recommendations, the Commissioner advised that he too shared my concerns and amongst his strategies for addressing the issue, he had formed a Police Information Integrity Work Group. I was invited to participate as a stakeholder in this Work Group along with the Information Commissioner. I was more than happy to agree to the Commissioner's proposal and as a result I nominated that my Director Investigations, Cindy Bravos be my representative on the Work Group. Since this time, Ms Bravos has been an active member of the group and is continuing to ensure that my key areas of concern are being considered and addressed within the scope of the work group.

3. Claim for compensation rejected (Department of Infrastructure, Planning and Environment)

I received a complaint that the Territory Insurance Office (TIO) and the Department of Infrastructure, Planning and Environment's Building Advisory Services Branch (BASB) disallowed a claim for compensation under the Home Building Certification Fund (the Fund), on the grounds that the claim was not a valid one under the terms and conditions of the Fund.

The complainant had identified the problem as significant corrosion to steel channel landing supports of the elevated landing of the property, apparently caused by a lack of protection and slope/fall of the concrete slabs, when constructed. The complainant believed that this had come about due to the apparent lack of coded building legislation that controlled building standards and practices in the Northern Territory that related to the construction of elevated landings made of concrete slab and channel steelwork.

I undertook preliminary inquiries into the complaint in order to determine whether the Department's administrative actions in relation to the claim were reasonable.

As background, the Fund was developed to support the private certification system of building control introduced in 1993. The intent of the Fund was to protect consumers from a failure of the building control process to achieve building compliance with the *Building Act 1993*, Regulations, the Building Code of Australia, the Australian Standards, the National Plumbing Code, and the NT Code of Practice for the Installation of On-Site Sewage Disposal Systems. Contributions to the Fund are mandatory for both builders and homebuyers for certain classes of domestic building works.

The Fund covers the reasonable cost of repair, replacement, rectification or other work required to remedy such compliance defects, but does not cover defects related to maintenance, poor or careless workmanship or other problems, which are considered *quality* related defects rather than *non-compliance*.

TIO is the fund manager on behalf of the Northern Territory Government and is only responsible for administering the financial aspects of the Fund. The Building Advisory



Services Branch provides technical advice in respect of claims on the Fund for non-compliance and determines whether claims meet the necessary technical criteria, ie. whether the works or defects identified, fail to comply with the *Building Act 1993* and Regulations, etc.

The BASB advised that the claim was deemed not to be a valid claim under the Fund because there was no non-compliance identified. While my inquiries did not find the Department's technical assessment of claim to be unreasonable, it did highlight certain deficiencies in the Department's administration of the Fund. In particular, I noted that the Department's advice to the complainant about the disallowed claim was very brief and contained no proper explanation of what the Department did and how the claim was assessed.

I also found that there was no further avenue of redress, which the complainant could approach to request a review of the decision. The Department's record keeping was also less than adequate and there appeared to be no audit trail of the Department's assessment of a claim. At the conclusion of my inquiries, I made a number of recommendations for improvement, which the Department duly acknowledged and accepted.

I recommended that the Department:

- a) Takes steps to ensure that more comprehensive information is provided to claimants on the fund, particularly when the claim is rejected.
- b) Consider implementing an appeals process, whereby a panel of suitably qualified experts, or at least, an independent Engineer, can assess claims that are rejected by the initial assessment process. (Presently, there are no formally independent avenues of appeal available, other than referring back to the Department).
- c) Conduct a review of similar Funds interstate to ensure that best practice is being followed in the Northern Territory.
- d) Consider instituting a process whereby similar claims made on the Fund, (whether or not the claim is accepted), should be used as a trigger for a review of the relevant building codes, standards, etc, to ensure that costly building mistakes are not repeated.

The Department responded promptly and positively by accepting my recommendations and advised that a process had been put in place to provide detailed information to claimants on the assessment process. Copies of relevant documentation pertaining to improvement to practices and procedures were later provided. The Department also offered to review the claim if the complainant could show independent evidence that the claim was a non-compliance issue.

The Department further advised that it was currently involved in the Northern Territory Government's review of current building legislation in the Northern Territory, the *Building*



Act 1993, incorporating initiatives on Builders Licensing and Indemnity Insurance in the Northern Territory Residential Building Market.

I accepted the Department's positive response and advised the complainant that, in the circumstances, even though the result was not of personal satisfaction, it had resulted in important improvements to the department's administration of the Fund, which would have long term benefits for future claimants on the Fund.

4. Glaring problem (Department of Infrastructure, Planning and Environment)

A house was constructed next door to the complainant's house which caused the following problems:

- Earthworks undertaken in the construction process altered the flow of water across the block such that stormwater then flowed into the complainant's block, and this caused damage to the complainant's house and yard. (Both blocks are on a slope, with the complainant's block being the lower of the two);
- The new neighbour's house was elevated and was built to the minimum setback on the western boundary (which is shared with the complainant and which is the complainant's private open space). The difficulty was that all walls on the western side of the neighbour's house were clad in a highly reflective material known as "zincalume". These western walls also had large "picture" windows. The glare produced from the walls and windows of the neighbour's house each afternoon except for the winter months was unsafe and extremely intrusive. The visual intrusion on the complainant's privacy was also an issue.

The complainant complained that the Building Services Advisory Board, as the authority responsible for regulating building certifiers (who are now private contractors) failed to properly supervise the certifier in this case, in that the new house was not built to plan (being higher than the plan). The complainant further complained that the neighbour did not get planning approval and that he had built in such a way as to spoil the complainant's amenity (glare and lack of privacy) and to damage his property, and that the Department should have taken some responsibility for regulating this.

Further, in the early stages of the matter the complainant received a letter from the neighbour (who had not yet moved in to the new house) alleging trespass onto his property, and threatening police and legal action. The complainant complained that the Department had wrongly released the complainant's name to the neighbour from the information held on the file.

My inquiries into this complaint included visiting the site, and putting the complainant's difficulties to the Department for its response.

The Department advised that no planning approval was required for the house and that the issues of storm water and amenity (glare and privacy) in this particular situation were not



covered by legislation currently in force in the Northern Territory. It confirmed that the certifier had correctly certified the house, that amended plans had been lodged and that there is a margin allowed for variation in construction.

As a result of my inquiries, however, the Department admitted that the complainant's original written complaint to the Department had been inadvisably filed on the neighbour's Building record file (thus allowing the neighbour access to the complainant's personal information). It stated that this should not have occurred (although there was no existing policy about this) and a policy preventing this happening in the future and governing the types of documents to be kept on building files was being drafted.

After reviewing the Department's new policy on documents to be kept on Building Records at the Building Advisory Services Board, I was satisfied that this policy demonstrated an improvement to the services provided and would limit the possibility of a similar complaint being received in the future.

5. Incident V's Accident (Territory Insurance Office & Department of Employment, Education and Training)

This complaint involved both the Territory Insurance Office (TIO) and the Department of Employment, Education and Training), which administer the *Motor Accidents (Compensation) Act* (MACA) and the *Work Health Act* respectively.

The complainant contacted my Office to lodge a complaint regarding the administration of her MACA and work health claims, including rejection of her claim, delay and confusion about her entitlements.

The MACA claim was apparently rejected as the bus trip, where the complainant's pre-existing injury became symptomatic, did not constitute an accident under the MACA Scheme and that, as no accident had occurred, the journey provisions in that Act did not apply.

The Workers Compensation Claim was accepted, based on willingness on behalf of the employer to assist the complainant, her intention to seek rehabilitation and receipt of medical information and legal advice. However, TIO stated that the acceptance of the claim did not necessarily mean that the initial decision to dispute the claim was incorrect. TIO's view was that both decisions are defensible in Court and the complainant may not have any entitlement.

Following inquiries by my Office, I did not sustain any of the complainant's issues of complaint, but made the following recommendations:

1. As it was identified that there was a long delay in processing the complainant's claim with this delay identified as being primarily due to the discussions between TIO, the Department and with legal advisers, as to where the complainant's eligibility might lie, I recommended that TIO should seek legal advice at the earliest opportunity where a



claim raises questions of eligibility and/or the particular scheme the claim should fit into.

TIO agreed entirely with this recommendation and advised that they have now incorporated awareness of the journey guidelines into the training of new claim management.

2. I also recommended that the Department should liaise with TIO where future claims raise questions of eligibility for the Work Health scheme.

The Department agreed that should similar situations arise it will liaise with TIO to resolve the matter in a timely manner.

3. Due to the fact that neither the *Work Health Act* nor the MACA appeared to contain any clause to cover the particular situation encountered by the complainant as references to 'accident in a motor vehicle' did not appear to apply, I recommended that TIO and the Department consider taking these issues up with the relevant Ministers, in relation to the adequacy of the relevant legislation and guidelines.

Neither TIO nor the Department would contemplate any review of the legislation at that time, saying that they considered the current guidelines to be sufficient to resolve disputes where it is obvious the claim is either a MACA or *Work Health Act* claim. In the complainant's case, the claim was not disputed because it was thought to be a MACA claim but because the validity (eligibility) of the claim was in doubt. Neither considered the legislation inadequate and said the issue was that the basic eligibility was questionable and could be tested in the courts.

After considering their responses, I was inclined to accept the arguments put forth and did not pursue this aspect of the matter further.

6. Teachers Giving Evidence in Family Matters (Department of Employment, Education and Training)

I received a complaint from a concerned parent that a teacher at a local Public School had acted inappropriately by providing an affidavit to the complainant's ex-partner, containing evidence about their child, which was used in a Family Court matter. The complainant believed that the teacher was acting in an official capacity in providing the affidavit, and not in a private capacity, contrary to the Department's advice.

I commenced preliminary inquiries with the Department during which the Department advised that although the Department had a policy which was yet to be formalised, its intention was that, when a teacher is approached to provide a statement concerning family law matters, they were to do so in accordance with the Department's informal guidelines available at that time. I was advised that the teacher had since been briefed on the Department's expectations in that regard.



I recommended that the Department formalise its guidelines as soon as possible. Through research of similar interstate educational jurisdictions during inquiries, my Office had obtained comprehensive information on interstate guidelines and policies pertaining to the issue of teachers giving evidence in family matters. I offered the information to the Department to assist in further developing and formalising their guidelines.

The Department while acknowledging that it had not proceeded as quickly as it should have, recognised this need and accepted my recommendation and the information. A draft copy of the guidelines was to be forwarded to me for input when completed and prior to implementation across all public schools.

I advised the complainant what while the final outcome did not result in any personal benefit, the outcome was very positive overall as it had resulted in the development of important guidelines on teachers giving evidence in family matters, for adoption in all NT public schools.

RECOMMENDATIONS NOT IMPLEMENTED

1. Objection to being moved from Protection to mainstream Dormitory (Department of Justice - NT Correctional Services)

I received a number of complaints from a small number of "Protection" prisoners incarcerated in one of the prisons, complaining about inadequate amenities and facilities in the Dormitory area where they were temporarily housed. However, their main objection was about being moved from their Protection cells and temporarily housed in Dormitory accommodation adjacent to other prisoners in mainstream.

My Office interviewed the prisoners concerned, inspected the site and commenced inquiries with the Department. At the conclusion of inquiries, I did not find that the agency has acted unreasonably or that the conditions and facilities complained about were inadequate, and therefore, I did not sustain the complaints.

However, I noted that there was no documented prison policy for the temporary transfer of "Protection" prisoners within the prison, indicating that there may not be any proper forward planning process in place for the smooth transfer of prisoners. As such, I recommended that the Department consider developing such a policy.

In response the Department confirmed the lack of any documented policy and advised that only ad hoc verbal arrangements are made at an operational level for the temporary re-housing of Protection prisoners, as and when the need arises. The Department's view was that it would be unrealistic to provide written guidelines or develop such a policy due to prisoners being required to move at short notice, security considerations, effective resource management, prisoners' health and the general good order and management of the prison.

I considered that Departmental reasonings for not implementing my recommendation were reasonable, given the dynamic environment of a Correctional Facility. However, I



determined that my Office would keep abreast of any more complaints which may arise of a similar nature and if it was noticed that the issue was of a systemic nature then I would review the matter further.



ACTIVITY 3: ACCESS AND AWARENESS

DESCRIPTION

To educate and inform the public about the role and functions of the Office of the Ombudsman and promote and facilitate access to its services.

OUTCOME

Ombudsman's services being known and appropriately accessed by users throughout the Territory.

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.

COST

Total expenditure by the Office on this activity was:

1.5% of Ombudsman's actual expenditure	\$24,210
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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, I have offices in Darwin and Alice Springs. The Northern Territory Government has maintained a commitment to provide services and access to services to Territorians in Central Australia, hence the Alice Springs Office is an integral part of the goal of providing access to the Ombudsman and promoting awareness of it.

MAINTAIN ACCESS AND AWARENESS AT THE NATIONAL LEVEL

1. Australian Ombudsman Meeting, Hobart, 30 June 2004

As a result of my having responsibilities both as an Ombudsman and as the Health and Community Services Complaints Commissioner. It has been the common practice in recent years to try and arrange relevant interstate activities to coincide so as to reduce the cost of interstate visits and maximise the opportunities in attending various conferences and meetings.



The Australian Ombudsmen meeting on 30 June 2004 took place in Hobart in conjunction with my attending the Australian Institute of Administrative Law (AIAL) National Forum on 1 and 2 July 2004.

In my capacity as Chairperson of the NT Chapter AIAL I was provided with financial assistance by the National Chapter of the AIAL to attend the National Forum in Hobart. Given this, and the fact that the Australian Ombudsmen were attending the conference, it was considered appropriate to organise a meeting of the Australian Ombudsmen in conjunction with the National Forum of the AIAL.

The meeting was a useful opportunity for the Australian Ombudsmen to provide each other with a briefing as to recent developments within their own jurisdictions and to discuss matters of common interest. The topics discussed included:

- resource issues
- staff training
- accounting to Parliament
- information sharing
- matters pertaining to the International Ombudsman Institute and, more particularly, the Australasian and Pacific Ombudsman Region.

The meeting was attended by Ombudsmen from New South Wales, Queensland, South Australia, Commonwealth, Western Australia, Tasmania and New Zealand.

2. Visits to the Ombudsman's Office in New Zealand and the Police Complaints Authority in New Zealand

In March 2004 I attended a meeting of the Health Complaints Commissioners for the Australasian region in Auckland, New Zealand. This provided me with an opportunity to visit the New Zealand Ombudsman's Office in Wellington and also the Police Complaints Authority in Wellington, New Zealand.

(a) Visit to the New Zealand Ombudsman's Office

My visit to the New Zealand Ombudsman's Office involved a meeting with the three New Zealand Ombudsmen – the Chief Ombudsman, Mr John Belgrave and Ombudsmen Mr Mel Smith and Judge Anand Satyanand. I was given a briefing as to how the New Zealand Ombudsman's Office operated.

I then had a meeting with staff of the Ombudsman's Office and we discussed a number of issues of common interest. It was reassuring to note that many of the issues discussed were common to the Northern Territory albeit, given the size of the New Zealand Office, on a much larger scale.

I was very appreciative of the hospitality extended to me by the New Zealand Ombudsmen and it was useful to gain an appreciation as to the nature of the work carried out by the New Zealand Ombudsmen.



(b) Visit to the Police Complaints Authority

My visit to the Police Complaints Authority was very kindly arranged by the New Zealand Ombudsman, Judge Anand Satyanand. The New Zealand Police Complaints Authority is responsible for complaints against New Zealand police officers. The Authority is an independent statutory office with the sole responsibility of dealing with complaints against police, unlike some of the models in Australia which see the Ombudsman incorporating the role and dealing with complaints against police within the general Ombudsman jurisdiction.

During the course of my meeting a number of issues were discussed relating to the nature of the relevant legislation governing the Police Complaints Authority, specifically the processes for dealing with complaints and issues of common interest.

I found the meeting particularly useful in that it highlighted the differences between the different models for dealing with complaints against police. Given the review of the Northern Territory legislation it was useful to consider alternative mechanisms for dealing with police complaints.

I very much appreciated the hospitality extended to me by Judge Ian Borrin, Police Complaints Authority and his staff.

3. Deputy Ombudsman's Meeting, Brisbane

Deputy Ombudsman from around Australia met in Brisbane on 4 June 2004. This was the third such meeting and the first attended by the Northern Territory whose representative was Vic Feldman.

The items that were discussed during the course of this meeting were:

- **Bulletin Board:** This is accessed via the web and provides an effective means for Ombudsman Offices to contact their counterparts on a range of common issues and to circulate material for noting and comment.
- **Accountability of Cross Border Law Enforcement Activity:** Areas covered during discussion were surveillance devices, control operations, protection of witness identity and assumed identity.
- **ASIO Action Involving State Police:** The matter of concern was the roles of ASIO and the State/Federal police and the potential that in joint investigations concerns/complaints may be passed to either or both agencies.
- **Employment Status of Staff:** The different approaches taken by different Ombudsman in employing staff was discussed.
- **Benchmarking/Performance Measures:** The possibility of benchmarking performance across the various Offices was discussed.
- **Individual Reports from State Offices.**



ACCESS AND AWARENESS THROUGHOUT THE TERRITORY

Access and Awareness Sessions

During the year under review, myself and staff from my Office undertook a number of access and awareness sessions throughout the Territory. Specific access and awareness sessions were undertaken in Darwin, Palmerston, Alice Springs, and remote communities such as Mataranka, Hermannsburg and the Tiwi Islands.

In addition, in September 2003, I piloted the position of an Aboriginal Liaison Officer with the position being based in my Alice Springs office. The position saw the incumbent undertaking 50% of his duties as the Aboriginal Liaison Officer and 50% as an Investigation Officer. The primary objective of the position was to develop mechanisms to improve accessibility for indigenous people to the Northern Territory Ombudsman's and Health and Community Services Complaints Commission's (HCSCC) complaint processes and receive, inquire into, investigate and resolve Ombudsman and HCSCC complaints. The key responsibilities of the position, relevant to Aboriginal Liaison were to:

1. Develop mechanisms to enhance indigenous users' accessibility to the services provided by the Ombudsman and the HCSCC.
2. Provide an educational resource to the indigenous communities throughout the Northern Territory by developing and distributing educational and promotional material.

A pilot project was commenced in November 2003, that involved providing information to staff of three Indigenous organisations with a broad overview of the roles and functions of the Ombudsman and the HCSCC. It was envisaged that since the staff of these organisations had already established effective links with a significant number of town based and remote indigenous people, they were then in a prime position to relay information about, and to become aware of, issues that could possibly come within the jurisdiction of the Ombudsman and the HCSCC.

Due to organisational constraints of this Office, and of the indigenous organisations approached, the pilot project was not as successful as hoped. Despite this, a significant amount of information was provided to the organisations involved and face to face meetings occurred a number of times. These face to face meetings enabled the organisations involved to become familiar with officers of the Ombudsman and the HCSCC, which in turn led to an increased awareness of our existence and roles.

Information session and visits were made to the Alice Springs Hospital Aboriginal Liaison Unit, Centre for Appropriate Technology, Ntaria (Hermannsburg) Community Council, Tangentyere Council, Waltja Tjutanku Palyapayi Aboriginal Association and Central Australian Remote Health Development Services. Information brochures were also sent to the East Arnhem Local Government and Regional Development Offices for distribution and display.

Unfortunately, due to budget constraints, this position has now reverted back to its original position of a full time Investigation Officer.



A more detailed breakdown of sessions and conferences attended is provided at Appendix C, pages 122 to 123.

Written Material

The Office has continued to distribute its pamphlets and posters throughout the Northern Territory and to target organisations and consumer groups. In particular, the Office's poster specifically targeting indigenous people, and the multi-language brochure targeting different ethnic groups have been well circulated.

Community Newsletters

The Office, in order to reach members of the Territory's diverse population, recognises the usefulness of community and group newsletters. As a result of approaching many of these newsletter editors, information concerning the Office has appeared in newsletters produced for many community groups, including those living in remote areas, professionals, and organisations which service specific communities.

Information about the roles and functions of the Ombudsman and HCSCC was also published in "Cooee", a quarterly newsletter for indigenous employees in the Northern Territory Public Service, and "*Common Ground*" a quarterly newspaper distributed by the Office of Indigenous Affairs.

Advertising

Although the Ombudsman has a limited budget for paid advertising we did utilise newspapers, newsletters and radio advertising during the year. No use was made of television advertising.

Outreach visits are always advertised by community radio, if such exists, and in local newspapers. When visits are made to remote communities contact is made with community government councils, local schools and other organisations to advise of the visit, promote awareness of the Ombudsman's role and to facilitate access to the community.

During the year under review regular advertisements appeared in the NT News and the Centralian.

Website

People throughout the Northern Territory, and indeed worldwide, can access the Ombudsman through our website 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.



ACTIVITY 4: MANAGEMENT OF OFFICE OF THE OMBUDSMAN

DESCRIPTION:

To ensure the Ombudsman meets all his legislative and employment responsibilities and that the Office of the Ombudsman is well managed and resourced.

OUTCOME:

Operations of the Office of the Ombudsman are carried out in accordance with the Ombudsman's legislative and employer responsibilities.

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.
6. Compliance with the *Information Act*.
7. Management of resources.

COST

Total expenditure by the Office on this activity was:

15% of Ombudsman's actual expenditure	\$242,100
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CORPORATE GOVERNANCE

LEGISLATIVE FRAMEWORK

As Ombudsman I am responsible for the administration of the *Ombudsman (Northern Territory) Act*.

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

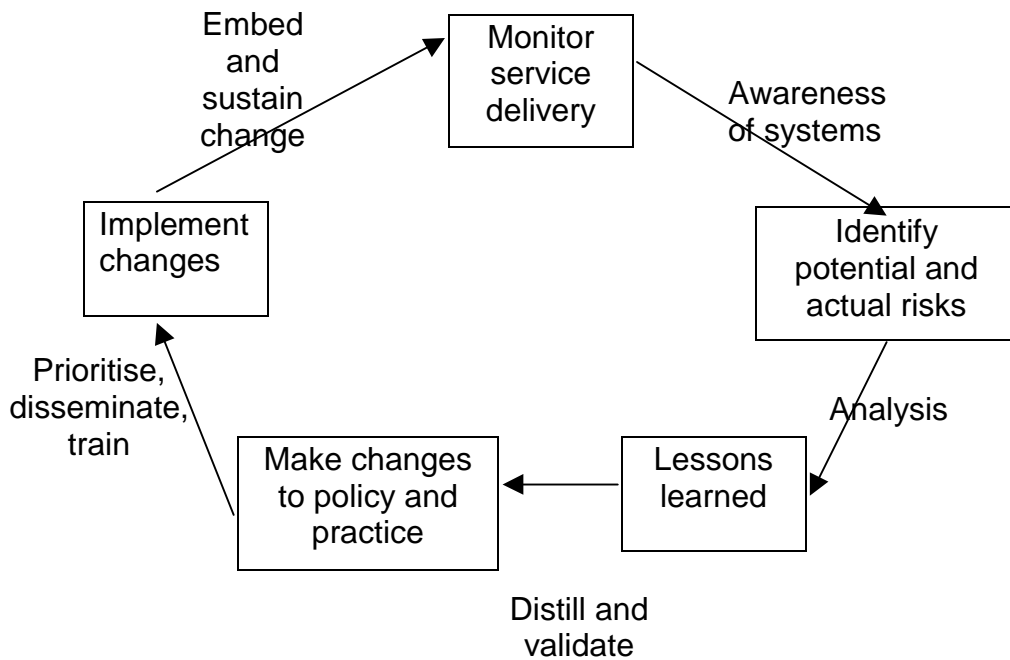
Under the *Ombudsman (Northern Territory) Act*, I am independent of the Government and I am not accountable to a Minister, but rather to the Legislative Assembly as a whole. However, under the Administrative Arrangements Orders, where relevant, the *Ombudsman (Northern Territory) Act* is the administrative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



PLANNING AND REVIEW CYCLE

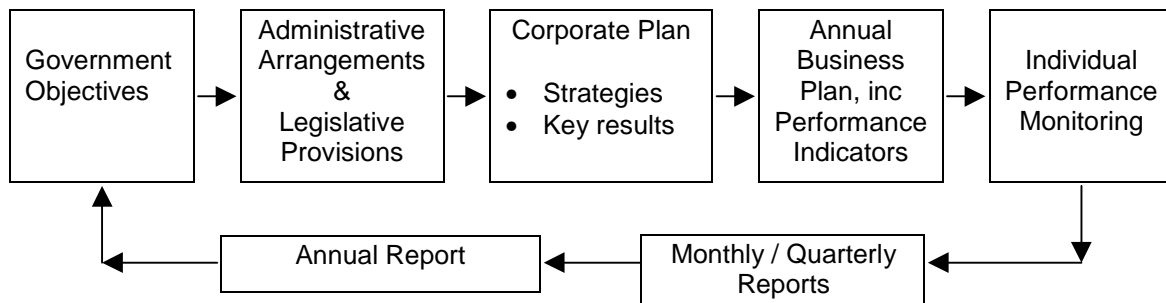
The Office of the Ombudsman has developed and adopted a continuous planning and review cycle. This is based on the principle that we learn from what we have done - the positives and the negatives – and as a result of that learning, we make changes that lead to improvements in service delivery.

Diagram 1: Planning and Review Cycle



In relation to the strategic planning framework, the Office of the Ombudsman operates in the following way:

Diagram 2: Strategic Planning Framework



The Corporate Plan for the Ombudsman’s Office was developed in mid 1998 and reviewed in March 2002. As a result, the Plan was amended slightly to provide direction for the next five years. The Corporate Plan provides guidance for the Office of the Ombudsman and is a reference point for all staff in relation to where we are heading and what we are trying to achieve.



An annual Business Plan is prepared and this provides specific direction and performance indicators and this in turn cascades down into individual performance plans. Monthly performance reports are provided to the management team and overall performance of the Ombudsman's Office is reported on annually to the Legislative Assembly.

The Vision, Mission and Goals of the Ombudsman as identified in the Corporate Plan are detailed in Chapter 4, page 48.

PERFORMANCE MANAGEMENT SYSTEM

There are a number of ways that performance is monitored during the course of the financial year. These include the following:

- Short weekly meetings with staff to identify priorities and action required during the week.
- Open door policy to discuss day to day management of cases and complaints.
- Fortnightly case meetings between investigation staff and their supervisors to discuss and monitor progress on cases and, where appropriate, determine action on the more difficult cases.
- Investigation Case Management Meetings every month between Ombudsman, Deputy Ombudsman, Principal Investigation Officer, Case Manager and Case Officer to determine priorities and discuss cases.
- Monthly meetings of the Management Committee and regular staff meetings.
- Progress reports relating to the Business Plan being provided to the Ombudsman.
- Individual performance being measured at least bi-annually against agreed performance indicators.
- Achievement of the detailed strategies and performance indicators being reported on in the Annual Report.

INTERNAL ACCOUNTING CONTROL PROCEDURES

The internal control procedures expected to be adopted by accountable officers for their agency are defined in the *Financial Management Act* and Treasurer's Directions. Part 3 of the Treasurer's Directions defines the internal control procedures to be established and incorporated into an agency's Accounting and Property Manual.

The Office of the Ombudsman's control procedures have been determined in conformity with these requirements and recorded in the Ombudsman's Accounting and Property Manual.

EQUITY AND MERIT PROGRAM



The Ombudsman 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 HRM policies and practices;
- Eliminate workplace discrimination and harassment; and
- 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; and
- 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 treatment including conditions of service, recruitment and staff development and training.

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

Table 9: Ombudsman's establishment – By gender and position level

Position Level	Male	Female	Total
Ombudsman ⁴	1	0	1
Deputy Ombudsman ⁵	1	0	1
Administrative Officer 8	0	1	1
Administrative Officer 7	1	2	3
Professional Level 2	0	1	1
Administrative Officer 5	3	1	4
Administrative Officer 4	0	1	1
Administrative Officer 3	0	3	3
Total	4	11	15

⁴ The Ombudsman for the Northern Territory is also the Commissioner for Health and Community Services Complaints

⁵ The Deputy Ombudsman is also the Deputy Commissioner for Health and community Services Complaints.



STAFF TRAINING AND DEVELOPMENT PROGRAMS

A staff performance appraisal framework is utilised to meet the needs of the Ombudsman's Office and the Health and Community Services Complaints Commission.

The framework ensures that both employees and supervisors are provided with the opportunity to:

- focus on goals and tasks and the achievement of targets;
- define expectations, roles and responsibilities;
- give feedback on each other's performance;
- discuss work related concerns constructively and confidentially;
- discuss learning and development needs and activities; and
- plan for the next performance period.

This framework is designed to assist employees and supervisors to appraise performance and plan for the future – it is not a performance management program.

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

The expenditure on staff training and development during 2003/04 amounted to \$26,527.45. This is represented by a total figure of 521 training hours comprised of 51 training opportunities. This is significantly more than for last financial year where there were 80 training hours representing 44 training opportunities provided to staff. A large percentage of the training expenditure for this year has been for the participation in the Executive Development Program and the Public Sector Management Program by two staff members.

OCCUPATIONAL HEALTH AND SAFETY PROGRAM

I take my responsibility for the safety, health and well being of staff very seriously and have developed an overall Occupational Health and Safety (OH&S) Plan for the Office of the Ombudsman.

The presence of health and safety risks within my Office has consistently been assessed as low. Even so, staff awareness is actively encouraged and staff involvement in occupational safety and health issues is still part of the regular staff meeting agenda. The OH&S Officer prepares monthly reports for staff and management drawing attention to any practices, procedures or equipment which may be hazardous.

The Ombudsman's Office has a contract with Employee Assistance Services NT (EAS) to supply counselling and other services to staff on an as needed basis. The availability of this service is actively promoted to all staff and EAS have presented an information session to all employees on the services they provide.

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



OH&S initiatives completed during the year were:

- Ergonomic Assessment of work-stations
- Work Life Balance Toolbox sessions with EAS

During the year the combined number of sick day absences for both the NT Ombudsman and the Health & Community Services Complaints Commission amounted to 76. This is a significant decrease from the previous year where there were 214 sick day absences. I believe that this significant reduction in sick day absences may have come about through such initiatives as more flexible working arrangements for staff, the Work Life Balance Toolbox sessions and improved communication channels between staff and management.

There were nil reported days lost as a result of reported injuries during the year.

PREMISES, PLANT AND EQUIPMENT

There have been no minor new works undertaken during the year.

AUDITS

There were no external audits undertaken during the year.

STRATEGIC AUDIT AND RISK MANAGEMENT

During the year, a risk management assessment was undertaken with the assistance of Risk Management Services of the Department of the Chief Minister. As a result of the assessment it was identified that there exists a need for the Office to develop a Knowledge Management strategy and to further enhance budget management processes. It is proposed that this will occur in the 2004/05 year.

FOI 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 Commission's obligations under Section 11 of the Act are provided at Appendix F, pages 199 to 203.

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



- (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
- adopt new methods and technologies for keeping and managing records
- fully compliant with the *Information Act (2003)* and the NTG Standards for Records Management.



Appendix A

SERVICE STANDARDS OF THE OFFICE OF THE OMBUDSMAN

THE OMBUDSMAN'S STAKEHOLDERS:

The Ombudsman's stakeholders are:

- Community members of the Northern Territory.
- Government Agencies and Statutory Authorities.
- Local Government and Community Councils.
- The Northern Territory Police Force.
- The Legislative Assembly of the Northern Territory.

THE OMBUDSMAN'S COMMITMENT:

1. Fairness

- 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.

2. Independence

- Our staff are independent, objective and impartial.

3. Professionalism

- Our staff are ethical and honest and will respect your confidentiality.
- Our staff will be courteous, helpful and approachable.
- Our staff are trained and competent and will provide information about our role and processes.
- Our staff will declare any interest which conflicts with the duty to properly determine complaints.
- Our staff will provide appropriate referrals if your complaint is beyond our jurisdiction.

4. Accountability

- We will act lawfully and in accordance with the *Ombudsman (Northern Territory) Act*.
- We will treat complaints against this Office seriously and with integrity.
- We will be open and transparent in all our dealings.



- We are 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.

5. Accessibility

- Our ordinary office hours are 8.00 am to 4.30 pm Monday to Friday.
- Staff 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.
- Staff are trained in the use of translation and interpreter services.
- We will use plain language in our letters and interviews.
- You are welcome to bring a friend or mentor with you to talk with us, or to assist you in your complaint.
- Wheelchair access is provided at both Darwin and Alice Springs Offices.

6. Timeliness – unless otherwise advised

- Your complaint will be assessed within 7 days and you will be promptly informed of the action taken.
- Telephone, facsimile and email messages will be answered promptly.
- Letters will be acknowledged within 7 days of receipt.
- You will be informed of the progress of the complaint regularly and ordinarily 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 letters and requests for information.

7. What the Ombudsman cannot do

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

- provide legal advice or representation;
- act as an advocate; or
- assist with complaints about politicians, most employment disputes, decisions of the courts or actions of private individuals or businesses.



Appendix B

CERTIFICATION OF FINANCIAL STATEMENTS

The accompanying Financial Statements in respect of the operation of the Ombudsman for the Northern Territory have been prepared in accordance with the *Financial Management Act* and the Treasurer's Directions. They represent a true and accurate disclosure of all financial transactions during the year under review.

The Ombudsman Activity consists of two programs:

- Ombudsman; and
- Health and Community Services Complaints Commission (HCSCC).

We the undersigned have received an assurance from DCIS that the functions they undertake on our behalf are carried out in accordance with the Treasurer's Directions and we are not aware of any circumstances, as at 30 June 2004, or occurring since the end of the financial year, to date, which would render any of the particulars included in the accompanying financial statements misleading or inaccurate.

PETER BOYCE
Ombudsman and Accountable Officer
Date:

KAREN LEWIS
Business Manager
Date:



Budget Comparison

	Published Budget 2003-04 (1)	Final Estimate 2003-04 (2)	Actuals 2003-04 (3)	Budget Variance (1) – (2)	Actual Variance (2) – (3)
	\$000	\$000	\$000	\$000	\$000
Output Appropriation	1792	1869	1869	77	0
Statement of Financial Performance					
Operating Revenue (a)	1820	2176	2170	356	6
Operating Expenses (b)	1844	2200	2166	356	34
Net Operating Surplus/Deficit	-24	-24	4	8	20
Statement of Cash Flows					
Net Cash from Operating Activities (c)	28	28	58	0	30
Net Cash from investing and financing activities (d)	0	0	-4	0	-4
Statement of Financial Position					
Change in Equity	-171	-190	-161	-19	29

Variations:

(a)	- Recognition of DCIS services received free of charge	279
	- One off funding for unexpected employee termination expenses	30
	- One off funding for Project Officer for Review of Health Complaints Act	47
(b)	- Reduction in provision for employee entitlements	34
(c)	- Recovery of costs from other NT Government Agencies, including employee expenses	30
(d)	- Finance Lease for Microsoft Licences	4



**OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF FINANCIAL PERFORMANCE
For the year ended 30 June 2004**

	NOTE	2004 \$'000	2003 \$'000
OPERATING REVENUE			
Taxation revenue			
<i>Grants and subsidies</i>			
Current		0	26
Capital			
<i>Sales of goods and services</i>			
Output revenue		1869	1784
Other agency revenue		28	0
Interest revenue			
Miscellaneous revenue			
Services received free of charge	13	274	0
Profit/Loss on disposal of assets		0	0
TOTAL OPERATING REVENUE	2	<u>2,170</u>	<u>1,810</u>
OPERATING EXPENSES			
Employee expenses		1,486	1,455
<i>Administrative expenses</i>	3		
Purchases of goods and services		376	369
Repairs and maintenance		1	1
Depreciation and amortisation	6	29	28
Other administrative expenses	13	274	0
<i>Grants and subsidies</i>			
Current			
Capital			
Community service obligations			
Interest expense		0	1
TOTAL OPERATING EXPENSES	2	<u>2,166</u>	<u>1,854</u>
NET OPERATING SURPLUS/ (DEFICIT)	11	<u>4</u>	<u>(44)</u>

The statement of financial performance is to be read in conjunction with the notes to the financial statements.



**OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF FINANCIAL POSITION
As at 30 June 2004**

	NOTE	2004 \$'000	2003 \$'000
ASSETS			
Current assets			
Cash and deposits	4	52	63
Receivables	5	5	12
Prepayments		1	1
Inventories			
Advances and investments			
Other assets			
Total current assets		59	76
Non-current assets			
Receivables			
Prepayments			
Advances and investments			
Property, plant and equipment	6	18	47
Other assets			
Total non-current assets		18	47
TOTAL ASSETS		77	123
LIABILITIES			
Current liabilities			
Deposits held			
Payables	7	30	66
Borrowings and advances	8	0	4
Provisions	9	208	218
Other liabilities	10		
Total current liabilities		238	288
Non-current liabilities			
Borrowings and advances			
Provisions			
Other liabilities			
Total non-current liabilities		0	0
TOTAL LIABILITIES		238	288
NET ASSETS		161	165
EQUITY			
Capital	11	122	122
Reserves			
Accumulated funds	11	39	43
TOTAL EQUITY		161	165

The statement of financial position is to be read in conjunction with the notes to the financial statements.



**OMBUDSMAN FOR THE NORTHERN TERRITORY
STATEMENT OF CASHFLOWS
For the year ended 30 June 2004**

	NOTE	2004 \$'000 (Outflows)/ Inflows	2003 \$'000 (Outflows)/ Inflows
CASH FLOWS FROM OPERATING ACTIVITIES			
Operating receipts			
Taxes received			26
<i>Grants and subsidies received</i>			
Current			
Capital			
<i>Receipts from sales of goods and services</i>			
Output revenue received		1869	1784
Other agency receipts		58	41
Interest received			
Total operating receipts		1,928	1,851
Operating payments			
<i>Grants and subsidies paid</i>			
Current			
Capital			
Community service obligations			
Payments to employees		(1535)	(1400)
Payments for goods and services		(399)	(409)
Interest paid		0	(1)
Total operating payments		(1,934)	(1,810)
Net cash from/(used in) operating activities	12	(6)	(41)
CASH FLOWS FROM FINANCING ACTIVITIES			
Financing receipts			
Proceeds of borrowings			
Deposits received			
Capital appropriation			
Equity injection			
Total financing receipts			
Financing payments			
Repayment of borrowings			
Finance lease payments		(4)	(4)
Equity withdrawals			
Total financing payments		(4)	(4)
Net cash from/(used in) financing activities		(4)	(4)
Net increase/(decrease) in cash held		(11)	36
Cash at beginning of financial year		63	27
CASH AT END OF FINANCIAL YEAR	3	52	63

The statement of cash flows is to be read in conjunction with the notes to the financial statements.



OMBUDSMAN FOR THE NORTHERN TERRITORY
Notes to and forming part of the Financial Statements
For the year ended 30 June 2004

1 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) Objectives and funding

The Ombudsman for the Northern Territory 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.

(b) Central Holding Authority

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

The Central Holding Authority also records all Territory items. Territory items are revenues, expenses, assets and liabilities controlled by the Government and managed by Agencies on behalf of the Government. The main Territory item is Territory revenue, 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 long service leave.

(c) Basis of accounting

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act* and Treasurer's Directions.

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

These financial statements do not comply with International Accounting Standards, as Australia is not adopting these requirements until reporting periods commencing on or after 1 January 2005. However the potential impact on accounting policies that will arise from the transition to AASB equivalents of IASB pronouncements is disclosed in note 23.

The following is a summary of the material accounting policies, which have been adopted in the preparation of the financial statements.

(d) Changes in accounting policies

The accounting policies adopted are consistent with those of the previous year except in respect of services received free of charge.



Currently all agencies receive services free of charge, predominantly from the Department of Corporate and Information Services (DCIS) for various finance and human resource functions. From 1 July 2003 these amounts have been disclosed within the Statement of Financial Performance as revenue under 'Services Received Free of Charge' and under "Purchases of Goods and Services" in Administrative Expenses. Previously these amounts had been disclosed by way of note but not reflected within the Statement of Financial Performance. The financial effect has been to increase both Total Operating Revenue and Operating Expenses by \$274,000, with no impact on the net operating surplus/deficit.

(e) Revenue recognition

Revenue is recognised at the fair value of the consideration received net of the amount of goods and services tax (GST). Exchanges of goods or services of the same nature and value without any cash consideration are not recognised as revenues.

Output revenue

Output revenue represents Government funding for Agency operations and is calculated as the net cost of Agency outputs after taking into account funding from Agency revenue. The net cost of Agency 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 Agency gains control of the funds.

Grants and other contributions

Grants, donations, gifts and other non-reciprocal contributions are recognised as revenue when the Agency 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.

Interest revenue

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

Sale of non-current assets

The profit or loss on disposal of non-current asset sales is included as revenue at the date control of the asset passes to the buyer, usually when an unconditional contract of sale is signed.

The profit 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.

Contribution 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 revenue at the fair value of the asset received when the entity gains control of the asset or contribution.



(f) Goods and services tax

Revenues, 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 an item 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 Statement of Financial Position.

Cash flows are included in the Statement of Cash Flows on a gross basis. The GST components of cash flows arising from investing and financing activities which is 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 from, or payable to, the ATO.

(g) Interest expenses

Interest expenses include interest and finance lease charges and are expensed as incurred.

(h) Cash and cash equivalents

For the purpose of the Statement of Financial Position and the Statement of Cash Flows, cash includes cash on hand, cash at bank and cash equivalent assets controlled by the Agency. Cash equivalents are highly liquid short-term investments that are readily convertible to cash.

Bank overdrafts are carried at the principal amount.

(i) Inventories

Inventories are carried at the lower of cost and net realisable value. Costs have been assigned to different classifications of inventories as follows:

- *Raw Materials* are valued at average cost.
- *Work in Progress* is valued using absorption costing with raw materials incorporated at the average cost at time of issue, and the labour and overhead costs are valued using standard costs.

(j) Receivables

The collectibility of debtors or receivables is assessed at balance date and specific provision is made for any doubtful accounts.

Trade debtors to be settled within 30 days and other debtors to be settled within 30 days, are carried at amounts due.

(k) 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. Property, plant and equipment below the \$5,000 threshold are expensed in the year of acquisition.

The cost of property, plant and equipment constructed by the Agency 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 Agency 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 useful lives.

Construction work in progress

As part of Stage 1 of *Working for Outcomes*, Department of Infrastructure, Planning and Environment is responsible for managing general government capital works projects on a whole of Government basis. Therefore appropriation for most capital works is provided directly to the Department of Infrastructure, Planning and Environment 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 Agency.

Revaluations

Assets belonging to the following classes of non-current assets are progressively revalued on a rolling basis with sufficient regularity to ensure that an asset's carrying amount does not differ materially from its fair value at reporting date:

- Land;
- Buildings;
- Infrastructure assets;
- Cultural assets; and
- Self generating and regenerating assets.

Fair value is the amount for which an asset could be exchanged, or liability settled, between knowledgeable, willing parties in an arms length transaction.

Other classes of non-current assets are not subject to revaluation and are measured on a cost basis.

The unique nature of some of the heritage and cultural assets may preclude reliable measurement. Such assets have not been recognised in the financial statements.

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, for the current year, are in accordance with the Treasurer's Directions and are provided as follows:

	<u>2004</u>	<u>2003</u>
Plant and equipment	10 Years	10 Years

Assets are depreciated or amortised from the date of acquisition or, in respect of internally constructed assets, from the time an asset is completed and held ready for use.

(I) Leased assets

Leases under which the Agency assumes substantially all the risks and benefits of ownership 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 recorded 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 lease property.

(m) Payables

Liabilities for trade creditors 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 Agency. Trade creditors are normally settled within 30 days.

(n) 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 annual leave. Liabilities arising in respect of wages and salaries and annual leave expected to be settled within twelve months of the reporting date are measured at their nominal amounts based on remuneration rates which are expected to be paid when the liability is settled.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken indicates that accumulated sick leave is unlikely to be paid.

Employee benefits expenses are recognised in respect of the following categories: wages and salaries, non-monetary benefits, annual leave, sick leave and other leave entitlements; and other types of employee benefits are recognised against profits on a net basis in their respective categories.

As part of the introduction of Working for Outcomes, the Central Holding Authority assumed the long service leave liabilities of Government Agencies, including Ombudsman for the Northern Territory. The actual liability was transferred from Agency ledgers during 2002-03.

(o) Superannuation

Employees' Superannuation entitlements are provided through the NT Government and Public Authorities Superannuation Scheme (NTGPASS), Commonwealth Superannuation Scheme (CSS) and non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The Agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or the non-government employee nominated schemes. Any liability for government superannuation is met directly by the Central Holding Authority and the Agency has and will continue to have no direct superannuation liability.

(p) Rounding of amounts

Amounts in the financial statements and notes to the financial statements have been rounded to the nearest thousand dollars.

(q) Comparatives

Where necessary, comparatives have been reclassified and repositioned for consistency with current year disclosures.



2 STATEMENT OF FINANCIAL PERFORMANCE BY OUTPUT GROUPS

	Output Group 1		Output Group 2		Total	
	2004 \$'000	2003 \$'000	2004 \$'000	2003 \$'000	2004 \$'000	2003 \$'000
OPERATING REVENUE						
Taxation revenue						
<i>Grants and subsidies</i>						
Current	28	26				26
Capital						
<i>Sales of goods and services</i>						
Output revenue	1343	1784	528			1784
Other agency revenue						
Interest revenue						
Miscellaneous revenue	205		68		274	
Profit/Loss on disposal of assets						
TOTAL OPERATING REVENUE	1576	1810	594		2170	1810
OPERATING EXPENSES						
Employee expenses	1095	1258	391	197	1486	1455
<i>Administrative expenses</i>						
Purchases of goods and services	284	278	93	91	377	369
Repairs and maintenance	1	1			1	1
Depreciation and amortisation	29	28			29	28
Other administrative expenses	205		68		273	
<i>Grants and subsidies</i>						
Current						
Capital						
Community service obligations						
Interest expense		1				1
TOTAL OPERATING EXPENSES	1614	1566	552	288	2166	1854
NET OPERATING SURPLUS/ (DEFICIT)	(38)	244	42	(288)	4	(44)

2004
\$'000

2003
\$'000

3 OPERATING EXPENSES

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

Administrative Expenses:

Consultants (1)	24
Advertising (2)	4
Marketing and Promotion (3)	2
Document Production	17
Legal Fees	8
Recruitment (4)	2
Training and Study	41
Official Duty Fares	19
Travelling Allowance	7

(1) Includes marketing and promotion 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 recruitment related advertising costs.

4 CASH AND DEPOSITS

Cash on hand		
Cash at bank	52	63
On call or short term deposits		
	52	63

5 RECEIVABLES

Current

Trade debtors	1	10
Less: Provision for doubtful trade debtors	0	0
	1	10

Sundry debtors		
Interest receivable		
Other receivables	4	2

Non-current

Other receivables		
	4	12

6 PROPERTY, PLANT AND EQUIPMENT

Plant and equipment

At cost	80	80
Accumulated depreciation	(62)	(38)
	18	42

Leased plant and equipment

At capitalised cost	9	9
Accumulated amortization	(8)	(4)
	0	5

Total property, plant and equipment	18	47
--	----	----

Reconciliations

Reconciliations of the carrying amounts of property, plant and equipment at the beginning and end of the current financial year are set out below:

	Note	Plant & Equipment	Leased Plant & Equipment	Total
30 June 2004				
Cost/Valuation				
Balance at the beginning of the year		80	9	89
Additions				
Disposals				
Transfers (net)	11 (a)			
Revaluation (net)	11 (b)			
Balance at the end of the year		80	9	89
Accumulated depreciation				
Balance at the beginning of the year		38	4	42
Depreciation and amortisation		24	4	28
Disposals				
Transfers (net)	11 (a)			
Revaluation (net)	11 (b)			



Balance at the end of the year	62	8	70
Written down value			
Balance at the beginning of the year	42	5	47
Balance at the end of the year	18	0	18
		2004	2003
		\$'000	\$'000
7 PAYABLES			
Trade creditors	(31)	(21)	
Other creditors	0	(38)	
	<u>(31)</u>	<u>(59)</u>	
8 BORROWINGS AND ADVANCES			
Current			
Loans and advances			
Finance lease liability (Note 15)	0	(4)	
	<u>0</u>	<u>(4)</u>	
Total borrowings and advances	<u>0</u>	<u>(4)</u>	
9 PROVISIONS			
Current			
<i>Employee benefits</i>			
Annual leave	(157)	(169)	
Leave loading	(24)	(23)	
• <i>Other current provisions</i>			
Other provisions	(26)	(25)	
	<u>(208)</u>	<u>(218)</u>	
Non-current			
Other provisions			
Total provisions	<u>(208)</u>	<u>(218)</u>	
10 OTHER LIABILITIES			
Current	0	(7)	
Non-current			
11 EQUITY			
(a) Capital			
Balance at the beginning of year	122	0	
Equity recognised on adoption of accrual accounting	0	419	
Equity injections	0	0	
Equity withdrawals	0	0	
Transfer of long service leave to Central Holding Authority Note 1 (n)	0	(297)	
Balance at the end of year	<u>122</u>	<u>122</u>	
(b) Accumulated funds			
Balance at the beginning of year	(44)	0	
Current year operating surplus / (deficit)	4	(44)	



Balance at the end of year

(39)	(44)
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**2004
\$'000**

**2003
\$'000**

12 NOTES TO THE STATEMENT OF CASHFLOWS

Reconciliation of net operating surplus / (deficit) to net cash used in operating activities.

Net operating surplus/(deficit)	4	(44)
<i>Non-cash items</i>		
Depreciation	24	24
Amortisation	4	4
(Profit)/loss on disposal of non-current assets		
<i>Changes in Assets and Liabilities</i>		
Decrease/(Increase) in receivables	7	6
Decrease/(Increase) in prepayments	(1)	(1)
Decrease/(Increase) in inventory		
Decrease/(Increase) in other assets		
(Decrease)/Increase in accounts payable	(29)	11
(Decrease)/Increase in provision for employee benefits	(11)	31
(Decrease)/Increase in other provisions	1	9
(Decrease)/Increase in Deferred Income	(7)	0
Net cash flows from/(used in) operating activities	(8)	40

Non-cash financing and investing activities

Finance Lease Transactions

During the financial year the Agency acquired plant and equipment / computer equipment and software with an aggregate fair value of \$0 (2003:\$9,000) by means of finance leases.

13 SERVICES RECEIVED FREE OF CHARGE

Corporate and information services	274	0
Internal audits and reviews	28	0
Comparatives for 2002/03 are Corporate and Information Services \$267,000 and Internal audits and reviews \$4,000.		

14 COMMITMENTS

(i) Finance lease payment commitments

Future finance lease commitments are payable:

Within one year		
One year and no later than five years		6
Greater than five years		

Less Future lease finance charge

Lease liabilities provided for in the financial statements:

Current		6
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Non-current

Total lease liability

The Agency purchased software licenses under a finance lease expiring from 1 to 5 years.

	6

15 CONTINGENT LIABILITIES AND CONTINGENT ASSETS

a) Contingent liabilities

The Ombudsman for the Northern Territory has two contingent liabilities.

1. As a result of an Agreement for enhancements to the ProActive Complaint Management System. The liability may arise where a third party relies on incorrect information supplied by the system. The risk to the Territory under the Agreement is considered to be minimal and the contingent liability resulting from this undertaking is unquantifiable

As a result of a finance lease required to purchase required Microsoft Licences over a two year period. There is a general indemnity clause, indemnifying the Lessor employees, officers, directors, agents and assignees against Claims arising from or in connection with the agreement. The risk to the Territory under the Agreement is considered to be minimal and the contingent liability resulting from this undertaking is unquantifiable.

16 DISCLOSING THE IMPACT OF ADOPTING AASB EQUIVALENTS TO IASB PRONOUNCEMENTS

At this point in time the Ombudsman for the Northern Territory is managing the transition through attendance at seminars etc. Treasury, through its accounting policy branch, will identify and communicate changes required to Treasurer's Directions and future reporting requirements.

At this stage it is anticipated that there will be no significant changes to the accounting policy for the Ombudsman for the Northern Territory.



Appendix C

ACCESS AND AWARENESS SESSIONS

VISITS MADE TO RECEIVE COMPLAINTS

- Katherine (2)
- Pine Creek (1)
- Mataranka (1)
- Batchelor (1)
- Litchfield (1)
- Palmerston (1)
- Alice Springs (2)
- Hermannsburg (1)
- Daly River (1)
- Tiwi Islands (1)

TALKS

Speaker	Date	Details
Peter Boyce, Ombudsman	28 July 2003	Danila Dilba, Advocacy Training Workshop
Peter Boyce, Ombudsman	19 September 2003	Family & Children's Services, Department of Health & Community Services
Wayne Sanderson, Investigation Officer	15 January 2004	Prison Officer Training Course, Alice Springs Correctional Centre
Wayne Sanderson, Investigation Officer	21 January 2004	Tangentyere Council
Cindy Bravos, Principal Investigation Officer	12 February 2004	Prison Officer in Training Course
Peter Boyce, Ombudsman	8 March 2004	Staff of the Ombudsman's Office, Wellington, NZ
Peter Boyce, Ombudsman	8 March 2004	Police Complaints Authority, Wellington, NZ
Peter Boyce, Ombudsman	24 March 2004	Rotary Club of Nightcliff



Peter Boyce, Ombudsman	20 April 2004	Detective Training Course
Wayne Sanderson, Investigation Officer	22 April 2004	Hermannsberg Council
Wayne Sanderson, Investigation Officer	22 April 2004	Ntaria Womens Centre
Peter Boyce, Ombudsman & Cindy Bravos, Principal Investigation Officer	1 June 2004	Police Constable Development Course
Wayne Sanderson, Investigation Officer	9 June 2004	Alice Springs Hospital Aboriginal Liaison Team
Peter Boyce, Ombudsman & Cindy Bravos, Principal Investigation Officer	17 June 2004	Police Management Development Program
Cindy Bravos, Principal Investigation Officer	22 June 2004	Police Training Course

CONFERENCES/MEETINGS

Vic Feldman, Deputy Ombudsman	4 June 2004	Deputy Ombudsman Meeting, Brisbane
Peter Boyce, Ombudsman	30 June 2004	Australian Ombudsman Meeting, Hobart



Appendix D

DETAILED COMPLAINT STATISTICS FOR 2003/04

ENQUIRIES/COMPLAINTS RECEIVED

NT AGENCIES (INCLUDING CORRECTIONS AND LOCAL GOVERNMENT)

As detailed in Table 10, a total of 1734 new approaches were made about NT agencies, excluding complaints against police officers. Of the total 1899 active approaches for the year, 1772 or 93% were finalised. This resulted in 127 approaches remaining open as at 30 June 2004.

Table 10: Enquiries/Complaints open during 2003/04 (NT Agencies)

ITEM	2000/01	2001/02	2002/03	2003/04
Open as at 1 July	80	138	5	165
Received during the year	1542	1248	1590	1734
Total for the year	1622	1386	1595	1899
Finalised during the year	1484	1301	1430	1772
Still open as at 30 June	138	85	165	127

NT POLICE

As detailed in Table 11, a total of 621 new approaches were made about NT police officers. Of the total 795 active complaints for the year, 588 or 74% were finalised. This resulted in 207 approaches remaining open as at 30 June 2003.

Table 11: Enquiries/Complaints open during 2003/04 (Police)

ITEM	2000/01	2001/02	2002/03	2003/04
Open as at 1 July	65	74	103 ⁶	174
Received during the year	363	390	492	621
Total for the year	428	464	595	795
Finalised during the year	355	381	421	588
Still open as at 30 June	73	83	174	207



NUMBER OF ENQUIRIES/COMPLAINTS MADE BY AGENCY

The following is a detailed breakdown of the number of enquiries/complaints received by the Office of the Ombudsman for each Agency.

NT AGENCIES (EXCLUDING CORRECTIONS AND LOCAL GOVERNMENT)

AGENCY	2001/02	2002/03	2003/04
Aboriginal Areas Protection Authority	0	0	0
Auditor General	0	0	0
Batchelor Institute of Tertiary Education	0	4	5
Bushfire Council NT	0	2	0
Business, Industry and Resource Development	0	15	7
Asian Relations and Trade	0	0	0
Industries and Business	0	0	3
Mines and Energy	0	1	2
Primary Industry and Fisheries	0	14	2
Charles Darwin University	10	14	13
Chief Ministers	2	4	3
Department	0	0	0
NT Electoral Office	1	0	2
NT Remuneration Tribunal	0	0	0
Protocol and Public Relations	0	1	0
Women's Policy	0	0	0
Ethnic Affairs	0	0	0
Office of Senior Territorians	0	0	0
Office of Indigenous Policy	0	0	0
Office of Territory Development	1	3	1
Community Development, Sport and Cultural Affairs	103	99	121
Arts and Museums	0	1	1
Territory Housing	87	81	97
Local Government	7	6	12
NT Libraries	0	1	1
Pool Fencing Authority	0	8	6
Sport and Recreation	2	2	1
Remote Communities Aboriginal	4	0	2
Regional Development	0	0	1
Corporate and Information Services	14	14	12
Corporate and Information Services	4	2	3
Contracts Branch	2	9	3
Finance	1	0	3
NT Fleet	2	0	0
Property Management	1	0	0
Salaries	3	2	3
Communications	1	1	0
Darwin Port Authority	1	0	0
Development Consent Authority	0	3	9



Employment, Education and Training	54	62	47
Curriculum and Assessment Division	0	0	0
Strategic Services and Operations	6	0	1
Operations Support Branch	3	1	0
Operations – North	4	1	1
Operations - South	0	1	5
Pre School	0	1	1
Primary School	13	8	16
High School	5	2	8
College	3	0	1
Territory Schools Sports Council	0	0	0
NTETA	3	2	0
Commissioner for Public Employment	3	7	10
Work Health	4	23	1
NT Worksafe	0	0	3
NT Open Education Centre	0	2	0
Health and Community Services	90	74	104
Acute Care Policy	0	0	11
Acute Care Alice Springs Hospital	0	0	4
Acute Care Royal Darwin Hospital	0	0	5
Adoptions and Substitute Care	3	2	0
Aged and Disability Services	7	4	8
Child and Family Protective Services	6	3	0
Community Dental Clinic	2	0	0
Community Health Centre	0	1	5
Departmental Executive	5	9	6
Disability Services Bureau	0	0	0
Environmental Health	3	3	0
Family and Children's Services	26	30	48
Hospitals	22	0	0
Mental Health Services	3	0	6
Menzies School of Health	0	0	0
PATS	5	3	4
Pensioner Concessions Unit	3	1	0
Centre for Disease Control	0	0	1
Professional Registration Boards	2	7	1
Public Health Services	2	7	1
Remote Health Services	1	4	1
Sexual Assault Referral Centre	0	0	0
Strategic Policy and Finance	0	0	3
Industrial Land Corporation	0	0	0
Industrial Land Corporation	0	0	0
TDZ	0	0	0
Infrastructure, Planning and Environment	65	74	84
Lands, Planning and Environment	12	12	14
Natural (Water) Resources Division	1	4	4
Planning Appeals Tribunal	0	0	0



Planning Authority	4	2	5
Planning Authority Support	1	0	0
Plumbers, Drainers and Licensing Board	0	0	0
Valuer-General	0	0	0
Transport and Works	6	9	6
Darwin Bus Service	0	0	1
Marine Branch	2	0	0
Motor Vehicle Registry	26	23	28
Road Development	0	1	4
Transport Division	0	5	3
Parks and Wildlife	5	2	8
Bush Fire Council	0	0	0
Territory Wildlife Park	0	0	0
Alice Springs Desert Park	0	0	0
Building Advisory Services Branch	8	16	11
Justice	82	79	86
Fines Recovery Unit	2	0	18
Anti-Discrimination Commission	6	3	3
Community Corrections	2	0	2
Consumer Affairs	11	13	18
Coroner's Office	3	6	0
Correctional Services (Administrative)	0	15	6
Office of Courts Administration	7	13	11
Crime Prevention	0	0	0
Escort Agency Licensing Board	1	0	0
Family Law Court	0	0	0
Land Titles Office	2	1	0
Legal Practitioners Complaints Committee	0	0	1
Magistrates Court	8	1	3
Public Prosecutions	3	9	7
Public Prosecutions – Victims Support Unit	1	1	0
Public Trustees Office	10	10	10
Registrar Generals Office	4	5	3
Solicitor for the NT	2	0	1
Supreme Court of the NT	0	0	0
Small Claims Court	2	2	3
Property Agents Licensing Board	1	0	0
Legal Aid Commission (NT)	16	11	13
Department of the Legislative Assembly	1	0	0
Legislative Assembly	0	0	0
Table Officers – Clerk	1	0	0
Building Management	0	0	0
Ombudsman and Health and Community Services Complaints Commission	6	5	4
Ombudsman	6	5	4
Health and Community Services Complaints Commission	0	0	0
Police, Fire and Emergency Services	17	14	12
Police Administration (not member)	14	11	8



Emergency Services	0	0	0
Fire Services	3	3	4
Power and Water Authority	55	65	44
Electric Generation and Supply	43	52	29
Public Water Supplies	4	2	8
Public Sewerage and Drainage Services	1	1	1
Water Operations	1	1	3
Water Services	5	9	3
PAWA - Admin	1	0	0
Territory Insurance Office	44	44	35
Tourist Commission	1	3	0
Treasury	7	12	21
Department	2	2	2
Commissioner of Taxes	1	0	1
Racing, Gaming and Licensing	2	7	16
Superannuation	1	0	0
Procurement Review Board	1	3	2

CORRECTIONAL SERVICES

Sections	2001/02	2002/03	2003/04
Correctional Services	89	265	362
Executive	8	5	1
Correctional Centre – Darwin Prison	37	174	176
Correctional Centre – Alice Springs Prison	39	81	185
Juvenile Justice	3	5	0
Parole Board of the NT	2	0	0

LOCAL GOVERNMENT COUNCILS

Local Government Council	2001/02	2002/03	2003/04
Councils	53	89	66
Alice Springs Town Council	8	8	2
Borroloola Community Government Council	0	1	0
Coomalie Community Government Council	6	2	4
Elliot District Community Government Council	4	1	0
Darwin City Council	12	39	22
Jabiru Town Council	1	0	7
Katherine Town Council	3	7	2
Litchfield Town Council	2	5	5
Palmerston Town Council	7	4	6
Pine Creek Community Government Council	2	0	0
Tennant Creek Town Council	6	0	1
Other	2	22	17

AGENCY OUT OF JURISDICTION

Agency out of Jurisdiction	537	652	687
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MATTERS IN ENQUIRIES/COMPLAINTS RECEIVED

Information is recorded about the matters described in every enquiry/complaint, and often more than one matter is recorded against a complaint. Standard matter descriptions are used and these are grouped under categories.

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

NT AGENCIES (INCLUDING LOCAL GOVERNMENT)

MATTER	CATEGORY	2001/02	2002/03	2003/04
Practice or Procedures	Inadequate	76	40	79
	Unreasonable	179	38	38
	Failure	69	63	46
	Wrong	50	24	17
	Other	25	36	64
		399	201	244
Attitude/Behaviour of Staff	Rudeness	25	9	12
	Harassment	11	6	16
	Threats and intimidation	7	10	2
	Discrimination	3	9	12
	Use of physical force	2	0	0
	Assault	0	3	0
	General issues only	0	6	6
	Other	9	27	21
		57	70	69
Fees and Charges	Level of charge/fee	31	36	28
	Penalties for no payment	5	6	13
	Other	16	42	41
		52	84	82
Grievance/Complaint Procedures	Failure to investigate/respond	14	23	20
	Dealings with the Omb's Office	2	0	1
	Inappropriate techniques	5	2	2
	Other	8	10	5
		29	35	28
Information	Negligent improper disclosure	4	6	9
	Refusal to give access to	8	4	6
	Refusal to alter records/info	1	0	0
	Fail to maintain confidentiality of info	3	5	5
	Loss of documents	0	6	1
	Failure to consider 3 rd party	0	0	0
	Other	20	59	59
		36	80	80



Service – Program Delivery/Entitlement to Service or Program	Delayed action or response	19	13	6
	Failure to act/delay in taking act	25	12	8
	Poor or inadequate service	15	6	6
	Failure to advise or consult	7	3	7
	Failure to deal with reasonably	5	2	5
	Refusal to act	15	3	2
	Failure to provide benefit/entitle	11	10	5
	Other	2	14	7
		99	63	46
Natural Justice	Denial of procedural fairness	10	22	4
	Failure to give reasons	0	8	7
	Other	0	2	9
		10	32	20
Misconduct	Conflict of Interest	1	3	5
	Corruption	1	4	12
	Dishonesty	1	2	2
	Neglect	1	1	1
	Accepting benefits/favours	0	0	0
	Other	3	13	6
		7	23	26
Misapplication or Law/Policy	Faulty procedures	7	14	29
	Objection to law	2	8	9
	Objection to policy	3	4	9
	Unreasonable demand	4	3	4
	Failure to enforce	0	6	5
	Use of statutory powers	6	2	5
	Other	3	30	11
		25	67	72
Tenders/Contractual Matters	Tender practices, procedures	6	7	6
	Contractual issues	2	1	8
	Admin of contract payments	1	0	5
	Other	2	2	2
		11	10	21
Damages and Compensation	Action re: property	1	9	10
	Damages/loss of property	7	9	4
	Injury to person(s)	6	5	0
	Other	4	18	12
		18	41	26
Exercise of Discretion – as envisage by s26(1)(d)	Wrong	0	3	1
	Improper purposes	0	0	0
	On irrelevant grounds	0	0	1
	Irrelevant consideration	0	0	0
	Other	0	3	3
		0	6	5



CORRECTIONAL SERVICES

MATTER	CATEGORY	2001/02	2002/03	2003/04
Administration Acts or Omissions	Delay	1	3	7
	Refusal to act	1	0	1
	Refusal to provide a service	1	3	3
	Practice or procedure	16	6	3
	Misapplication of law/policy	0	1	6
	Disclosure of information	1	0	3
	Procedural fairness/nat justice	2	0	3
	Exercise of discretion	0	0	10
	Corrections issue only	0	75	75
	Other	0	11	14
		22	99	125
Assault – Unreasonable/Excessive Use of Force	By prison officers	5	2	7
	By prisoners	0	3	1
	By police officers	0	0	0
	By education/training staff	0	0	0
	By health care workers	0	0	0
	Other	0	0	0
		5	5	8
Attitude/Behaviour of Staff	Threats	13	13	3
	Harassment	14	6	4
	Other	6	14	12
		33	33	19
Misconduct/Behaviour of Staff	Segregation/separate confinement	1	1	0
	Loss of privileges	0	1	4
	Unreasonable/incorrect procedure	1	4	4
	Other	0	2	1
		2	8	9
Security Measures/Issues	Protection from other prisoners	0	2	2
	Cell search	0	0	1
	Strip search	0	0	0
	Drug testing	0	2	6
	Classifications	0	1	1
	Tactical response action to major	0	0	0
	Other	1	1	4
			1	6
Prisoners Rights and Privileges	Parole	2	5	0
	Work and day release	2	6	3
	Social/sporting amenities	0	0	1
	Telephones/teleconference	3	9	21
	Visits	4	5	5
	Accommodation	1	4	11
	Education, training	2	4	6



	Food, nutrition	4	2	10
	Recreation, hobbies	4	2	3
	Other	7	38	73
		29	75	133
Grievance/Complaint Procedures	Access to superintendent	0	2	10
	Failure to investigate adequate	1	1	0
	Improper techniques	0	0	0
	Dealings with Ombudsman	0	0	0
	Other	0	5	2
		1	8	12
Mail	Censorship and confidentiality	3	0	1
	Failure to dispatch	0	5	3
	Delays in receiving or dispatch of	1	0	3
	Other	0	1	2
		4	6	9
Medical/Health Issues	Delay to provide service	6	7	6
	Inadequate medical service	3	3	1
	Other	4	2	11
		13	12	18
Property Issues	Loss of/failure to account for	8	1	6
	Refusal or failure to release	1	1	0
	Refusal by PO's to receive gift	0	0	0
	Other	0	1	4
		9	3	10
Transfers – Intra and Interstate	Refusal	2	14	6
	Delays	1	1	2
	Other	2	7	11
		5	22	19
Other	-	6	0	0

NT POLICE

MATTER	CATEGORY	2001/02	2002/03	2003/04
Abuse/Rudeness/Misdemeanour	Abuse, incivility, rudeness	63	41	38
	Racist	4	2	0
	Traffic abuse, incivility, rude	13	5	5
	Dress and bearing	2	0	1
	Police complaint issue only	0	5	12
	Other	6	21	16
		88	74	72
Arrest	Unjust/unreasonable arrest	18	2	13
	Unlawful arrest	9	2	9
	Transfer to a mental institution	0	0	2
	Unreasonable force	23	6	17
	Assault	4	5	7
	Apprehension for intoxicification	5	1	2
	No reason given/warrant	3	1	5



	Use of power of arrest	2	1	2
	Use of handcuffs	3	1	1
	Other	3	0	8
		70	19	66
Assault Not Major Injury (Physical/Mental)	Without proceeding to arrest	8	12	9
	Prior to or during an arrest	12	8	11
	En route to police station	2	0	5
	At watchhouse	5	3	5
	In police cell	1	0	0
	During interview/questioning	1	2	3
	During search of premises	1	0	0
	During crowd control	3	4	3
	At other place of detention	2	5	3
	Other	9	7	9
		44	41	48
Assault Causing Major Injury (Physical/Mental)	Without proceeding to arrest	0	3	0
	Prior to or during an arrest	3	5	8
	En route to police station	0	0	0
	At watchhouse	0	3	0
	In police cell	1	0	0
	During interview/questioning	1	0	0
	During search of premises	0	0	0
	During crowd control	0	1	0
	At other place of detention	1	2	0
	Other	0	2	5
		6	16	13
Breach of Rights	Fail to provide/delay	2	15	4
	Unreasonable treatment	20	21	22
	Other	1	21	28
		23	57	54
Complaint Against Police Procedures	Failure to receive a complaint	5	8	3
	Failure to consider action	13	10	28
	Bias, prejudice	8	10	37
	Delay in investigation	9	21	22
	Failure to investigate	10	42	61
	Inadequate investigation	10	11	14
	Intimidation of comp/witness	16	0	5
	Improper techniques	22	34	47
		93	136	217
Corruption, Favouritism, Personal Advantage, Other Criminal Conduct	Accepting benefits/favours	2	1	0
	Gaining personal advantage	0	2	0
	Conspiracy/cover up	5	1	2
	Motor vehicle use	0	2	0
	Drug/alcohol use	1	0	0
	Fraud	0	0	0
	Perjury or false statement	0	3	0
	Other	3	5	3
		11	14	5



Custodial/Watchhouse/Detention	Refuse access to legal advice	2	0	0
	Access to medical treatment	6	0	2
	Care and hygiene issues	3	0	0
	Body searches	0	0	0
	Restraint/manhandling	1	0	0
	Padded Cell	0	0	0
	Other	1	5	12
		13	5	14
Custody of Handling Property	Damage to property in custody	3	3	0
	Failure/delays return property	6	17	8
	Handling of exhibits/drugs	1	1	0
	Failure to properly record	0	4	0
	Other	8	6	5
	Loss of property in custody	1	0	0
	Failure to provide receipts	3	0	0
		22	31	13
Entry and/or Search	Faulty search procedures	8	8	4
	Unnecessary search/entry	9	3	0
	Unnecessary force/damage	3	1	2
	Strip/intimate search	2	0	1
	Other	9	5	1
		31	17	8
Failure to Perform Duty	To take crime report/invest	4	4	4
	Domestic situation	5	2	2
	Restrain & custody order	1	0	0
	Failure to provide ID as police	2	0	1
	Traffic	2	1	1
	Other	22	12	5
		36	19	13
Firearms	Discharge/use of firearms	0	2	1
	Seizure of firearms	1	0	0
	Other	2	0	2
		3	2	3
Harassment, Threats, Excessive Attention	Threats/victimisation	19	10	7
	Repeated traffic tickets	0	0	1
	Bona fide/warrant checks	0	0	6
	Surveillance	3	10	7
	Other	24	26	39
		46	46	60
Inadvertent Wrong Treatment	Property damage	1	1	0
	Other	12	4	5
		13	5	5
Information (incl photographic fingerprint info)	Failure to notify/give info	14	2	4
	Inapprop access/use of info	2	1	0
	Inappropriate disclosure of info	11	4	2
	Incorrect/Inaccurate records	1	1	2
	Provide false/incorrect info	6	0	0
	Failure to ensure confidentiality	0	0	4



	Improper acquisition/retention information management	2	0	0
	Treatment/use of crime Intel	0	0	0
	Other	5	2	3
		41	11	15
Investigations	Delay in investigating	3	1	6
	Failure to interview witness	1	2	5
	Fabrication of/false docs	0	0	0
	Conduct of interviews	2	2	5
	Fail to disclose evidence	3	0	0
	Other	9	1	14
	Investigation review Nil JRC	1	2	0
	Review JRC decision	1	0	0
		20	8	30
Juveniles	Arrest	1	4	0
	Interview	0	0	0
	Detention	1	0	0
	Notification of parents/guardian	4	0	0
	Other	0	7	0
		6	11	0
Practice and Procedures	General Orders	2	0	0
	Keeping of records	0	0	1
	Other	6	26	31
		8	26	32
Prosecutorial Discretion	Refusal to prosecute	9	0	2
	Inappropriate prosecution	2	0	0
	Victims charter	0	0	0
	Misuse of prosecution power	1	1	0
	Other	5	0	3
		17	1	5
Traffic	Traffic	11	6	2
		11	6	2
Warrants	Failure to execute	0	0	0
	Improper execution	1	4	1
	Other	5	0	2
		6	4	3
Other Misconduct	Misuse-Office/police power	16	1	5
	Conflict of interest	0	0	1
	Other	15	9	8
		31	10	14



Appendix E

CASE STUDIES

NT AGENCIES

1. Taxi! (Department of Health and Community Services)

An aged pensioner complained about the length of time that the department was taking to assess her application for taxi vouchers. Under the department's Taxi Subsidy Scheme, eligible applicants are entitled to a certain amount of taxi vouchers per year to use when keeping medical appointments or visiting a doctor, where they do not have their own transport or are unable to use public transport. The complainant advised that she was frail and was unable to use public transport due to a medical condition and personal financial difficulty. She requested that the department speed up the assessment process.

When contacted, the department advised that the assessment process included a medical assessment by a qualified practitioner, who, on completing the physical assessment of an applicant, forwards the application to the department's Taxi Subsidy Unit for final approval and subsequent issue of the vouchers.

Apparently, the delay in processing the complainant's application was due to the medical assessment form being lost by the private medical practitioner. The unit had to send another assessment form for the private practitioner to complete and return to the department. The department advised that the waiting time for assessment of applications was approximately 4 to 8 weeks. However, given the complainant's medical condition and personal circumstances, the department arranged to bring forward the physical assessment. On receipt of the recommendation from the practitioner of the complainant's assessment, the unit arranged to forward the taxi vouchers to the complainant thus short tracking the normal waiting time, in this particular instance.

The complainant confirmed that she was happy with having received the vouchers promptly. I was satisfied with the department's prompt resolution of the matter and closed my file.

2. Who 'wins' a family law property case? (NT Legal Aid Commission)

The complainant approached my Office to lodge a complaint about the amount of financial contribution he had to pay to the NT Legal Aid Commission after they had represented him in a family law property settlement matter.



According to the complainant, his understanding of his agreement with the NT Legal Aid Commission was that he only had to pay them if he won his case. The complainant provided my Office with a copy of a letter from the NT Legal Aid Commission that referred to costs payable “should the matter conclude in your... favour”. The complainant also provided my Office with a copy of a payment of costs letter that he had signed which stated that he would pay the NT Legal Aid Commission back the costs of his case “if I get any money or property or keep my home by winning my case”. On this basis I agreed to make inquiries into the matter.

A review of the *Legal Aid Act* and Guidelines indicated that the complainant was liable to repay his costs to the NT Legal Aid Commission notwithstanding the statements made in other documentation. It was also revealed that the complainant had a right to petition a statutory review committee for a review of the decision. This precluded me from further investigating the matter unless special circumstances applied.

I contacted the NT Legal Aid Commission and drew to their attention the discrepancies in their documentation, suggesting that some of the statements were inaccurate and liable to mislead legally assisted people into thinking that they would only have to repay their legal costs if they ‘won’ their case. These criticisms were accepted by the Director who undertook to review the guidelines and related documentation in the near future.

3. Court imposed penalty extended by administrative action (Department of Infrastructure, Planning and Environment)

The complainant was convicted, at a regional sittings of the Court of Summary Jurisdiction, under section 19 of the *Traffic Act* (‘exceed .08’). She was fined and disqualified from driving for six months. Six months later she attended at the Courthouse to “get her licence back” and was referred to the Motor Vehicle Registry (MVR). MVR advised her that they had had no notification of the conviction and they then amended their records and cancelled her driver’s licence. She was also advised of the requirement under section 102AA of the *Motor Vehicles Act* to attend a driver re-education course prior to having the licence re-instated. She complained that this was the first she knew of this requirement. The complainant then found out that the next such course in the town in which she lived would not be held until some two months later (the previous one having been held 4 months earlier).

In effect, the penalty given by the Court was increased by a period of two months, through no fault of the complainant, other than her being unaware of the operation of section 102AA of the *Motor Vehicles Act*. As a mother of three young children and having a husband who cannot work because of illness, in a town without public transport, this extension of the penalty was onerous.

My inquiries indicated that, through clerical oversight, the conviction was not recorded in the Court’s data base (‘IJIS’) by the Clerk of Court at the time it was made. The requirement to enter the conviction on the IJIS system is not a legal one, but an administrative one. At the end of each week, the court orders relating to



disqualification of licences are automatically transferred to the database operated by MVR ('MOVERS'). Once the information is in MOVERS, two letters to the convicted person (who has been disqualified from driving) are automatically generated. These letters are sent to drivers straight after conviction, and again five months before the licence suspension period expires, advising them that they cannot get their licence back at the end of the disqualification period without proof that they have attended a driver re-education course. These letters of advice from MVR are not a legal requirement and are sent as a courtesy.

Because of the oversight of the Clerk of Court, the transfer of information about the complainant's conviction was not sent to the MOVERS database in the usual way. As a result, the MOVERS system did not generate the standard letters.

My inquiries also found that people who are disqualified for drink driving offences are usually handed a brochure by court staff which outlines the requirement for driver re-education. These brochures are printed by the agency which conducts the course (which is administered by the Department of Health and Community Services). The brochures are carried by court staff when visiting regional courts with the Magistrate, and are handed to people again only as a courtesy, not as a result of a legal requirement. Unfortunately the complainant in this matter appeared not to have been given a brochure.

In summary, none of the officers dealing with the complainant's matter acted illegally, however, the two minor oversights on the part of the court staff and the Clerk of Courts combined to produce the result that the complainant was never made aware of the requirement to attend a drink driver re-education course. She therefore did not book a place in the earlier course held in her home town, and had to wait until the course held two months after her licence disqualification ceased.

My Office received this complaint prior to the later drink driver re-education course. I determined from the legislation that there is no discretion given to the Registrar of Motor Vehicles to grant a licence, which has been cancelled in this way, without evidence of attendance at a course. I further determined that the officers from MVR had done nothing to cause or exacerbate this complaint. The Office of Courts Administration at my request made enquiries about the possibility of facilitating the complainant's attendance at another earlier course in the Territory, in order to resolve the complaint expeditiously, but for various reasons this could not be achieved.

What that Office did immediately, however, was alter the wording on its fine slip (handed to each defendant as they leave the court) to read in bold print that if the penalty imposed by the Court involves licence disqualification, the defendant should contact MVR immediately to find out what they must do to get the licence reinstated at the end of the disqualification period.

I sent details of the complainant's out of pocket and lost financial opportunities caused by the delay in being able to reapply for her licence, to the Department of Justice (which encompasses the Office of Courts Administration) for the Chief Executive to consider an ex gratia payment to the complainant. The Chief Executive



felt however, there were no legal grounds on which to pay the complainant compensation. I determined that this response was not unreasonable, and thus had to report to the complainant that nothing could be done for her.

This matter was still of concern in that the complainant, because of where she lived and the limit on the availability of the driver re-education course in regional centres in the Northern Territory had effectively had the punishment which was issued by the Court extended by administrative action. I determined to close this file, however, as a result of this matter, I have commenced an own motion investigation into the issues of access and equity for remote and rural Northern Territorians in complying with the requirements for drink driver re-education. That matter is continuing.

4. What's up Doc? (Department of Health and Community Services)

The complainant, a Doctor, approached my Office after the Chief Health Officer (CHO) of DHCS advised him that it appeared that he had been "prescribing Schedule 8 substances in an inappropriate manner" that constituted a "risk to public health and safety", and that subsequently the Chief Health Officer intended to use the powers provided to her by the *Poisons And Dangerous Drugs Act*, and prohibit him having in his "possession, supplying, administering or prescribing a Schedule 8 substance". Additionally the complainant informed me that the Chief Health Officer had also forwarded her concerns to the Medical Board of the Northern Territory for its consideration.

Following my assessment of the complaint, I identified three issues as being the primary concerns of the complainant. Firstly, the complainant believed that the Chief Health Officer issued the order to refrain him from prescribing Schedule 8 substances without giving him a proper right of reply. Secondly, the complainant queried whether it was appropriate for the Chief Health Officer to refer the matter to the Medical Board before allowing him the opportunity to defend the initial complaint. In this regard the complainant was of the belief that the Chief Health Officer had found him guilty and referred the matter to the Medical Board, prior to allowing him a proper right of reply. Then finally, the complainant was concerned that the Chief Health Officer only allowed a period of two weeks between her notification of the prohibition and the actual date the prohibition took effect. He asserted that this was not sufficient time for him to provide a defence to the allegations and again that he had been found guilty without due process. In this regard, the complainant was of the opinion that the Chief Health Officer made the determination without meeting him or with his forty (40) Schedule 8 patients.

Following my preliminary enquiries into this matter – which included the review of the complaint, the departmental response, supporting documentation, and all relevant legislation - I determined that the complainant had in fact been offered the 'right of reply' on a number of occasions and had simply failed to provide a response that adequately addressed the concerns raised by the Chief Health Officer. I was also of the view that the Chief Health Officer's actions in referring the matter to the Medical Board did not warrant criticism in the circumstances. It was my belief that the actions



of the Chief Health Officer might have been viewed in line with the 'duty of care' that was required by her position.

In regard to the final issue identified, having reviewed all of the available material in relation to this matter, I was of the view that the process followed by the Chief Health Officer provided the complainant with a fair and reasonable opportunity to present his case, and was reasonably open to the Chief Health Officer in the circumstances. Indeed, I was of the view that in this particular matter, due process did not necessarily require the Chief Health Officer to meet/question the forty Schedule 8 patients.

Overall, the report prepared following my preliminary enquiries into this matter concluded that the actions of the Chief Health Officer had been reasonably open to her in the circumstances and did not give me cause for concern. I determined that no further action was warranted regarding this complaint.

5. "It's in the Mail" (Department of Corporate and Information Services)

A local resident complained that the Department of Corporate and Information Services had been sending letters addressed to two previous occupants of the property that she now occupied. The complainant advised my office that despite informing the Department that those persons were no longer living on the property, she continued to receive correspondence.

The complainant contacted my office for assistance in getting the department to stop sending the correspondence. My office contacted a senior Departmental officer to look into the matter and fix the problem.

Following inquiries, the Departmental officer advised that when the complainant first contacted the department about the problem, only one of the two addressees, which had the same surname, had been removed from the Department's computer system instead of both names being removed. The Department advised that the second addressee's surname had now been removed from their computer system, which should resolve the problem.

The Department further explained that it acts as an agency for various client departments, which deal directly with its clients. The Department advised that it issues notices, invoices, etc, on behalf of departments when requested and it relies on the information provided by these departments.

The Departmental officer advised that he had contacted the complainant, apologised for the inconvenience caused and provided an assurance that the problem had now been fixed. After confirming with the complainant that she was satisfied with the apology and the explanation provided and on being assured that the Department had taken prompt remedial action I closed my file.



6. Unlicensed to drive (Department of Infrastructure, Planning and Environment – Motor Vehicle Registry)

The complainant's son went to a Motor Vehicle Registry (MVR) office. His drivers licence had expired by 2 days and he says he asked the counter staff to re-new it. He says he filled in a blue form and paid money. He did not receive a receipt for this transaction but was given a card which looked like a drivers licence.

The complainant's son had a motor vehicle accident several weeks later in which he was injured and the car he was driving was written off. In this way, it came to the complainant's attention that her son was given a licence by MVR with no expiry date on it. She went to MVR and was advised that the licence he was issued with a few weeks ago was invalid and expired and that although MVR had made a mistake by issuing her son with an expired drivers licence, there was nothing that could be done about the situation as they were not able to backdate licences.

The complainant lodged a complaint with my Office, seeking to have the MVR decision changed so that her son would be deemed to be licensed at the time of the accident and therefore not driving illegally and also be covered by insurance for the purposes of the accident.

MVR was contacted to ascertain whether the matter might be resolved expeditiously. My Office was initially advised by MVR that the complainant's son had gone into MVR to request the "P" be removed from his licence, which it was. MVR reiterated that he had been issued with an expired licence and it was a 'technical glitch' that had been brought to their attention before. There is no way for the computer to check it, so it is up to the operator to ensure that the dates are showing on the card and not expired. MVR's position was that he had not asked for a renewal, had not paid for one, and was not given one. The complainant's position was that her son was issued with something which looked like a valid licence and relied on that, thinking he was licensed. Furthermore, the complainant was adamant that her son (who was still in hospital) had indeed paid over money for a renewal. When asked about the possibility of MVR issuing a backdated license to cover this situation, MVR advised it was getting legal advice.

Further inquiries at management level revealed the same advice as had been given to the complainant. MVR had no record of the complainant's son having applied for a renewal of his drivers licence, only an upgrade of his licence to have the "P" removed, for which there is no charge. They had no record of receiving any money from him, and they had checked the till of the operator he spoke to and there was no discrepancy in the takings.

It was pointed out that the way the complaint was explained to this Office, the complainant's son had asked for an "open licence" (ie. one with the 'P' status removed) and that perhaps the counter staff interpreted that as a request simply to amend his existing licence (which appears supported by all the paperwork). MVR purported to do this even though his existing licence had expired two days



previously. He then thought he had what he wanted because he walked out with a licence (even though the expiry date was stated as "000000"). At 17 years of age, it is not unreasonable to assume that he would not check it before he left, but equally, the counter staff did not check it either. If they had, they would almost certainly have had a conversation with him to the effect that his current licence had actually expired, at which point, the complainant's son would have had the opportunity to state that he actually came in to get a renewal for his licence, and staff could then have told him that he needed to fill out another form and pay \$24.

The MVR determined that their staff did play a role and that they had a responsibility to point out the fact of the invalid licence before the complainant's son left the MVR that day. After clarifying their legal position, MVR issued the complainant's son with a licence backdated to the original date he tried to apply for a renewal, upon payment of the applicable fee. MVR then fixed their database "Movers" so that it cannot issue expired licenses in the future. The MVR also checked their database and found there were 20 other licence holders who were or may have been in a similar position and they sent a letter to these people asking them to check the details of their licence and if they were inaccurate etc, to bring them in and a new one with correct information would be issued free of charge. The MVR also rang the complainant's son's insurer and police to advise of their determination. In light of the MVR's actions I determined that no further investigation of this matter was warranted.

7. To Truck or not to Truck....

(Department of Infrastructure Planning and Environment – Transport Division)

The complainant lodged a complaint with my Office against the Transport Division of the Department of Infrastructure, Planning and Environment regarding the requirements in the Northern Territory to be licensed as an 'Escort'; a licence which enables the holder to escort loads in excess of 5.5 metres wide.

In this regard, it was the complainant's understanding that in order to undertake a NT escort training course he was required to obtain, among other things, a 'Heavy Combination Class licence' (HC Class Licence) in the state in which he resided. This level of licence was nationally recognised and above the level of licence the complainant held. The complainant was of the view that it was 'ridiculous' for the Department to insist that he needed this class of licence to pursue escort accreditation in the NT, given his previous relevant experience and level of licence he currently held.

Preliminary inquiries were made with Departmental officers to clarify the current requirements for holding an escort licence in the Northern Territory; in addition my office advised them of the complainant's concerns regarding the need to hold a HC Class licence. The officers advised that this complaint had raised a number of issues as the complainant was the first interstate licence holder to apply for a NT escort licence.



During discussions with my Office it was suggested that the Department handle the complaint in the first instance, with a view to resolving any issues of concern directly with the complainant. My Office agreed that this was an appropriate proposal in the circumstances, and advised that I would keep my file open until the matter was satisfactorily resolved.

My Office was subsequently informed that the complainant's concerns had been considered and discussed with industry representatives and the training provider. The result being that the need for truck driving experience and a HC class driver's licence (which were put in place when the Escort accreditation course was originally developed) were no longer necessary. Consequently, the drivers licence prerequisite requirements for an NT Accredited Escort were amended.

The Department advised the complainant of this outcome in writing, and I closed my file shortly after.

8. Watered Down (Power and Water Corporation)

The owner of a five-acre block in the rural area complained that the Power and Water Corporation (Power and Water) had refused to substantially reduce the level of his recent quarterly water bill. The complainant had received a water bill for \$1384 for the consumption of 2046 kilolitres of water over a three-month period from August to November 2003. The complainant believed that there was a problem with the water meter and denied consuming that amount of water.

An internal Power and Water inquiry had established that the water meter at the complainant's property had stopped working at some stage during the above period but it could not be accurately determined when the water meter stopped working. The inquiry also established that Power and Water had failed to follow procedures in that it failed to notify the complainant of the high reading prior to issuing the water bill.

Due to this failure, Power and Water reduced the complainant's bill by \$440, based on previous year's consumption at the property for the same period. However, the complainant was still dissatisfied and believed that Power and Water should further reduce the bill on the presumption that there was something wrong with the meter. Power and Water were of the view that the water had been consumed and were not inclined to further reduce the bill any further.

I did not consider Power and Water's actions in acknowledging its mistake and then making prompt restitution to the complainant, to have been unreasonable. However, as a further concession, Power and Water indicated that it was prepared to offer the complainant a six to twelve month time to pay agreement, to assist him in paying off the debt in instalments. When advised of this offer, the complainant still seemed dissatisfied and indicated that he would consider the offer. I advised the complainant that as Power and Water's offer and actions were reasonable in the circumstances, I did not intend to pursue the matter any further.



9. Road Rage (Department of Infrastructure Planning and Environment)

The complainant in this matter was the resident of a small rural community whose members had been lobbying for many years to get a particular road sealed. A budget paper was released indicating that 11km of road would be sealed. Later in the year, the project was advertised for tender. The tender referred to only 6.3 km of road. The complainant claimed that she could not get a straight answer out of the Department about the missing 4.7 km.

The matter was initially referred back to the Department to deal with. The Department explained that the initial project for 11km of road had been costed at \$2 million but that Cabinet had only approved \$1 million for that year, with the remainder to come in the following year. Unfortunately the description of the project in the budget paper had not been altered to reflect this decision. The Department also pointed out that Stage 2 of the project was now under review as different community groups wanted different sections of the road sealed.

The complainant was not happy with the Departmental response and returned to this Office. My Office undertook to obtain more specific information about the process. Eventually, an officer from Treasury conceded that it had been their responsibility to ensure the accuracy of the description in the budget paper. It is probable that a Departmental employee had some responsibility for the error, however, this person was no longer with the Department. The officer in question declined to apologise directly to the complainant in light of the ongoing tensions over the project review. The complainant accepted this and also accepted that the matter was one of innocent mistake. My Office was able to identify a contact officer for the complainant to approach directly with any further concerns or queries about the project.

10. Registration transfer (Department of Infrastructure, Planning and Environment – Motor Vehicle Registry)

The complainant in this matter contacted my Office and explained that the Motor Vehicle Registry (MVR) had allowed her ex-partner to transfer the registration on one of her vehicles to his name without her knowledge or consent. The complainant approached the MVR, however she was told to report the matter to Police and that there was nothing that MVR could do about the matter. The complainant was also advised to seek legal advice.

The matter was originally referred to MVR by this Office for the matter to be resolved. The complainant contacted this office after the referral and advised that she was told again that there was nothing MVR could do and to seek legal advice. This Office agreed that the complainant should seek legal advice, however, enquiries were undertaken to ascertain whether the MVR were acting reasonably in the circumstances.



Pursuant to section 102 of the *Motor Vehicles Act*, the Registrar of Motor Vehicles may cancel a registration that was obtained by fraud. The Chief Executive of the Department advised this office that the Registrar of Motor Vehicles may change ownership of a vehicle when presented with evidence of a court order. The *Motor Vehicles Act* does not contain a section that makes it an offence to transfer a vehicle registration by fraud, however, the Police can pursue such matters under the *Criminal Code*. The MVR advised that in the past, the Registrar of Motor Vehicles has assisted the Police's investigation by providing relevant information and ensuring that the registration record was protected from further transfers (by placing a "No Transfers Lock" on the vehicle's records) until the allegations had been investigated and resolved. This was not initially offered to the complainant, but a lock was eventually placed on the vehicle's registration.

At the time this matter was reported to my Office, there were no formally documented policies or procedures in place to deal with such a situation. As a result of this approach to my Office, the following guidelines were documented for use by MVR:

- MVR will request that a complainant complete a Statutory Declaration,
- The registration record will be locked with a "No Transfers Lock",
- The Manager of the relevant MVR will then take responsibility for the future management of the matter,
- The MVR will write to the Police advising them of the situation, and monitor any action taken by Police,
- All parties to the dispute will be advised in writing that the Registrar has placed a lock on the registration and will refuse to transfer the registration until such time as the dispute is resolved by written agreement of the parties in dispute, or an order of a Court,
- All paperwork is then filed on the No Transfers File,
- The Manager deals with any transactions, including renewals that may need to be processed, and ensures the record is locked again,
- The No Transfers Lock is then periodically followed up by the Manager to ensure the party or parties are actively attempting to resolve the dispute. Where no evidence of resolution is provided, the Manager may decide to remove the No Transfers Lock and advise the parties accordingly,
- The Lock is released when either written consent is received by the parties in dispute, or a court order is received.

The complainant's matter was then managed by MVR in accordance with the new procedure and the file was closed.

11. What About Me? (Department of Health and Community services – Children's Services Unit)

The complainant approached my Office to express dissatisfaction with the manner in which she alleged management and staff had treated her during her employment at a child care centre. The complainant asserted that certain employees at the child care centre had made false allegations against her which had resulted in severely



hindering her ability to find work in the child care industry and caused her distress and illness. The complainant also appeared to be unhappy about, what she perceived to be, the management board's failure to address the situation.

Preliminary inquiries were conducted by my Office which indicated that:

- the child care centre in question was owned by a private Aboriginal body incorporated under the umbrella of Commonwealth legislation;
- complaints about bodies incorporated under this legislation could be made to the 'Office of the Registrar of Aboriginal Corporations' by phone or letter;
- like other child care centres in the Northern Territory, the child care centre was inspected and recommended for licensing by the Children's Services Unit of the Department of Health & Community Services. Consequently, the child care centre was required to comply with relevant legislation and 'Standards for NT Child Care Centres'. In this regard, the Children's Services Unit played a regulatory role in relation to child care centres,;
- the child care centre received operational funding from the Commonwealth and a child care subsidy from the NT Government of \$20.20 per child per week (like all other licensed child care centres in the NT);
- the Children's Services Unit investigated complaints made by concerned parties against licensed child care services if the complaints related to breaches of relevant licensing standards.

Given the regulatory role of government in relation to the child care centre in question (and other child care centres), and the fact that it was an independent incorporated body operating in a private industry, the complainant was advised that I didn't have jurisdiction, under my Act, to pursue her complaint. Shortly after receiving this advice, the complainant raised concerns about the Children's Services Unit, stating that they had conducted an investigation into the child care centre following the allegations made against her. In this regard, the complainant alleged that the Children's Services Unit had not afforded her with procedural fairness in that she had not been provided with an opportunity to address the allegations. As a result, I determined that further inquiries were appropriate.

Subsequently, my Office met with representatives from the Children's Services Unit to discuss the complaint, and a copy of their investigation report into the child care centre was obtained. This report made it clear that the child care centre's 'licensee' was required to investigate the allegations against the complainant and inform the Children's Services Unit of the process it had undertaken and the outcomes.

In my view, this was the correct approach. In addition, it appeared that the purpose and outcomes of the Children's Services Unit's investigation into the child care centre was consistent with its regulatory role. Indeed, I was satisfied that the Children's Services Unit understood the limitations of its role and, importantly, the distinction between their investigation into the licensee and a proposed investigation by the licensee into allegations made against one of its staff.



The complainant was informed of the outcome of my inquiries, and was advised that the Children's Services Unit had expressed a willingness to meet with her to address/resolve any issues of concerns about their actions. The complainant indicated that she was happy to meet with officers from the Children's Services Unit and pursue her complaint with them. As a result, I took no further action.

12. Time's Up (Department of Justice – Fines Recovery Unit)

The complainant in this matter contacted my Office and advised that he had entered into a 'time to pay' agreement with the Fines Recovery Unit with respect to outstanding fines. The agreement was that the complainant would pay off the outstanding fines at a rate of \$20 per week. The complainant had been paying off the fines as per the agreement for approximately 17 weeks, when he was contacted by the Fines Recovery Unit and told that the agreement was no longer valid and if he did not pay the outstanding amount, the Fines Recovery Unit would commence debt recovery processes.

Enquiries by my Office established that pursuant to the *Fines and Penalties (Recovery) Act*, the Fines Recovery Unit are able to enter into time to pay agreements with people with outstanding fines, within certain legislative limits. The Act also allows the Fines Recovery Unit to enter into agreements outside of these limits, when the Director or Deputy Director is satisfied that a person has established that they are unable to pay at the legislated amount.

The Department informed this office that the complainant was contacted by the Fines Recovery Unit as he had incurred a further fine. According to the Fines Recovery Unit the complainant was subsequently advised that \$20 per week was no longer sufficient, however if the complainant believed that he could not afford an increase in his payment, he was able to return a Financial Statement Form. Depending on the Fines Recovery Unit's assessment of the form the complainant would then be advised of whether his payments would increase, stay as they were, or be reduced. The complainant refused to fill out the form, as he believed that it was unfair for the Fines Recovery Unit to no longer honour their previous agreement with him, and complained to this Office. The complainant later paid the further fine in full, submitted a Financial Statement and his payments were then reduced to \$10.00 per week.

The Department submitted to this office that the Fines Recovery Unit did not act unreasonably in this case. Notwithstanding this, the Department implemented changes to the policy and procedures at the Fines Recovery Unit with regard to people who find themselves in a similar position to the complainant. These changes included:

- The Fines Recovery Unit is taking a stricter policy position in terms of entering into time to pay agreements that fall within the legislative guidelines.
- All existing time to pay agreements that do not fall within the legislative limits will not be reviewed and will be allowed to run their course. However, if a



person incurs additional fines/penalties and contacts the Fines Recovery Unit to include the same in a new time to pay agreement, the guidelines will apply, unless the person can satisfy the Fines Recovery Unit that they are unable to pay at this rate.

- Guidelines are being developed by the Fines Recovery Unit with regard to Financial Statement applications.
- The Fines Recovery Unit is in the process of developing a Customer Service Charter.

Although the Fines Recovery Unit may have provided the complainant with a better explanation as to what they were attempting to achieve when they contacted him, the end result was in his favour. In addition, the Fines Recovery Unit had taken steps to avoid a repeat of the situation in the future. As such this Office did not investigate the matter further.

13. I Object!

(Northern Territory Treasury - Racing, Gaming and Licensing)

The complainant contacted my Office and said that some time ago she had successfully objected to a liquor licence being granted to a local shop. The shop had then re-applied for a liquor licence. The complainant wrote another letter of objection but it was not accepted by Racing, Gaming and Licensing (RGL). Further, the letter of objection was forwarded onto the applicant for the licence including the complainant's full address details. The complainant was quite frustrated as she did not understand why the evidence and letters that she helped produce in the first hearing could not be readmitted. The complainant had spoken to various people in RGL but felt she was not getting any further.

The matter initially was referred back to RGL by my Office and it was agreed that RGL would respond to the complainant directly. RGL responded to the complainant and also provided my Office with a copy of the response and a letter explaining RGL's actions. The complainant was contacted by my Office and she advised that although she could not quite understand the legislative arrangements in place, her objection had been accepted and she was satisfied with the result.

The only outstanding issue was the fact that RGL provided the applicant in this matter with the complainant's full address. The complainant did not believe that this was necessary and also believed that this practice may discourage other people from objecting to these types of applications.

When contacted by my Office, RGL advised that the practice of providing applicants with objectors' full address details has been carefully considered by RGL and the Northern Territory Licensing Commission. An applicant is entitled to defend an application by challenging the validity of an objection. Where the validity of an objection relies on section 47F(3)(a) of the *Liquor Act* (i.e. the objector is a person who resides in the neighbourhood), the residential address of that objector forms part of the substance of the objection and must be provided to the applicant in accordance with section 47G of the Act. The provision of an objector's suburb and/or



postcode is insufficient proof of residency. In other circumstances, such as where an objector works in the neighbourhood, a work address is sufficient for this purpose. In other words, RGL determined that the applicant must be able to verify the objector's right to object, (as a "resident of the neighbourhood") and providing only the suburb or postcode is not enough for that purpose. In response to this complaint, however, the Director of RGL advised that all future advertisements for applications for a liquor licence and the response sent by RGL to objectors acknowledging their objection letter, will state that an objector's identity and address will be provided to the applicant.

It was my opinion that the reasons given by RGL for providing applicants of liquor licences full address details of objectors is not unreasonable. RGL also initiated a change to their advertisement to inform potential objectors that their identity and address will be forwarded on to an applicant. As such, I determined not to pursue the matter further.

14. Unfair Policy (Department of Community Development Sport and Cultural Affairs - Territory Housing)

My office received a complaint from a Pre Housing 2003 tenant of Territory Housing, complaining that by participating in a newly introduced Employment Incentive Scheme, it had disadvantaged him financially by effectively increasing rent payable. The complainant, on a Disability pension, was receiving a rental rebate from Territory Housing and paying rent at a rate of 14% of income.

When the complainant obtained employment, the pension was suspended. On ceasing employment a short time later, his pension was reinstated. However, since he had undertaken employment through the Employment Incentive Scheme, under Territory Housing's policy, the rent payable changed to around 23% of income under Territory Housing's Post Housing 2003 rental assessment rates. The complainant objected to this decision, and requested to be reinstated back to Pre Housing 2003 status, where rent payable was 14% of income.

Dissatisfied, the complainant approached his local MLA. Following a review of his case, Territory Housing overturned the decision by applying discretionary powers and reverted the complainant's rent back to Pre-Housing 2003 status, on the basis that the complainant only worked for a three week period, and also because it was unclear if adequate information about the Scheme had been provided to him. However, no further assurances were given and the complainant was advised that future rental rates would increase if the tenant should take up employment under the Employment Incentive Scheme in the future.

In the complainant's opinion, this policy would have adverse financial implications for other tenants in similar situations and seemed to be in direct contradiction to the overall intent of the Scheme, in that it gave no real incentive to find employment. The complainant felt it would be far better for tenants to stay on the pension rather than having their rental status changed and rent increased.



During inquiries by my Office, Territory Housing advised that the Employment Incentive Scheme was introduced to enable clients to obtain employment without being penalised financially, through an immediate increase in rent. The strategy is to gradually transfer all clients from Pre Housing 2003 rent assessments of between 14%-28% to Post Housing 2003 of between 18%-23%, in line with other Territory and State Housing Authorities. Those Pre Housing 2003 tenants who have a change in income type would transfer to a Post 2003 rate, ie. a higher rate.

Meanwhile, Territory Housing advised that it would commence a review of the Employment Incentive Scheme in 2004, taking into account the objections of the complainant and the issues it raised. It also undertook to provide the complainant with detailed information about the scheme, and also details of its internal Two Tiered Administrative Appeals mechanisms currently available for tenants to appeal a decision of Territory Housing, should the tenant wish to use it.

In the circumstances, I did not consider Territory Housing's response to the complainant's concerns were unreasonable. However, I determined to monitor the review of the Employment Incentive Scheme in order to identify whether there was any cause for concern in the Scheme's amendments.

15. A Man Needs his Shed (Department of Community Development Sport and Cultural Affairs - Territory Housing)

A complainant telephoned my Office complaining that his Territory housing dwelling did not have a shed or storeroom and that he had to keep gardening equipment inside his 2 bedroom dwelling. He said that his requests for a shed had been denied. The complainant had also complained that his house required spraying as there were ants and cockroaches.

Attempts to resolve this complaint through the Client Relations Officer of Territory Housing failed and the complainant returned to my Office. He also complained that since his earlier contact, he had been advised that a Territory housing officer would attend his premises, and that no one had yet attended.

During inquiries by my Office, Territory Housing staff advised that there was no funding with which to provide the complainant with a shed at present but that he had been advised he was on a waiting list, that under the lease it was the tenants obligation to spray for pests, and that all of this had been explained to the complainant numerous times. The officer conceded that no written explanation had been provided and also conceded that the Territory Housing officer had not visited the complainant as discussed.

The officer was asked how the situation might be resolved and a suggestion was made that the complainant meet with the Area Manager to discuss the issues and to receive a full explanation. It was suggested that this discussion then be confirmed in writing with the complainant. The complainant agreed to this approach and a



telephone call was later received from the complainant advising that he was now satisfied with the explanation.

16. Tenancy Trouble (Department of Justice - Residential Tenancy Tribunal)

The complainants in this matter contacted my Office and advised that they had been respondents in an application by their former tenant for return of a security deposit before the Residential Tenancy Tribunal. They were aggrieved because the matter had already been heard and determined, and yet they had received a notice advising that the tenant wished to pursue the matter and they were required to attend before the Tribunal again. The complainants explained that their former tenant had damaged their property and stolen goods from the property, and that they had declined to press criminal charges. They perceived that the Tribunal and Consumer Affairs staff were 'on the tenant's side'.

Inquiries made through the Department and the Commissioner's delegate revealed that part of the matter had been called back on due to an administrative error that occurred during the earlier hearing. According to the delegate, the tenant had produced a number of receipts at the hearing as evidence of rent paid in advance which she was seeking to recover. The Delegate told the tenant that he could not see from the receipts that rent had been paid in advance. The tenant was given an opportunity to check the receipts herself. The tenant then withdrew that part of the application. The Delegate said that he had later realised that the receipts showed that the tenant may have paid rent in advance and he was concerned that the Tribunal may have led the tenant into error. He felt that in the interests of fairness the matter should be called back on. He recognised the inconvenience this would cause the complainants and had told them he would accept written submissions.

The above situation was carefully explained to the complainants by my Office and although they were not happy, they accepted the explanation. They were also told that they as landlords could make a counter claim application to the Tribunal for compensation and that they may wish to obtain legal advice in this regard. They were also provided with a contact officer in the Department, as well as details of how to obtain materials designed specifically to assist private landlords.

17. Two Sides To Every Story (Northern Territory Treasury – Racing Gaming Licensing)

The complainant had approached my Office after having his vehicle seized by Police under the restricted area provisions of the *Liquor Act*. A passenger in the vehicle was subsequently charged and found guilty of a liquor related offence which was connected with the seizure of the vehicle in question.

The complainant had previously made an application to the Chairman of the NT Licensing Commission for the release of his vehicle, asserting that he had not been charged or convicted of any liquor related offences and did not have any knowledge of liquor being in his vehicle at the relevant time. Inquiries conducted by my Office



revealed that Police had opposed the release of the vehicle to the complainant and had provided the Chairman with a number of statements by witnesses which clearly indicated that the complainant was involved in the bringing of liquor into a restricted area. Inquiries also revealed that the complainant had been provided with full copies of the statements by those witnesses and he had in fact challenged various aspects of the same. Notwithstanding this, the Chairman, having considered all the material relating to the matter, refused to return the vehicle to the complainant.

Following a meeting between the Chairman and my Office, the Chairman agreed to forward the complainant's file to other members of the NT Licensing Commission for their independent assessment and to provide recommendations to the Chairman. The Chairman subsequently provided my Office with the detailed report prepared by those members, and advised that his intention was to leave his earlier decision unchanged; that is, to not return the vehicle to the complainant. The report found that the Chairman could fairly and safely reach a decision on the balance of probabilities that he could not be satisfied that the complainant was ignorant of alcohol having been brought into the restricted area in his vehicle.

Having carefully considered the report, I was satisfied that the Chairman had properly considered all the relevant information before making his decision. It appeared that his decision was reasonably open to him in the circumstances and was within his powers under the *Liquor Act*.

18. Communications Restored (Department of Justice - Public Trustee)

The complainant's daughter approached my Office after becoming concerned about the way in which the Public Trustee was dealing with a deceased estate. The complainant had a claim on the estate and did not understand why the Public Trustee kept extending the deadline for other potential claimants to make their claim. The complainant was also concerned that the Public Trustee was sending a letter to everyone from a particular Aboriginal community asking them about the distribution of the estate. The complainant lived on an outstation.

As the complainant did not appear to have sought redress from the agency herself, my Office contacted the Public Trustee and asked if he would be would amenable to talking with the complainant directly and answering her questions and addressing any concerns. The Public Trustee was willing to talk with the complainant and her daughter. My office therefore arranged for a teleconference between the complainant, her daughter and the Public Trustee. The complainant was told that she could return to this Office if dissatisfied, however, did not do so.

19. Take the Bus (Department of Infrastructure, Planning and Environment)

The complainant had trouble with his vehicle which had stopped near some traffic lights on University Avenue in Palmerston. The complainant was on his way to work and he pushed his vehicle to the side of the road, which he alleges was not a



clearway. He went to work and then returned to put petrol in the car some 45 minutes later, to find out the vehicle had been towed away.

The complainant contacted the Roads Division of the Department of Infrastructure, Planning and Environment but was unable to resolve his complaint and ascertained that he would have to pay a fee to retrieve his vehicle from the tow shop.

In the course of inquiries conducted by my Office, the Roads Division of the Department, explained that although it was within the Department's ability to decide to have a vehicle towed if it was obstructing traffic and a hazard to public safety, the officer had been a bit overzealous in applying it to this situation. It was decided, in this instance the fee would be waived and the complainant could collect his vehicle with no charge. As such I determined that no further investigation of this matter was necessary.

20. Delay in distribution of an estate (Department of Justice – Public Trustee)

The complainant contacted my Office concerned about the delay on the part of the Public Trustee in the distribution of an estate. The complainant had not formalised her complaint through the Department.

The complainant was advised that, in the first instance, an agency should be afforded an opportunity to resolve a complaint before my Office would consider the issues complained about. However, because there appeared to be a communication problem between the complainant and the Public Trustee's office my Office proposed a meeting with the Public Trustee in order for him to have an opportunity to provide the complainant with an explanation for the delay. The complainant requested that someone from my Office attend the meeting with her in a support role.

This occurred and at the conclusion of the meeting the complainant had been provided with a reasonable explanation for the delay in the distribution of the estate and had each of her additional concerns addressed. I therefore determined that no further action by my Office was required.

21. Double Trouble (Power and Water Corporation)

A consumer complained that a recent electricity bill she had received from Power and Water was incorrect. She claimed that Power and Water had charged her twice for the same quarter based on the manner in which the billing information was presented on her bill. On the face of it, the meter reading details did appear confusing and the supply charge did appear twice on the bill giving the impression that the consumer had been charged twice for the one quarter.

Power and Water explained that the problem was apparently due to the way in which the computer-billing program had incorrectly formatted the statement by splitting the electricity consumption into two components for the same period and by duplicating



the supply charge on the bill. This gave the impression that the charges had been applied twice, when in fact that was not actually the case. Power and Water advised that the problem had since been fixed. Power and Water had written to the consumer explaining the reason and the cause of the problem, apologising for the inconvenience caused and giving an undertaking to review its procedures with a view to ensuring that this did not occur again. However, the consumer was not satisfied with the explanation.

A check of relevant billing records showed that the supply charge had actually been charged once (even though it appeared twice) and the calculation of the total amount of the bill of \$415.46 (based on the actual amount of electricity consumed for the period) had been correctly calculated. As a gesture of goodwill, Power and Water had agreed to "stay" any further recovery action of the outstanding amount while inquiries were being conducted into the matter, thus further extending the due date of the amount of the bill.

On receiving an assurance that the problem had now been fixed and that it was an isolated case, with no other incidents or complaints of this nature received, I advised the consumer who then accepted the outcome. I declined to take any further action in the matter.

22. Jump in my car! **(Department of Infrastructure, Planning and Environment – Motor Vehicle Registry)**

The complainant contacted my Office to raise his concerns in relation to the Motor Vehicle Registry's (MVR's) handling of a number of attempts that he had made to have various vehicles approved for use as a Private Hire Car.

The complainant felt his problems began when, shortly after purchasing the Private Hire Car plates, he sought advice regarding whether or not he could use them on a particular vehicle. The MVR advised him, that at that point in time the vehicle he had identified was not on the 'approved vehicle list', and therefore could not be used as a Private Hire Car. Following this, the complainant then travelled interstate where he purchased another vehicle, and on his return to Darwin he sought the MVR's approval to use this vehicle as Private Hire Car. The MVR again declined the request for approval, this time stating the vehicle was not the top of the range model available at the time of manufacture. Next, the complainant made an application to the MVR to have yet another vehicle assessed and recognised for the purpose of being used as a Private Hire Car. The MVR informed him that this time the suggested vehicle had not met all of the basic entry requirements and hence, once again, was not suitable for use as a Private Hire Car. Due to an apparent lack of suitable vehicles available in the Territory, the complainant again travelled interstate in an attempt to find a vehicle that he could use as a Private Hire Car. While interstate the complainant contacted the MVR to check on the suitability of a vehicle that he believed to be on the approved list of vehicles. The MVR advised him that the vehicle in question was not actually approved as the year of manufacture of that vehicle was different to the one that was considered suitable.



In addition to the above difficulties, the complainant also alleged that on two separate occasions he had witnessed a vehicle, which the MVR had previously advised him was not suitable as a Private Hire Car, operating as a Private Hire Car. Following my inquiries with the Department, it was determined that one of the allegations could not be substantiated, and that the other was based on inaccurate information, therefore the allegations, in my view, did not warrant further action.

In the complaint, it was implied that the rules and regulations relating to Private Hire Car's were inconsistent in nature. Additionally when it came to assessing the suitability, and subsequent approval, of vehicles to be used as a Private Hire Car, it was implied that the staff at the MVR had inconsistently applied the rules and regulations. Following my inquiries I determined that the rules and regulations relating to Private Hire Car's did in fact appear to be consistent, and furthermore there did not appear to be any evidence supporting the inference that staff of the MVR had inconsistently applied the rules and/or regulations relating to Private Hire Cars in this matter.

Notwithstanding the above findings, I noted that in response to my inquiries the Department identified that staff would refer all future inquiries of this nature to their supervisor and/or Manager of Commercial Services, ensuring that all customers are provided with up to date, and consistent advice.

Overall it was my view that the actions of the MVR had been reasonable in the circumstances and that no further action was warranted.

NT CORRECTIONAL SERVICES

1. Overcharging of International Phone Calls

A prisoner contacted my Office through the Prison Telephone System (PTS) and made a complaint that his phone calls to Singapore were being overcharged. The prisoner stated that he had already spoken to the Superintendent regarding his complaint and NT Corrections had made a determination, on the available information, that he was being charged correctly.

I consequently commenced inquiries with NT Corrections and asked that they provide me with a charge listing for phone calls to Singapore from their telephone provider Optus. Once NT Corrections had reviewed this information, it was established that the prisoner was indeed being overcharged for his calls.

NT Corrections subsequently gave an undertaking to audit the phone accounts of all prisoners that had accessed international calls to Singapore, and re-credit those prisoners that had been overcharged for their calls. I was satisfied with this course of action and as such closed my file on the matter.



2. Performance under pressure

A prisoner contacted my Office to advise that he had been charged and consequently received a 'Loss of Privileges' for being unable to produce urine for Drug Testing when requested. The prisoner asserted that he could not urinate in front of Prison Officers for personal reasons. He advised that this has resulted in him being punished, as he cannot produce the urine for testing. The prisoner felt this was unreasonable.

My Office undertook inquiries of NT Corrections, during which it was ascertained that:

- If a prisoner refused or failed to supply a urine sample, it attracted the same penalty as would be imposed for a positive sample;
- That in the first instance, the prisoner had admitted to throwing out his urine sample;
- That NT Corrections had pursued inquiries through the Corrections Medical Service and had found out that they could not provide any information to support the prisoners claim that he was unable to urinate in front of Prison Officer for personal reasons;
- Drug testing by NT Corrections is mandatory and is conducted to the Australian Standard and these tests necessitate two Prison Officers being present to ensure the urine sample is not tampered with.

My inquiries showed that Prison Officers had not acted unreasonably or improperly in the attempted collection of the complainant's sample. In light of this, it appeared that NT Corrections had taken all reasonable steps to investigate the prisoner's concerns, and furthermore the process adopted to collect and test the urine was in accordance with accepted Australia wide practices. As a result, I determined that no further action was warranted.

3. A headache for prisoners

A complaint was referred to my office from the Health and Community Services Complaints Commission. A prisoner had complained to the Commission that prison officers would not dispense panadol to prisoners. Inquiries of NT Correctional Services by my Office revealed that prison officers were refusing to dispense panadol on the advice of the Prison Officers Association. The Association advice was that they may be legally liable in the event that there was an adverse affect on a prisoner's health. It was also revealed that Corrections Medical Services had been attempting to resolve the issue with NT Corrections.

In light of this, I determined that my Office should become involved in this matter with a view to ensuring that the matter was being taken seriously and was being actioned appropriately by NT Correctional Services. My Office was advised that NT Correctional Services would obtain legal advice in relation to prison officers' liability and that if the advice was that prison officers were not liable, then a direction would be made for prison officers to resume dispensing panadol to prisoners. My Office also requested that interim measures be put in place to allow prisoners access to panadol.



NT Correctional Services subsequently requested legal advice and panadol was made available through the Chief Prison Officer as an interim measure. On receipt of the legal advice the NT Correctional Services determined that panadol should be available to prison officers who could then resume dispensing panadol to prisoners without fear of being liable for any adverse reaction the prisoner may suffer. Based on this positive outcome, I determined not to take any further action on the matter.

4. Delayed Re-Action

I received a complaint from a prisoner unhappy with a particular prison Misconduct Policy. The policy required the prisoner to serve out a prison misconduct sentence, which the prisoner had incurred whilst serving a prior prison sentence, but who had been discharged before serving out that sentence. When the prisoner returned to prison on another occasion, he was advised that he was required to serve out the remainder of the misconduct sentence.

Following inquiries, the Department advised that a legal opinion would be sought on the matter. Following receipt of legal advice, the Department advised that a decision had been made to cease this policy with immediate effect. I understand that the legal opinion found that there is no basis to suspend part of a misconduct penalty for an indefinite period of time. The Commissioner issued a memo to the Superintendents of both prisons advising them of this new policy and forwarded a copy to my office for information.

I commended the Commissioner taking prompt and positive action to address this matter. I believed this was a significant initiative, particularly for prisoners who might find themselves in this particular situation. I also suggested to the Department that it might wish to formalise this initiative by incorporating it into the department's Policy Manual.

5. Wacky Words

As a prisoner of Darwin Correctional Centre, the complainant contacted my Office to complain that the Chief Security Officer had confiscated 18 pages of TuPac rap lyrics that he had transcribed from memory. He stated that he had asked both the prison officers and the Superintendent if he could have the pages back, but he had been told that he could not.

Inquiries were commenced by my Office in the hope that the matter could be resolved expeditiously. NT Correctional Services advised my Office that the lyrics contained phrases relating to committing suicide in jail, which raised the concerns of the Chief Security Officer. He provided the pages of writing to the Doctor at the prison for assessment.

I clarified with NT Correctional Services that the pages were in fact rap lyrics from the prisoner's favourite songs and asked that the pages be placed in the prisoner's



property, so that he could have them upon his release. This course of action was agreed to and the prisoner was satisfied with the outcome.

6. Snail Mail

The complainant, a prisoner at the Darwin Correctional Centre, contacted my Office to complain that he was experiencing substantial delays between the time he handed his outgoing mail to the prison staff and the time that the letters were actually being posted. In this regard, the complainant advised me that he had experienced these delays on a number of occasions, when sending both personal and legal letters, and he was particularly concerned about any delays in the sending of his legal letters as some were subject to specific time frames that needed to be adhered to.

As a part of my assessment of this matter I determined that it would be appropriate for me to examine the issues raised by the complainant in the context of the overall effectiveness of the prison mail system. To this extent, I decided to conduct a physical inspection/analysis of the system with a view to firstly identifying and obtaining any and all material related to the specific issues raised by the complainant, and secondly to determine whether it would be feasible, and/or possible, to conduct an audit of the system to ascertain whether or not the concerns raised by the complainant were indicative of broader systemic issues.

Following my inquiries - which included the inspection and subsequent evaluation of the mailing system, as well as a review of the documented policies/procedures - I determined that there was not sufficient evidence/information available to resolve the complainant's issue of complaint, nor was there sufficient information on which to base a meaningful and/or useful audit of the mailing system.

In this respect - whilst not being critical of, or suggesting that there were any evident problems with the system – I came to the conclusion that a few minor improvements to the processes in the mailing system might result in a substantial increase to the transparency and accountability of the system and additionally create the ability to conduct meaningful and useful audits of the system.

As a result of my conclusions, NT Correctional Services acknowledged that there was a need for all administrative processes within NT Correctional Services to be as transparent and accountable as possible. As such an additional step – specifically, that the mail is now date stamped on the day it is received by the prison and additionally on the day that it is posted – has been introduced. This will allow for more accurate information to be obtained and monitored in relation to the amount of time mail spends in the prison's administrative processes, as well as for audit purposes.

7. Protection

A 'protection' prisoner in a Correctional Centre in the Northern Territory complained to my Office that he had been informed that he would have to share his cell with



other inmates, one of whom he believed was serving a life sentence and was mentally unwell.

Subsequent inquiries by my Office indicated that inmates with a security category of “protection” are to be placed in a suitable environment to ensure their protection. There did not seem to be any guarantee of a single cell for prisoners on protection.

NT Correctional Services informed my Office that the complainant was placed in protection as a result of an identified risk. The majority of prisoners on protection are in shared cells and the compatibility of all prisoners sharing cells is assessed prior to cell allocation. There are only two single cells available in the protection block at the Correctional Centre in which the complainant was housed, which are reserved for “At Risk” prisoners and prisoners that require protection from other inmates within protection. As the complainant did not fall within the categories above, his request to be placed in a single cell was not accommodated.

The complainant was seen by the Deputy Superintendent of the Correctional Centre concerned and advised that if he wanted a break from his cellmate, the Superintendent would consider this request and/or the complainant could consider ‘going off’ protection.

Given the above, it was my view that the administrative actions of NT Correctional Services did not seem unreasonable in the circumstances and the matter was closed.

8. Jailhouse Hot

At the beginning of last summer the complainant wrote to my Office regarding the extreme heat in the prisoner accommodation blocks at the Alice Springs Correctional Centre. The substance of his complaints were that the conditions in the dormitories are too hot in the summer. The complainant said that:

- He had been refused permission for a fan on the basis that the power supply to the buildings is not sufficient for this;
- He had been told by the Superintendent that he has applied for funding for air conditioning, but that this may not be installed for a couple of years due to shortage of funds;
- The only ventilation in the cells is 2 louvre type windows, which are inadequate to deal with the heat;
- He believed that temperatures reach 45 to 55C in the dormitories;
- He believed that the sniffer dogs that work at the prison are accommodated in air-conditioning while the prisoners are not given such comfort;
- You had to sleep draped in wet towels, on the floor, to get away from the heat radiating from the back wall of the cell;
- Prison officers have commented on the heat in the buildings when they unlock you of a morning;



I conducted a number of inquiries in relation to this matter. The prison advised my Office that there are no dogs working at the Alice Springs Correctional Centre, and that the issue of air-conditioning for them is therefore not relevant. This resolved this aspect of the complaint. I also considered that the response given by the Superintendent to the prisoner's request to supply and run his own water-cooled fan is not unreasonable in the circumstances.

However, the uncomfortable temperatures inside the prisoner accommodation block in the summer were acknowledged by the NT Correctional Services. They confirmed that an application had been made through the government's major new works program for the provision of evaporative air-conditioning to all prisoner accommodation at the prison, however, NT Correctional Services were not able to give an estimated date of completion at that stage. I was also informed that the following measures had been or were being taken to improve conditions:

- Maintenance on the ventilation system in the dormitories;
- Screens (made of angled slats) on dormitory windows were originally hung upside down, keeping out sun in the winter and attracting sun in the summer. These screens had now been reversed, so that the windows will be more shaded in summer, and allow for sun to enter in the winter;
- Experimentation with large metal screens and reflective paint had been undertaken, to see what impact they have in reducing the effect of the sun on the outside of the buildings. It was determined that the metal screens were the most effective, and these have been constructed around all but one accommodation block, and an application for funding for this to be completed had been made through the minor new works program. A date for completion was unable to be given. Additionally, it was acknowledged that these screens limit the impact of the angled slat screens referred to above, however, NT Correctional Services believed that the metal screens are effective in cooling the buildings.

The effect of these measures will obviously not now be known until next summer, however, I believe that the response of NT Correctional Services to this complaint was comprehensive, and I determined that no further investigation was required by my Office. Furthermore I gave an undertaking that all future complaints of this nature would continue to be monitored.

9. Why me?

An inmate of a Correctional Centre contacted my Office and advised that another inmate had bashed him with a cricket bat. At the time they were housed in the cottages, a low security area of the Centre. Since the alleged assault the inmate had not been allowed back to the cottages even though he was not at fault. He said that he was only sleeping in bed when the assault started. The complainant stated that he had spoken to the Superintendent about the incident and was told that he would be staying in the main zone. The complainant believed that his security rating had also been upgraded as a result of the incident for no apparent reason.



Inquiries by my Office established that the inmate was transferred from the cottages to the Management Zone of the Centre for the purposes of a medical assessment. Once a medical clearance had been obtained, the complainant was transferred back into the cottages. The inmate's security classification had not been affected by the incident. As such I determined that no further investigation into this matter was warranted.

10. Unchain my heart

A prisoner contacted my Office to complain that he could not get approval to use the video conferencing facilities to contact his wife, who was currently incarcerated in a Women's Prison interstate.

During inquiries into this matter, NT Correctional Services advised my Office that the current procedures on the use of the video conferencing facilities only allowed prisoners to receive calls. I was further advised that the complainant had in fact been given approval to receive a call from his wife, however, as the prison she was in had the same procedures as the NT Correctional Centre, they too would only allow her to receive calls.

In light of this catch 22 situation a special exemption was made for the complainant to initiate contact, via the video conferencing facilities, at his expense. The complainant asserted that he could not afford this, so after liaison with the Superintendent of the Women's Prison interstate, it was arranged that the complainant's wife would be granted approval to initiate the contact at her expense - something she was happy to do in the name of love. The first video conference took place successfully and further conferences are scheduled to continue once a fortnight until their release.

11. There's not always something to smile about

A prisoner contacted my Office and complained that NT Correctional Services would not provide him with mouthwash for his gingivitis complaint. The prisoner asserted that although the Visiting Medical Officer had recommended that he use mouthwash, the prison officers had refused his request because they believed the mouthwash might contain alcohol and as such there were other more suitable alternatives available.

Inquiries into this complaint revealed that the Deputy Superintendent had made the decision not to provide the prisoner with mouthwash, on the understanding that the Visiting Medical Officers (ie. the Doctor and the Dentist) had informed the prisoner that there were two common methods to combat gingivitis - the use of mouthwash; or the use of a salt-water solution. NT Correctional Services advised that due to both the expense of mouthwash and the possibility that it might contain alcohol, it was determined that the latter option would be the most appropriate in the circumstances.



My Office subsequently advised the complainant of the result of the inquiries and informed him that the available information tended to suggest that the decision appeared to be reasonable.

The complainant responded to the findings by asserting that he could specifically recall the Visiting Medical Officer recording on his file that "mouthwash was appropriate", and as such the decision to provide him with a salt-water solution was unreasonable. As a result, further inquiries were conducted through the Visiting Medical Officer and a copy of the prisoner's medical/dental records were obtained. The medical/dental records revealed that although it had been noted that the request for mouthwash might have been a reasonable request, it had been determined that it was not specifically necessary. In this regard, I advised the complainant that the actions of NT Correctional Services did not appear to warrant criticism in the circumstances, and as such I would not be further investigating his complaint.

12. Request for Additional Visits Denied

I received a complaint from a prisoner, complaining that NT Correctional Services had refused a request to grant additional visits for the prisoner's partner to visit the prisoner and a complaint of a prison officer slamming the prisoner's cell doors at night, causing a disturbance.

Inquiries showed that it is NT Correctional Services' policy that prisoners be permitted the opportunity to maintain contact and receive visits from family and friends. According to the policy, minimum security-rated prisoners are entitled to have up to two hours of visits per week, with provisions that the Superintendent of the Prison, due to exceptional circumstances, may grant any special or additional visits.

NT Correctional Services advised that the complainant, being minimum-security rated, was therefore entitled to receive a two hour weekly visit. I was also advised that, at a recent meeting with the complainant's partner to discuss the request for additional visits, the partner informed NT Correctional Services that she had now moved to the NT to live for an indefinite period. NT Correctional Services advised that the partner had previously been granted additional visits when living interstate and had travelled to the NT to visit the prisoner.

NT Correctional Services advised that it had been explained to the complainant's partner that by moving to the NT to live indefinitely, the situation had changed, and as such, it was now not considered exceptional or special circumstances. Therefore, the request for additional visits were refused. It is my understanding that some examples of special or exceptional circumstances include death in the family, ill health, compassionate grounds, etc. I did not consider this to be unreasonable and advised the prisoner accordingly.

In relation to the issue of a prisoner's door being slammed, NT Correctional Services advised that staff had been made aware of the need to conduct themselves properly at the prison, especially at night, and no such complaints had been received recently.



When my Office informed the complainant of this, he confirmed that the incidents had indeed stopped and that the prison officer, whom it was first thought had slammed the cell door, was no longer on night duty. In the circumstances, I declined to take any further action.

LOCAL GOVERNMENT COUNCILS

1. Rise & Fall (Palmerston City Council)

An owner of a small shed situated on an industrial property in the Palmerston Municipality was unhappy with the Palmerston City Council's (Council) decision to increase the rates for his shed from \$112 to \$300. The complainant felt that this increase was unjustified and sought my assistance.

When he contacted Council for an explanation, Council explained to him that the *Local Government Act* (the Act) dictated how rates were to be applied. Council advised that the Act restricted Council to applying the same differential rate in the dollar to all properties situated within a specified zone. That is, Council is unable to apply a different rate to individual parcels of land on the same zone whether it be industrial, commercial, strata titled sheds, irrespective of their limited economic value. However, Council advised that the Act did allow Council to waive a ratepayer's rates on the basis of financial hardship, but only if the property was the family home and was not held for investment purposes.

Council informed the complainant that as part of a Council-wide initiative to assist such ratepayers, Councils in the NT had, through their Local Government Association, approached the NT Government and proposed an amendment to the Act to allow Councils the power to set a different rate to specified parcels of land in the same zone and advice was due on the outcome of this approach.

Prior to finalising inquiries, Council informed my office that Councils' approach to the Northern Territory Government to amend the Act had been successful and the Act had been amended. In short, this meant that, as the result of the amendment to the Act, Council could now change the way it applied rates to such ratepayers and charge a different rate for such parcels.

Council advised that it could now charge a separate minimum for small parcels or storage units not intended for residential use in the Municipality of Palmerston. Those located on a single parcel, would be charged a minimum rate of \$158. This was a significant outcome for all owners of these particular types of properties and represented a substantial saving for them.

Council advised that it would contact the ratepayer and provide him with a full explanation of the new rates applicable. On advising my office that he was satisfied



with the situation and after acknowledging this with Council I declined to take any further action in the matter and closed my file.

2. Sink or swim (Litchfield Shire Council)

The complainant raised concerns about the amount of water that was being directed from the local rubbish dump onto his property following earth works at the dump. He advised that since heavy rains, water had gathered in a lake/catchment area that had been made after earthworks at the dump and that water had never collected in such a fashion in the 10 years in which he had lived in the area. He stated that he and his neighbours had rivers and ponds of rubbish dump water flooding their properties. He said that he wrote to the Council asking them to remedy the problem urgently. The complainant did not receive a response so he went to the council and asked them. The Council stated that it was not their problem.

Inquiries by this office established that the complainant's property did flood when excessive rainfall was experienced. However, assurances by the Council, and independent water testing on a number of occasions, indicated that the water was not originating from the dump. Council were aware of the flooding and had attempted to conduct works on other private properties in an effort to alleviate the problem. The efforts were thwarted when landowners refused to give consent for Council to access their properties. Council also advised that when the complainant's property was subdivided, conditions were imposed requesting that the developer installed adequate drains. Council were of the opinion that these conditions were never met.

As a result of the above, the complainant was informed that it was unlikely that the water entering his property was originating from the dump. The complainant was advised to contact the Council and request that it utilised its powers under the *Local Government Act* to gain access to the relevant properties to conduct the necessary works. The complainant was also given sufficient information for an approach to be made to the Development Consent Authority, regarding the original subdivision of his property.

3. It's a dog's life (Alice Springs Town Council)

The complainant approached my Office and stated that when he was arrested by Police and transported to the local police watchhouse, his 2 dogs travelled with him. The complainant said that Council staff then attended at the watchhouse and threatened to shoot his dogs. However, the Police gave him an assurance that his dogs would be placed in safekeeping. When the complainant went to the Council pound to collect his dogs after his release, he was advised that his dogs were not there and never had been. Council later advised the complainant that his dogs had been destroyed.



Inquiries by my Office revealed that the Council had on another occasion been requested by Police to impound the complainant's dogs because they had bitten someone causing injuries that required hospital treatment. At that time, Council impounded the dogs and advised the complainant that his dogs were considered dangerous and if his dogs were found in a public place anytime in the future they would be destroyed. Whilst the dogs were impounded the complainant requested that he be allowed to exercise the dogs to which the Council agreed, however, on doing so the complainant did not return the dogs to the pound.

A few weeks' later Council staff were requested by Police to attend at the Police station and collect 2 dogs. The complainant and his 2 dogs were in the back of a Police vehicle and Council staff were advised by Police that the dogs had again been biting people. Council staff advised the complainant that his dogs would be destroyed and provided the reasons why. After speaking to Police the complainant placed his dogs in the Council vehicle. A short time later the dogs were destroyed.

The complainant was advised that having regard for all the available information I was satisfied that the Council acted in accordance with the relevant By-Laws. Furthermore, I was of the view that it was reasonable in the circumstances for Council staff to form the view that the complainant's dogs were injurious to the health of the community and behaved repeatedly in a manner contrary to the general interest of the community. I noted that it was Police that assured the complainant that his dogs would be placed in safekeeping, however, the Council staff informed him of the actions that they would take and the reasons why they chose that course of action.

4. Council enhances service to rate payers (Darwin City Council)

A property owner complained that Council wrongly increased the general rates payable on her property, then refused to refund the full amount allegedly overcharged after agreeing to revert to the initial rate.

Consideration of the complaint hinged on the inspection of the property and the subsequent assessment as to whether the property contained one or two Residential Units. A Residential Unit is defined in the *Local Government Act* as being a dwelling, house, flat or other substantially self-contained residential unit. The calculation of general rates includes consideration of the number of Residential Units on a property. The definition of "self-contained residential unit" also required some consideration. The complainant was aggrieved that Council apparently took the word of a tenant that her property consisted of two Residential Units and that it failed to notify her of the proposed rate increase or give her any reason for the increase. She was further aggrieved that Council did not accept that she had queried the rate increase at an early stage and that it relied on the 6 months statutory limitation to refuse to consider her request for a refund of allegedly overcharged rates.



My Office was unable to assist the two parties to reach agreement as to the actual status of the property in the period in question and thus was unable to obtain any refund for the complainant.

However, Council responded positively to my recommendations that ratepayers – ie owners of the property – be given prior written notice of a proposed inspection of a property to assess its status and also be given notice of a proposed increase in rates as a result of reassessment of the property's status.

Council advised that it does now provide a courtesy letter to ratepayers prior to an officer conducting an inspection of their property for the purpose of assessing the rating criteria. In addition, it now provides notice of the assessment and invites the ratepayer to forward any objections to the Revenue Section. It also attaches an electronic copy of the advice of change in rate to the property assessment record, to ensure the information is readily accessible.

I also recommended that Council develop guidelines to assist Council officers in assessing whether or not a property is considered to be self-contained, as this term would appear to be open to interpretation. Council advised that it is seeking legal opinion on how best to implement this recommendation. It considered that the spirit of the current legislation is to capture additional dwellings constructed with the intention of being tenanted on a commercial basis, as opposed to those providing respite/independence for members of the owner's family. However it advised that formulating guidelines to capture the spirit of the legislation is problematic.

I am most interested to hear the outcome of this matter, with the expectation that improved guidelines will assist in avoiding disputes over general rate re-assessments.

NT POLICE FORCE

1. A Grand Finale

The complainant alleged that a police officer assaulted him in the police cells after he was apprehended for protective custody on Football Grand Final Day. It later became apparent that the complainant was also incensed by the same officer's decision to ban him from the local Social Club for a year, allegedly as a result of his behaviour on Grand Final Day.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). During the course of the investigation, the complainant made a further complaint about the same police officer, alleging that the officer had threatened to arrest him if he ever went to Darwin. The complainant also claimed that the same officer had since arrested him for protective custody when he was not in fact intoxicated.



After a lengthy investigation, which involved 28 interviews, the JRC determined that the complainant had sustained a cut to his eye during a period of custody at the police cells. The JRC was not of the view that the injury occurred as a result of a deliberate assault by the police officer. The JRC did, however, determine that the same police officer had subsequently banned the complainant from the Social Club, in retaliation for the complainant lodging a complaint against police. Police commenced disciplinary proceedings and the police officer was charged with improper conduct.

The JRC also determined that the complainant had been arrested for protective custody when he was not in fact intoxicated. However, the arresting officers had been called to a disturbance and upon arrival, made an assessment that the complainant was intoxicated. Later, when police spoke to the complainant in the cells, they made a further assessment that he was not intoxicated and subsequently released him from custody. The JRC was not prepared to make an adverse finding against the police officers in respect of this issue of complaint.

The JRC also determined that the previously mentioned police officer had made threats against the complainant by threatening to misuse his power of arrest. Police commenced disciplinary proceedings and the police officer was again charged with improper conduct.

Additional issues highlighted during the investigation included the failure of the Officer in Charge (OIC) to properly supervise other members and ensure that the Cell Standard Operating Procedures and Custody Manual were adhered to. In addition, the JRC was of the view that the OIC had failed to ensure that the relevant videotapes relating to the complainant's period in custody were seized. The JRC recommended that these matters be brought to the attention of the OIC and that the OIC be disciplined appropriately.

The complaint also prompted a review of the Cell Standard Operating Procedures and the procedures relating to the closed circuit television cameras in the cells. The Commissioner of Police also advised me that the NT Licensing Commission is reviewing the practice of police banning people from social clubs as part of the formulation of the relevant Liquor Management Plan.

2. Joining Forces

My Office received a complaint about aspects of an investigation that Police had conducted into the alleged sexual assault of the complainant's under-aged daughter by a number of visiting US Navy defence personnel.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC) and as a result, a number of general procedural and communication issues raised during the investigation were identified and addressed.



Although the overall JRC investigation found that no disciplinary action should be instigated against any NT Police officer, it resulted in improvements to communication procedures between the NT Police and visiting foreign defence forces.

In the main, the JRC found that the NT Police investigation had been unduly delayed by the lack of effective lines of communication between Police and the visiting defence forces Navy Criminal Investigative Service (NCIS). The JRC also found that the NT Police Sexual Crimes Unit was significantly under resourced during its investigating of this matter and that Police had failed to keep the complainant adequately informed as to the progress of the investigation, due largely to a lack of Police resources. However, the JRC noted that practical steps had been undertaken by the government to address the resourcing issue, as a whole.

Following the JRC investigation, I wrote to the Commissioner, recommending that appropriate action be taken to ensure that victims of crime are kept informed of progress on their case through regular monthly contact from their investigating officer and that CIB practices with respect to regular contact with complainants be reviewed. Police advised that its Major Crime Section were developing protocols relating to victims of crime. The protocols were to include the need to provide regular contact with a complainant/victim of crime and were to form part of the Business Plan for the section.

I also recommended to the Commissioner that the lines of communication between NT Police and the NCIS be addressed at an appropriate level. In the interim, I recommended that an instruction be issued to Police advising of the procedure to be followed, when it becomes necessary to identify visiting foreign defence force personnel as witnesses or suspects in an investigation. Given the large and transient presence of foreign defence forces personnel visiting Darwin, consideration should be given to developing appropriate lines of communication with the respective arms of all such defence forces.

Police advised that although CIB did have an informal liaison with the NCIS, this had now been formalised. A Security and Intelligence Unit of the Crime Intelligence Section (CIS) had been put in place, with a dedicated member allocated responsibility for coordinating liaison between officers of visiting navy ships from foreign countries visiting Darwin. In cases where there are dedicated security officers such as the NCIS, the CIS member coordinates liaison with the member of NT Police before, during, and after the visit.

I considered that the explanation and the arrangements that had been put in place were sufficient and after advising the complainant of the outcome, I declined to take any further action in the matter.



3. Red Hot Chilli Peppers

A man complained that police had sprayed his 13-year-old daughter with Capsicum Spray, hit her on the back and pushed her against a wall where she almost blacked out. The alleged incident occurred when police were called out one night to remove an unruly person from a local hotel. While he was being removed, a large angry crowd had gathered and objected to the removal of the person.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The overall investigation revealed that due to the lack of clear evidence and differing versions of the incident, it could not be conclusively established whether the girl had been hit on the back and pushed against the wall. However, the investigation established that the girl had indeed been sprayed with Capsicum Spray. This then raised the important issue of whether the use of Capsicum Spray on the girl was appropriate in the circumstances.

According to NT Police General Orders, Capsicum Spray may only be used in certain circumstances, essentially, in self-defence to protect Police and other persons from physical injury. Only officers holding current Operational Safety & Tactics Training and First Aid qualifications are authorised to use Capsicum Spray. Police considered their use of Capsicum Spray was justified to prevent injury to themselves and other persons.

The investigation found that, given the differing versions of events and the lack of a clear statement from the girl, the issue of whether the use of Capsicum Spray on her was justified in the circumstances remained unresolved.

The investigation also raised another important issue of concern regarding the lack of evidence that police had obtained from the complainant's daughter. The girl was interviewed in the presence of her grandfather, who was present to support her at the interview. Her record of interview was difficult to follow, possibly due to her age, being of non-English speaking background and Indigenous origin. Given the graveness of the allegations, the evidence of the girl was considered to be of key importance in the matter. However, the lack of clarity of her statement diminished the value of her evidence and made it difficult to come to a firm finding in the matter.

The JRC considered that it would have been appropriate at the time for the police investigation officer who interviewed the girl, to have considered the use of an independent interpreter. The JRC were also of the view that, had the girl's grandfather been advised that he could take a more active role in assisting the girl with her statement, the problems encountered above with her statement might not have arisen.

The JRC recommended that it be brought to the attention of the police investigation officer that the use of an interpreter be considered in future for such interviews. It also recommended that where a person is present to support a juvenile being



interviewed by police, then that person should be made to understand their role and informed of their right to intervene on the juvenile's behalf.

The recommendations were put to the investigation officer and were accepted. Given the positive outcome resulting in an improvement to police procedures, I declined to take any further action in the matter.

4. I Want My Money!

The complainant reported that in 1997, police had seized an amount of cash belonging to him. The charges relating to the seized cash were later withdrawn and it was recommended that the money be returned to the complainant. The complainant asserted that the amount of cash paid to him was incorrect and he was entitled to have the full amount of the money seized paid to him. The complainant also reported that a vehicle seized by police around the same time was unable to be located.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The investigation revealed that an amount of cash was erroneously paid to the complainant. The JRC noted that police apologised for the error and the complainant accepted the apology. The error occurred because police confused the money seized from the complainant with other cash that was seized from another person on the same day. Members of the Drug Enforcement Unit had contemporaneously executed two search warrants and seized cash from two different people, one of them being the complainant.

However, the complaint highlighted an irregularity regarding police exhibits procedures, in that it was unlikely the error would have been made if correct procedures had been followed. The *Crimes (Forfeiture of Proceeds) Act* states that where property is seized and no person is subsequently charged with an offence in relation to the property within 7 days, then unless a forfeiture order is made in respect of the property, the property must be returned to the person from whom it was seized. The JRC noted that no charge was ever instigated against the other person from whom the cash had been seized and therefore the cash should have been returned to that person. Instead, police retained the money for several years and mistakenly paid it to the complainant instead.

Police General Orders state that a member who seizes and records property in the Exhibits Book is responsible for ensuring the proper acquittal of such property. However, the JRC noted that the members responsible for the seizure were no longer members of the Police Force and therefore no further action could be taken. The JRC did recommend, however, that procedures in relation to property seized under the *Crimes (Forfeiture of Proceeds) Act* be reviewed and that, if possible an alert is placed on the relevant computer system to ensure that property seized under the Act is managed in compliance with the Act. In addition, the JRC recommended that police conduct an audit of all property, which was seized under the Crimes



(Forfeiture of Proceeds) Act, to determine whether all such property is being held in compliance with the Act.

In relation to the seized vehicle, the JRC noted that police did try to return the vehicle to the complainant and had signed the vehicle over to an authorised person. However, the vehicle was found to be 'hemmed in' and was not able to be removed that day. The authorised person did not return to collect it. Therefore, any police officer that looked at the Exhibit Book would have reasonably believed that the vehicle had been signed for and was no longer in police custody. This might have accounted for the complainant being told that the vehicle could not be found, but did not explain why an audit of seized vehicles did not highlight the matter. The JRC recommended that the audit procedures relating to seized vehicles be reviewed.

After reviewing the circumstances that led to this complaint and other complaints involving property management issues, Police advised that it became apparent that they were symptomatic of a wider problem that existed in relation to the Police's storage, safekeeping, auditing and return of property coming into its possession. As a result, the Police 'Audit and Risk Assessment Committee' approved the terms of reference to review the storage of exhibits and other property. The committee also agreed to develop terms of reference to undertake a further review of the management of accounting for property held in police custody, with particular emphasis on effective auditing practices that meet any legislative or regulatory requirements and ensure the timely return of property. By doing so, police advised that effective policies and procedures will be implemented to improve the overall effectiveness of police property management practices. Given the positive outcome achieved in this matter, I declined to take any further action in the matter.

5. Wild 'n' Wiley

The complainant in this matter lived next door to a Police officer. One night the complainant was intoxicated and was causing a ruckus. Another neighbour telephoned Police to say that they could hear screaming coming from the complainant's house. Police attended the house and the situation quickly deteriorated with Police and the complainant becoming involved in a violent struggle. The complainant was arrested on suspicion of firearm offences. Later at the Watchhouse it became apparent that the complainant required medical attention for a leg injury sustained during his struggle with Police. Police took the complainant to the hospital.

The complaint made to my Office included allegations of assault and conducting a search without a warrant. The complainant was also upset at comments that Police had made about his choice of magazines and alleged that he had not received prompt medical treatment. The complainant was particularly concerned that his next door neighbour, the Police officer, had caused the events in question.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The



investigation found all of the complaints to be unsubstantiated except for the allegation about inappropriate comments by Police officers. Recommendations were made accordingly. There was no evidence that the man's neighbour instigated Police action on the night in question. Rather, the investigation showed that Police were responding to a legitimate complaint by another inhabitant of the street. The evidence showed that the complainant was out of control and had put up a violent struggle when Police attempted to apprehend him, as officers in question held genuine fears for their own safety. After advising the complainant of the outcome, I did not take any further action in the matter.

6. Media Madness

I received a complaint from a local newspaper editor. While at work, the complainant was telephoned by a man who said he lived at a specified address, and who said *"I don't want that rag near my place again. I buy my toilet paper at the supermarket. I am a police officer involved in the (.....) incident, (which had been reported in the newspaper)."* The complainant said he immediately made a note of the detail of the call. The complaint was that he should not have been spoken to by a police officer in that manner.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC noted that much of the surrounding facts as stated, in that on a certain date in 2003:

- A police officer (who was off-duty at the time) made a telephone call to the newspaper and the complainant answered the call.
- The police officer did not give his name, but gave his address, and he requested that his subscription to the newspaper be cancelled.
- He was informed that the newspaper does not have subscriptions, but a delivery system.
- The police officer asked that the delivery to his house be stopped.
- The complainant asked the police officer why he wanted the delivery stopped and he replied that he bought his toilet paper from the supermarket and that he did not need it delivered.

The police officer denied that he identified himself as a police officer or that he referred directly to a particular incident. The police officer claimed that the complainant asked him why he wanted delivery stopped, to which he replied that he bought his toilet paper from the supermarket. He said he was asked whether there were any specific articles in the paper which had upset him, to which he replied, *"the incidents with the (.....) and other police bashing type reporting"*.

Neither party's conversation was overheard by anyone else. The JRC concluded that the police officer did make the comments as outlined in the complainant's note, however, the police officer gave his reason for wanting the newspaper delivery stopped only after the complainant asked him why.



The JRC concluded that in identifying himself as a police officer and speaking in this way, the officer may have breached section 14 of the NT Police Code of Conduct, which states that:

PRIVATE CONDUCT: Your conduct off duty is of concern if it brings, or has the potential to bring, discredit to the Police Force or adversely affect your job performance, especially in small communities.”

The JRC was therefore of the opinion that the police officer’s actions had the potential to bring discredit to the Police Force and therefore, the complaint was substantiated. The JRC was also of the opinion that in the context that the officer’s response was drawn out of him, his transgression of section 14 was relatively minor.

The JRC recommended that the police officer be counselled about his obligations as regards section 14. The complainant was advised of the outcome. On being satisfied with the outcome, I took no further action in the matter.

7. Street Beat

Police had cause to have dealings with a group of juveniles on a suburban street one evening. The incident escalated to the extent that police considered one female juvenile to be out of control and liable to hurt herself. She was placed in the rear of the police van and taken to her parents’ home, where she subsequently attempted to harm herself. She also had a fractured bone in her arm, which police were not aware of at the time when they tried to subdue her. These circumstances were highly unfortunate, however, Police actions were generally considered to have been reasonable during the incident.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC gave consideration to the lawfulness of police actions in detaining the juvenile, since they were not placing her under arrest nor were they clearly acting in accordance with the welfare provisions of the *Community Welfare Act*. That Act permits police to take a juvenile into custody to protect their welfare in certain situations, however, the action in this instance would not appear to have been authorised by that Act.

The police officers were, however, clearly attempting to meet their duty of care to take action to ensure the safety of a person who they had reason to believe was in danger of causing harm to herself. The police officers clearly believed that the welfare of the juvenile would be best ensured by the actions they took and the JRC considered that their actions did indeed meet their duty of care.

Consequently, no recommendations were made regarding disciplinary action.

Nevertheless, the actions of the Police Officers were under question because none of the legislation which authorises Police action deals adequately with the specific actions of police in this instance. In this respect I welcomed the review of the



Juvenile Justice Act, which I am participating in and which is also expected to include consideration of this matter.

8. Skating on Thin Ice.

The complainant (a juvenile) was skateboarding in a Mall one afternoon. He was standing with his foot on his skateboard when he saw a man walking straight towards him. He grabbed his board and tried to get out of the way. The man then walked into him and elbowed him in the chest. This caused him to lose his balance and stagger backwards several paces. His friend told him that the man was an off duty police officer who had been involved in an incident with the complainant and his friends in the Mall, two weeks earlier. The complainant and his friends then ran after the man, demanding to know why he had hit the complainant. The man then pushed one of the complainant's friends out of the way and walked off.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The accounts of the complainant and his friends about what happened were very similar. There was a conflict in the evidence as to who lined up whom for the collision. However, the man (who was indeed an off duty Police Officer) admitted he knew he was heading straight towards the complainant and did nothing to prevent the collision and raised his elbow to take the blow. The Police Officer said he heard a cry of recognition from the youths just before the collision.

The Police Officer felt very strongly about the earlier incident in the Mall. It seemed likely that there was some pre-existing resentment towards each other on this day.

The JRC found that the Police Officer deliberately engaged with the complainant in an action, which he knew would result in a collision between them and the complainant's fall/loss of balance. However, as he was off duty, he was therefore, only subject to Section 14 of the NT Police Code of Conduct, which states:

PRIVATE CONDUCT: Your conduct off duty is of concern if it brings, or has the potential to bring discredit to the Police Force or adversely affect your job performance, especially in small communities.

The JRC noted that this part of the Code is a guideline only and relies for its application on common sense. It was wrong for the Police Officer to allow his personal views to affect his off-duty behaviour in this way, notwithstanding that he felt provoked. It is also appropriate to look at the incident in the context of how serious/minor his actions were and their potential to bring discredit to the Police Force.

The JRC concluded that the Police Officer's actions had the potential to bring discredit to the Police Force, but in a relatively minor way and the complaint was substantiated. The JRC recommended that the officer be counselled about not repeating this sort of conduct and his duty under section 14 of the Code of Conduct.



9. Fire Fight

One night the complainant and several friends were driving in a vehicle past a local Town Council lawns, when they saw fireworks being set off. They turned their vehicle around and saw what they thought was a fight so they pulled up on the side of the road next to where the fight was taking place. From this position they saw a male person on the ground surrounded by Police, and a female Police Officer hitting this person across the legs with a baton. There was another Police Officer kneeling on the person's back. They then saw a third Police Officer grab the person's head and punch him at least eight times. They heard the person on the ground yelling out and saw blood on his face. The complainant started to yell out to Police to stop which resulted in one Police Officer telling him and the friends he was with, to "f..k off". After walking back to the car, the complainant saw Police pick the person up and throw him into the back of a Police wagon.

A short time later the complainant and friends attended the front counter of the Police Station to complain about what they had witnessed. The person behind the counter was unable to assist and a senior male Police Officer attended the counter. This Officer was alleged to have said that *"if this is about the incident at (.....), I don't have time to deal with this s..t. We're busy doing other stuff. Come back tomorrow"*. The complainant requested this Officer's name and asked him if they were to come back and see him again the next day. However the Officer left without replying.

The issues of complaint were firstly that the treatment by Police of the person the complainant saw on the ground, was excessive. Secondly, the complainant was told to "f..k off" by a female Police Officer on the scene. Thirdly, the complainant's report to the Police Officer at the front counter of the Police station was not handled correctly and the officer was rude.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). In relation to the first issue, the complainant was advised that the incident involving the person whom the complainant saw on the ground, was the subject of a separate JRC investigation, initiated by the person involved in the incident, and as such was not commented on within the JRC's report.

Regarding the second issue, the female officer admitted swearing at the complainant and added that the situation was very tense and she was fearful that the complainant and friends would join the fight, causing further trouble. The JRC recommended that a written apology be furnished to the complainant regarding the swearing and noted that the officer had been counselled about using appropriate language in future.

As for the third issue of complaint, the Police Officer at the Police Station said that the situation that night was very stressful as he had the injured man to deal with and two of his Officers were also injured. He simply had no time to deal with the complaint and did ask them to come back. He could not delegate the taking of the complaint as every available officer was tied up with the incident. He does not



remember swearing, but says he may have. The JRC concluded that, although the general orders in relation to taking police complaints required the officer to facilitate the taking of the complaint, it was not required that the matter be dealt with immediately and therefore, there was no breach of the orders in this instance. As such, the JRC felt that in all the circumstances, no further action need be taken against that Officer.

10. Disappearing Act

A 16-year-old teenager escaped from a Police Watchhouse while on remand. He was subsequently apprehended by Police and during the arrest it is alleged that two Police Officers grabbed the complainant and tried to force him to the ground. It is then alleged that in the process, one of the Police Officers kicked the complainant with his knee while the other tried to trip him. The complainant states that he was then struck on the back of the head by one of the Police Officers, which caused a cut to his head, causing it to bleed. A relation of the complainant was also present at the time. She alleged that she saw the Police Officer strike the complainant on the back of the head with a torch.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC found that the police investigation into this complaint was deficient in that the torches of the arresting officers were not seized at the outset and this lengthy delay ruled out any possibility of gaining meaningful evidence from them. The JRC found that the complainant was struck on the back of the head with an object such as a torch (whether by deliberate act or otherwise) during the course of his struggle with the police. To this extent the complaint was substantiated. However, the question as to whether or not the complainant was deliberately struck, and, if so, who it was that struck him, remained unresolved.

Despite the fact that there were some deficiencies in the police investigation of the complaint, the JRC was of the view that further investigation would be unlikely to resolve these issues.

The JRC found that there was no evidence to support the allegation that the complainant was “kneed” by police during the incident, although it was possible that a knee could have come into contact with the complainant during the attempt by police to trip him over.

After reviewing the investigation of the complaint, the JRC was also concerned to note that Police at the Watchhouse had apparently failed to record the fact that the complainant was bleeding from the head when he was received at the Watchhouse. It is a fundamental tenet of police responsibility that police officers owe a duty of care to persons in their custody.



The JRC recommended that all of the police members involved with the complainant in the Watchhouse be counselled in relation to their duty of care towards persons in custody and in relation to the specific requirements of the Police Custody Manual. On being satisfied with the action taken, I declined to take any further action in the matter.

11. Crowded House

During a routine police vehicle patrol, two Police Officers noticed a group of people congregated near a local business. The group was asked by Police to move on, however, several members of the group declined to do so. Police identified two members of the group to be in need of protective custody due to the level of their intoxication and as a result, police attempted to apprehend them. However, the two members of the group who are the complainants in this matter, resisted Police attempts to take them into custody. The Police members called for Police back up which resulted in a further two Police members attending the scene. After a further scuffle, the complainants were eventually apprehended, placed in the rear of the police vehicle and transported to the police station watch-house. Approximately 5 ½ hours later, the complainants were released from protective custody and one of the complainants was transported to the local hospital to have an injury to his eye checked. According to the Police Watchhouse records, the injury had occurred as a result of a fall whilst the complainant was in the Police Watchhouse.

Some time after the complainants' release from custody, the complainants approached the local aboriginal legal aid service, which lodged a complaint against police on their behalf. One complainant alleged that:

- he had been unlawfully apprehended as he was not intoxicated to the extent that justified him being placed in custody;
- he was assaulted by Police in that after being placed in the cage of the Police vehicle, on the drive back to the cells, the Police vehicle drove erratically and the driver of the Police vehicle purposefully applied the brakes, which caused him to fly through the cage and bash his head inside the cage, causing a deep gash above his right eye; and
- he did not receive any medical treatment until about 5-½ hrs after the injury was caused, when he was taken to the hospital where he received stitches above the eye.

The second complainant alleged that he was assaulted by Police through excessive and unnecessary force being used during his arrest in that his arm was twisted up behind his back which caused great pain; whilst struggling on the ground with Police, his head was banged or dragged on the ground causing abrasions and areas of skin to be scraped off his face; when he was placed in the caged area of the Police vehicle, his head was banged on the cage.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).



With respect as to whether the first complainant was subject to an unlawful apprehension by police as he was not intoxicated to the extent that justified him being placed in protective custody, the Police members involved in the incident each had a differing recollection as to just how intoxicated the complainant was – this ranged from that he “*was probably able to walk home on the day*” to ‘*full drunk*’. Given the differing versions of the level of the complainant’s intoxication and the fact that an assessment of intoxication as in whether a person is ‘seriously affected’ is subjective, the JRC was unable to come to any conclusion about the allegation and found that the issue must remain unresolved.

In relation to the second aspect of the complaint, the JRC found that the complainant’s allegation that he was assaulted by Police in that after being placed in the cage of the police vehicle, on the drive back to the cells, the police vehicle drove erratically and the driver of the police vehicle purposefully applied the brakes, which caused him to fly through the cage and bash his head inside the cage, causing a deep gash above his right eye, to be sustained. The JRC noted the advice provided by PRD that a criminal investigation was also conducted into the alleged assault and as a result, the Police Officer driving the vehicle was charged with two counts of aggravated assault. Disciplinary charges had also been laid against the Officer concerned.

Of further concern to the JRC was that the facts of the matter indicated that the complainant did not obtain medical treatment for the injury to above his eyebrow until some 5 hours later. This lack of the provision of medical treatment to an obvious injury was contrary to the procedures set out in the Custody Manual and as a result, the senior Officer involved was also subjected to disciplinary procedures.

With respect to the second complainant, the JRC determined that the injuries he obtained were gained as a result of his resisting arrest. The JRC therefore found that this allegation was not sustained.

12. Untimely Investigation

A man complained to me about police inaction in investigating a traffic matter. He stated that he was knocked off his bicycle one day in November 2001 by a vehicle driven by a young woman. There were passengers in the vehicle. The driver stopped the vehicle, backed up a short distance and then drove off. The complainant received minor injuries in the accident and sustained damage to his bicycle. Police asked him to provide a statement in December 2001, but he was unable to get to the station until January 2002.

On not hearing anything further from police he decided to ring and find out what was going on. He was concerned that a failure to prosecute may affect his right to make a claim under the *Motor Accidents Compensation Act* for personal injury and also his right to sue for civil damage. He also thought that if the driver was successfully prosecuted, the Magistrate might make a restitution order against the driver for the damage to the bicycle. When he spoke to the Police Officer responsible for the investigation of the matter, he said the matter would not be going to court because



the time limit for prosecution had run out. The Police Officer also told him to forget about the matter because he (the complainant) had a break and enter charge against him.

It was decided that this matter should be dealt with under the Minor Complaints Resolution Process (MCRP). A Senior Sergeant attempted to meet with the complainant to conciliate the situation, but the complainant was not amenable to this course. As the matter remained unresolved, it was then referred to the Joint Review Committee (JRC) for review. The JRC examined the police computer records of the investigation and the response of the officer to the complaint.

The JRC found that a substantial amount of work had been done in investigating the matter. However, there had been significant delays, which meant that the six-month time limit for prosecution of offences under the *Traffic Act* had expired. The first delay of one month was in identifying the station responsible for conducting the investigation, since the accident happened in one locality and the car was registered to someone who lived in another locality. There was another period of four weeks when nothing was actioned and for which there was no explanation except that the whereabouts of the driver was not known.

Another period of over a month was lost when the responsible officer went on leave and the case was not reassigned to another officer. In the final fortnight, the whereabouts of the driver was known, but she was not interviewed until the day before the time limit ran out, and where she made full admissions. When closing the investigation, the officer recorded in the police computer system that there was insufficient evidence to prosecute.

In its report to the JRC, the Professional Responsibility Division (PRD) of NT Police advised that in relation to the first delay, it had already undertaken to revise Police procedures for assigning cases, to avoid a recurrence of this type of situation. The responsible officer advised that in his contact with the complainant, he made referrals to VOCAL and MACA and Legal Aid regarding his damages and injuries and denied telling the complainant to forget about the matter.

The JRC found that the complaint about being told to forget about the matter could not be resolved as there was insufficient evidence to substantiate the claim one way or the other. It recommended that the responsible investigating officer be spoken to about his responsibilities in conducting and finalising investigations. It also recommended that the Assistant Commissioner, Operations Command, be notified of the detail of the matter and a request be made that he send a memorandum to all supervisors reminding them of their responsibilities in ensuring that subordinate officers' cases are dealt with in a timely manner. As these recommendations were actioned and the complainant was advised of the outcome, I declined to take any further action.



13. Get it Right!

The complainant lodged a complaint with Police after an incident occurred while she was on a work-related visit to a regional area. The complainant stated that she had observed a publican manhandling an aboriginal man and went over to see what was going on. Police attended at the scene and the complainant was asked to move on. When the complainant did not move on, a Police Officer threatened to charge the complainant with failing to cease to loiter.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC found that the Police Officer had acted inappropriately and did not display a clear understanding of the loitering provisions of the *Summary Offences Act*. As the Officer was on probation at the time of the incident, the JRC recommended that the Officer receive formal counselling on the recommendation of the JRC.

14. Not Without My Mum

The complainant, a minor, and his mother approached my Office to voice concerns about the conduct of an Aboriginal Community Police Officer towards the complainant while he had been out riding his bicycle. It was alleged that the Officer - who was in a police vehicle with other officers at the relevant time - had threatened the complainant as a result of having lodged a previous complaint against Police.

Given the seriousness of the allegation, a detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The investigation involved interviewing all officers who had been in contact with the complainant on the relevant day. It also included interviewing the complainant's friend who had allegedly witnessed the events in questions.

Having carefully considered all the available evidence, the JRC noted that the versions of events clearly differed, and that there was a lack of independent evidence. As a result, it was of the view that the complainant's allegations were unresolved.

Notwithstanding this finding, the JRC did raise one particular concern arising from its review of the Police investigation into the complaint: the JRC discovered that during the recorded interview with the complainant and his mother, the investigating Officer had indicated that there was a possibility of dealing with the complaint through some form of conciliation. This gave the JRC cause for concern in that the comments tended to suggest that the Officer did not treat the complainant's allegations with the level of seriousness required in such instances. Indeed, the complaint was very serious as it alleged that police had taken retaliatory action against the complainant as a direct consequence of him having lodged a previous complaint.



Accordingly, the JRC was of the view that the investigating Officer's comments were not appropriate in the context of a formal interview as part of his investigation into the complaint. In addition, the comments did not display to the complainant, or to his mother, the level of seriousness with which my Office and Police view and treat allegations of this nature. Indeed, the comments tended to misrepresent the JRC process.

As a result, the JRC recommended that appropriate action be taken by the Commissioner of Police to ensure that it did not occur in the future. I was pleased to note that shortly after, the Police advised me that it had taken the necessary action, and I was satisfied that my involvement in the matter was no longer required.

15. Rough Stuff

A complainant alleged that a Police Officer assaulted a juvenile by grabbing him by the shirt in a rough manner in circumstances where all the juvenile was trying to do was stop two boys fighting. The complainant, the juvenile's father alleged that there was no reason for the Police Officer to believe that his son had committed any criminal offence which would justify the power of arrest being exercised. The complaint therefore was that the actions of the Police Officer were unjustifiable and unlawful.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC found that the actions of the Police Officer in placing the juvenile in the cage of the police van to be ill considered and unjustified and to that extent, the JRC sustained the complaint. The JRC noted that disciplinary action had been taken against the Police Officer and considered that no further action was warranted.

16. Aches and Pains

The complainant attended a local Police Station and complained about an incident that occurred a few days before at the rear of a remote community Police Station. He alleged that a Police Officer swore at him and he in turn retaliated, whereupon the Police Officer became angry, lost his temper and struck the complainant on the right side of his abdomen, causing a bruise. The complainant then stated that he retaliated by punching the Police Officer.

As a result of this assault the complainant was placed in the Police cells where he alleged that he developed chest pains. After being seen at the local health clinic he was evacuated to hospital for treatment. The following day the complainant further alleged that he received an anonymous phone call telling him to leave the remote community and the Territory. The complainant believed this call was from one of the Police Officers stationed at the community.



A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC found that the cause of the bruise could not be determined but it was in a way linked to his medical condition and the need for him to be evacuated. The JRC also found that there was no evidence to support the complainant's allegations that he had been verbally abused or assaulted by Police. There was also no evidence to support the allegation that either of the Police Officers on the community made the anonymous phone call. The JRC, therefore concluded that the issues of complaint were not substantiated and that the actions and conduct of the Police Officers was appropriate.

17. Protest Rally

The complainant advised that he had attended a protest rally and was arrested. He complained that the Police vehicle sped on the way back to the Watchhouse, travelling at 100kph in an 80-kph zone. He further complained that the Police used unnecessary force in holding him upright when he refused to stand up at the Watchhouse reception counter. Three days later, the complainant was searched by Police for drugs and at the conclusion of the search, the complainant says Police threatened him, saying he was "lucky he didn't get a good flogging every time" he was picked up by Police.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

In relation to the allegation of speeding, the investigating officer conducted a time trial of the route taken, which showed that the time taken by the car which took the complainant to the Watchhouse was over the time taken in the time trial. Additionally, according to evidence from a Police Officer who travelled in the van during the incident, the complainant did not look at the speedometer.

In relation to the complaint about unnecessary force, the complainant refused to walk from the Police vehicle parked at the Watchhouse to the reception desk and had to be carried. Video footage of his entrance to the reception showed this and that the Police had to prop the complainant against the counter to keep him upright enough so that the usual search procedures could be undertaken. Video footage showed that there was no unnecessary force used.

In relation to the complaint that he was threatened after being searched for drugs several days later, the evidence of all Officers and the complainant was that one of the Officers had a long conversation with the complainant about drugs, but that it was a relaxed and jovial conversations at times. There was one independent witness interviewed, but she was unable to hear the conversation clearly and did not hear the words allegedly used by way of threat.

As to the first two complaints, the JRC concluded that the complaints were unsubstantiated on the evidence. As to the final complaint, the JRC concluded that



the matter remains unresolved, as there was insufficient evidence to prove the allegation or to disprove it.

18. Midnight Oil-tercation

A complainant alleged that her 14-year-old son was apprehended by Police at a Midnight Oil concert. She alleged that her son had an altercation with another boy near the bike racks at the venue and as a result someone called Police and they apprehended her son. She stated that in her opinion excessive force was used by the Police Officers to restrain her son and that the incident was handled badly and that Police acted inappropriately towards her son. She further complained that after the incident Police took her son home and left him in the care of his 15 year old brother which she felt was inappropriate.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division (PRD) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

On examination of all the evidence obtained, the JRC was of the opinion that unnecessary force was not used to apprehend the complainant's son in that:

- there was a need for the use of force;
- the amount of force was not excessive given the circumstances;
- the use of force was discontinued after its use was no longer necessary; and
- the type of force used was appropriate for the circumstances.

The JRC concluded that the actions taken by the Police Officers in leaving the boy in the care of his brother were reasonable in the circumstances. Namely, no adult was home at the time and it was impracticable if not impossible for the Police Officers to attempt to locate the mother. In regards to other arrangements for the custody of juveniles in this circumstance there are no other avenues available and the option taken was supported by Family and Childrens Services of the Department of Health and Community Services. The only other option available to Police was to take the complainant's son into Police custody on charges. However, no charges had been laid at the time and as such there was no reasonable grounds for the continued custody of the juvenile.

The JRC, however, was critical of the manner in which the complaint was initially investigated by Police and noted that formal disciplinary action was initiated against the Police Officer initially responsible for the investigation. The JRC commended Police for its actions in this regard.

19. Peace Pipe

A complainant complained that after being taken to a remote community Police Station, one of the Police Officers gave an Aboriginal Community Police Officer (ACPO) a pipe for smoking marijuana, that had been taken from the complainant, and told him to take it to the complainant's home. The complainant also alleged that



while at the Police Station he was assaulted by Police. The complainant states that he took fright and ran from the Police Station. He was pursued by a Police Officer who caught up with him and hit him with a baton when he was on the ground and also kicked him in the ribs. The complainant was subsequently taken to the health clinic by his mother and received some treatment there.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC concluded that the ACPO took the pipe without following General Orders and that this was a serious matter. In this regard, the JRC recommended that the ACPO be charged with a breach of discipline and noted that Police had already commenced such action. The JRC also found that the Police Officer did use force to effect the re-arrest of the complainant, in that he punched him and then pushed him forcibly with his foot into the back of the police van. However, the force used by the Police Officer was considered appropriate under the circumstances and was not excessive.

20. Gun? What Gun?

The complaint was driving along the Stuart Highway with some friends. On that morning, Police were in their first day of a three day high profile road traffic campaign referred to as 'Operation Drive Safe', which involved, among other things, establishing a random breath testing station/motor vehicle checkpoint. As a result, the complainant was directed into the station/checkpoint and underwent a breath test that proved negative and a licence check, which revealed that he was unlicensed. In addition, his vehicle was inspected and found to be unroadworthy. In light of this, Police did not allow the complainant to drive away and called a taxi, (at his request), which collected him and his friends from the checkpoint.

The complainant alleged that:

- As he was pulled over at the checkpoint a male Police member pointed a pistol at him;
- Police asked him to step out of his vehicle (to give him a breath test) and left him standing in the sun for 20 minutes; and
- He and his friends were made to wait in the sun for two hours for a taxi to arrive at the checkpoint. He believed that this wouldn't have occurred if Police had complied with his initial request to call for a taxi after they had discovered that he was unlicensed and his vehicle unroadworthy.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). Having reviewed all the available information, the JRC was of the belief that except for the complainant's statement, there was no evidence to support the complainant's allegation that a



Police Officer pointed a firearm at him. Rather, the evidence indicated that the item directed towards him was in fact a laser speed gun.

Though the available evidence did not clearly indicate when he was requested to get out of his vehicle, the JRC was satisfied that at some point during his stop at the checkpoint, the complainant was asked to do so by a Police Officer. In the circumstances, the JRC was of the view that this request was entirely reasonable. The evidence suggested that Police did not force him to stand near his vehicle, in the sun for 20 minutes; rather, this was his own decision.

Though the JRC accepted that there was some delay in the taxi arriving, the evidence did not suggest that this was the fault of Police, who in fact, took reasonable action to remedy the situation when it was realised that the complainant's taxi had not arrived.

21. Time Out

The complainant alleged that she was assaulted at her workplace. She complained that Police delayed completing their investigation into the alleged assault to such an extent that the matter became out of time and prosecution of the offender could not proceed. The complainant stated that this was despite that when Police took details of the assault, the alleged offender was interviewed and provided a partial admission to the offence. At that time she was led to believe that charges would be laid. The complainant also alleged that she was assaulted again and this was reported to the Police domestic violence unit, but nothing more was heard from Police about the matter.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC concluded that the complaint in relation to Police failing to satisfactorily complete the prosecution file in relation to the alleged assault prior to the six months statutory time was sustained. The JRC also noted that the lack of specific detail from Summary Prosecutions as to the need for additional statements significantly contributed to the prosecution file not being completed to their satisfaction. The JRC recommended that the responsible Police Officer be counselled for the poor standard of his record keeping and be advised of the deficiencies in the investigation he undertook in order that he might learn from the experience.

The JRC also concluded that the complainant had withdrawn her complaint in relation to the alleged second assault and there was therefore no substance to that issue of complaint.

22. The Warrant that Wasn't

The complainant was arrested from inside his residence while a fire was alight at his house. The complainant alleged that he was "thrown like a bag of potatoes" into the



Police van to such a degree that he hit his head causing an injury and that Police provided no reason for taking the action they did. The complainant stated that Police waited, watched the house burn and then they conveyed him into town in the back of the Police van. He described the trip into town as the worst of his life with the vehicle doing “doughnuts” and speeding over speed bumps.

At the Watchhouse the complainant was processed and advised that he had an outstanding warrant. He was then placed in a cell. The complainant further alleged that he asked for medical treatment for an injury to his head and that the Police just laughed at him and advised him that he was “there for a warrant”. After being held in custody and interviewed, the complainant was released from the cells without charge.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

While the manner in which the complainant was driven back to town will remain unresolved, due to the fact that it is one view against another, the JRC concluded that there was no evidence to support the allegation that the complainant was assaulted. The JRC was also satisfied from the evidence before it that the Police Officers had lawful reason for placing the complainant in the back of the van and that he was not unlawfully deprived of his liberty.

However, the JRC concluded that the complainant was unlawfully detained at the police station for a period of approximately 18 hours when he was being held on an outstanding warrant that had previously been recalled. The error in relation to arresting the complainant on the outstanding Warrant was caused by a breakdown in Courts Administration procedures and not by NT Police. The JRC were therefore satisfied that, from the information available to them, the Police Officers at the time had every right to believe their actions, in holding the complainant on the outstanding Warrant, to be appropriate and lawful. As such, no disciplinary action was recommended against the Police Officers involved.

As a result of the complaint the JRC recommended that Courts Administration be advised of their omission in this case and asked to review their current practices and procedures to ensure that mistakes such as this did not happen in the future. They also noted that NT Police had made some changes to their procedures to act as a safeguard to prevent a recurrence of this situation.

23. “It Wasn’t Me”

The complainant advised my Office that he was required to undergo a criminal history check to gain employment. This check came back showing that he had a recorded conviction that had occurred in Katherine. The complainant alleged that he had not resided in Katherine at the time of the offence nor had he committed the offence. He approached Police in respect to this matter and had been advised that he would have to undergo a finger print analysis at his expense. The complainant



was happy to provide his fingerprints for analysis but was not happy about having to pay the fee for something he saw as being someone else's mistake.

Inquiries were made by my Office with the Professional Responsibility Division (PRD) of the Northern Territory Police which advised that if the complainant presented himself to the Watch Commander at the Peter McAulay Centre, Berrimah Police Station and could prove his place of birth, it should be enough for the Watch Commander to review the situation.

This Office advised the complainant to go through the process as outlined above with Police. The complainant subsequently informed this office that the Watch Commander had looked into the situation and decided to waive the fingerprinting fee. The outcome of the complaint was that it was ascertained through the complainant's fingerprints and proof of birth that the conviction recorded against his name had been recorded against his identity in error and this was rectified.

24. Field of Dreams

An Indigenous male complainant contacted my Office advising that Police had taken him into custody. The complainant advised that during his arrest, one of the Police Officers had struck him twice with a baton, in the middle of the forearm and just below the elbow. The complainant also advised that he had been thrown into the rear of the Police vehicle and that his head hit the seat.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). During the course of the Investigation all civilian witnesses were interviewed and through these interviews it was established that all civilian witnesses did not support the complainant's claims that Police had assaulted him. The JRC also found that the detention of the complainant by the two Police Officers was lawful and appropriate under the circumstances and as such, this complaint against Police was not substantiated.

Through the course of the Investigation, it became apparent that the complainant had been highly intoxicated at the time of his detention and that, due to the conclusions of the JRC, what most likely could have occurred was that the complainant had woken up in custody with injuries and made the assumption from his hazy recollection of the events the previous evening, that Police must have been responsible for striking him.

The JRC advised that their investigation had revealed new information, which could have assisted the Northern Territory Police in investigating the assault of the complainant and Police had approached the complainant in respect to that ongoing investigation.

25. On Your Bike

The complainant was sitting outside a post office when two people stared at him in an intimidating manner. He believed they were Police Officers and confronted them.



In this process, he got on his bike and rode towards them. He did not have a helmet on. After he had resolved with these men the reason why they were staring at him, they asked him if there was any reason why he was not wearing a helmet. A Police patrol car then arrived. He was issued with an infringement notice for failing to wear a helmet. While this was happening, other cyclists passed with no helmets on, but they were not issued with infringement notices.

He complained to this office and advised that he intended to defend the infringement notice in Court. His complaints against Police were that he was being punished for responding to what he believed to be the intimidating behaviour of the non-uniformed Officers and that he was being treated unfairly in being issued an infringement notice while others in the vicinity were breaching the same law, without being penalised.

The matter was be dealt with by the Minor Complaint Resolution Process. The complainant told the Officer conducting the conciliation, that he wanted the Infringement Notice withdrawn, as other bicycle riders were not issued with similar Infringement Notices. The issuing Officer, however, stated that his attention was focused on the complainant, and that he could not be responsible for other members not issuing Infringement Notices. Therefore he would not withdraw the infringement notice.

As the complaint was unable to be conciliated, and as per the complainant's request, the complaint was referred to the Joint Review Committee (JRC) for assessment.

The JRC noted that the complainant had the opportunity to defend the matter in court and that he intended to do so. It is not known what the outcome was, however the JRC noted that a hearing by the court was his chance to explain why he was not wearing a helmet. Indeed, he told this Office that helmets give him headaches, but he had forgotten to say this to the Officer on the day. He would also have been able to submit to the court that the circumstances in which the notices were issued (being 'punished' for responding to what he believed was intimidating behaviour by other Police Officers) were in his view, not fair. These are matters, which are up to the court to determine.

As regards the issue of whether the Officer dealt with him unfairly by not issuing infringement notices to others in the vicinity whom he claimed were not wearing helmets, the JRC considered that the response of the issuing Officer was reasonable. The JRC determined that no further investigation of the complaint was justified.

26. To Review or Not to Review

The complainant in this matter wrote to me advising that she was not satisfied with the action by Police to resolve a complaint that had been actioned under the Nil-JRC process. One reason for the complainant's dissatisfaction was that she was not given a proper opportunity to be heard in relation to her complaint. Correspondence from Police during the investigation into the complaint advised that when approached by the investigating Officer for the purpose of an interview, the complainant



suggested that he contact her legal representative in the first instance. This did not occur and the complaint was investigated without further assistance from the complainant.

During the investigation, the complainant contacted my Office and explained that she did not want to provide Police with a statement as her lawyer had advised her not to meet with Police. The details of this conversation were passed on to the Professional Responsibility Division (PRD) of the Northern Territory Police and confirmed with the complainant in letters from my Office. I was therefore of the opinion that PRD's decision not to contact the complainant's lawyer and to continue the investigation without further input from the complainant was not unreasonable in the circumstances.

The complainant requested to be given an opportunity to make more detailed representations setting out her account of the events the subject of her complaint. As a result an Investigation Officer from my Office conducted an interview with the complainant. I considered the notes of the interview prepared by my Investigation Officer, the complainant's lawyer's notes of the interview and comments regarding the differences in these notes. My reading of these documents did not, in my opinion, establish that the investigation of the complainant's concerns with Police needed further action. The complainant's version of events had not substantially changed from that originally investigated by PRD. My review satisfied me that, on the substantive issues raised in the complaint, there was no basis to take any further action as such.

27. Coronial Corner

My office received a complaint from the resident of an Aboriginal outstation about the conduct of a Police investigation into the death of her nephew. The family was of the view that Police had not spoken to all the relevant witnesses. The Police had told the family not to worry as the death would be looked at thoroughly by the Coroner. When the Coroner's report was provided to the family it found that the death was due to self inflicted wounds. The family was very upset with the findings.

Coronial inquests and inquiries are not within my jurisdiction, however, the conduct of Police Officers are within jurisdiction. I therefore made preliminary inquiries through the Coroner's office in order to determine whether the matter had been the subject of an inquest. The Deputy Coroner advised that the matter had not been the subject of an inquest but rather an inquiry under the *Coroners Act*. The Coroner advised that if the family had information that they believed was relevant, including the names of witnesses not interviewed as part of the inquiry, then she would be happy to talk to them. As a result, my office was able to put the family in direct contact with the Deputy Coroner.

28. Gone But Not Forgotten

The complainant in this matter advised that his car, (which his wife had been driving) was parked in a local Club's car park. Another car reversed into it and damaged it.



The complainant's wife telephoned the complainant and told him what had happened. The complainant telephoned Police and he and his son attended the car park. After the complainant arrived at the car park, two Police Officers arrived and spoke with him. Initial indications were that the offending vehicle had left the car park and the complainant then left the area.

About a month later the complainant came in contact with a person that worked across the road from the Club and she said that she witnessed the whole incident. The witness said that she knew the driver of the vehicle was an off duty Police Officer who was drunk and that the Police had let him go. The complainant had not heard anything from the Police about the matter since seeing the Police Officers in the car park on the day the accident occurred.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The Police case management report showed that at about 2.00p.m. on the day in question, two Police Officers attended the car park of the Club, as a result of a report from the complainant of an accident involving his car. The complainant told the Police that a staff member of the Club had witnessed the accident. The Police Officers then spoke to a staff member in the Club. The staff member told Police that it was a person from across the road that had witnessed the accident. Police then interviewed this witness straight away. The witness advised Police that she witnessed a vehicle run into the complainant's parked car in the car park of the Club and that the driver had walked back into the Club shortly afterwards. The witness provided the Police Officers with the registration number of the vehicle.

The Police Officers went into the Club to find the driver of the vehicle. The driver of the vehicle was a former member of the Northern Territory Police Force, however Police were not aware of this at that point in time. The driver admitted to the collision with the complainant's car and that he had been drinking alcohol. The Police Officers conducted a breath test on the driver. However, the Officers concerned differed on the reading that was obtained. One Police Officer believed that the reading was about .04% or .05% and the other Police Officer believed that the reading was .05% or just over.

The Police Officers formed the opinion that it could not be proven that the driver had a reading over .05% when he backed into the complainant's car. The driver had gone back into the Club after the incident and may have consumed alcohol. There were also no other indications that the driver was intoxicated to the point that an arrest for the purpose of a full breath analysis was required (e.g. slurring words, strong smell of alcohol or unsteady on his feet). The driver of the vehicle was issued with a Traffic Infringement Notice for the offence of Drive Without Due Care (ie. in backing into the complainant's vehicle), with a penalty of \$160.00. Despite the belief that the driver was not intoxicated, the Police Officers gave the driver a lift home, erring on the side of caution.



One of the Police Officers completed a full accident report regarding the collision with the complainant's vehicle. The JRC noted that the section of the form headed "Sobriety/Breath Analysis/Blood Test" indicated that the driver was tested and a result of .000% was obtained. PRD informed this office that it is common and accepted practice to record .000%, where there is insufficient evidence to support an arrest for the purpose of a full breath analysis.

The breath test reading was obtained on a "Drager, Hand Held" device, which PRD advises, gives an indication of a person's blood alcohol reading, not a reading that can be relied upon for a driving under the influence charge. In other words, the result obtained at a roadside test is an indication only and has no evidentiary value. The JRC did not question the Police Officer's decision not to arrest the driver for the purpose of a full breath analysis. However, the form as it had been completed by the Officer, gave the impression that the driver was tested and recorded a reading of .000%. This was not a true record of the facts.

It was the opinion of the JRC that where a roadside test is conducted, Police Officers should mark the "Sobriety/Breath Analysis/Blood Test" section of the form as "Tested". The "Result" section should be reserved for a reading obtained from an Evidentiary Breathalyser Machine or a Blood Test. This would demonstrate that a roadside test was conducted, but the reading obtained was either .000% or did not justify arrest for the purpose of an Evidentiary Breathanalysis.

As a result of the complainant's complaint to this office, the investigating officer arranged for him to be contacted by the Officer in Charge of the Police Station involved and he was provided with the contact details for the offending driver.

In relation to the complaint that the Police did not update the complainant with the outcome of the matter or provide him with the offending vehicle's details to enable him to take action against the driver, the investigating officer observed that the complainant probably would not have made a complaint if he had been advised of the outcome of the matter on the day of the accident. The JRC concurred, and on this basis, the complaint was substantiated. The JRC noted that the complainant had been provided with the offender details. The JRC recommended that the members involved in this matter be informally counselled about the importance of following up and that the complainant be provided with an apology. These recommendations were accepted and actioned.

In relation to the complaint that the driver of the vehicle was let off because he was a Police Officer, this aspect of the complaint was not sustained. The person involved was a retired member of the Northern Territory Police and was issued with a Traffic Infringement Notice for driving without due care in relation to this matter. The driver was also breath tested and a reading of approximately .05% was obtained. As some time had passed since the accident, there was insufficient evidence to ascertain whether the driver had this reading at the time he backed into the complainant's car.

There were also no other indications that the driver was under the influence of alcohol. The driver concerned seems to have been treated as any member of the



public should have been in the circumstances. In this case, the JRC supported the Police Officer's decision not to arrest the driver given the circumstances of the matter.

29. All it takes is a little push....

The complainant approached this Office after having been charged with various offences arising from his conduct towards Police. He alleged that Police had provoked him in that he had been unnecessarily pushed in the back several times by an Officer and later sprayed with capsicum spray after being questioned about where he was living.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). Having carefully reviewed the available evidence, the JRC found that one of the two Officers involved used unnecessary and excessive force to arrest the complainant on the evening in question. Indeed, the information indicated that the Officers' decision to initially apprehend the complainant was not based on reasonable grounds.

In addition, it appeared that the Officer's conduct resulted in the complainant becoming aggressive towards Police, which in turn caused the other Officer to spray the complainant in the eyes with capsicum spray. In this regard, the JRC found that this Officer's actions were justified in the circumstances.

The JRC noted that as a result of the investigation into the complaint, the Police commenced disciplinary proceedings against the relevant officer and withdrew the criminal charges against the complainant. The JRC recommended that the Officer be counselled by a senior Officer in relation to his actions and that Police provide the complainant with a written apology regarding his apprehension and the manner in which he was treated by the Officer concerned.

30. Cherry Ripe with a false name (Bitter Sweet?)

The complainant was arrested for theft of a Cherry Ripe chocolate bar at a supermarket and taken back to the police Watchhouse to be charged. He would not give police his name and when police viewed the various identity cards in his wallet, some appeared to be false. When asked if his name was (...), the complainant told Police "I've used lots of names." Police decided that in order to verify his identity, the complainant should be fingerprinted and have a DNA sample taken. The complainant alleged that during this process he was assaulted.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The allegations were denied by Police who said that the complainant passively resisted the fingerprinting and the minor swelling and bruising he sustained was caused by having to use compliance techniques to get the fingerprinting done. Fingerprint data revealed a



different name and different date of birth, together with previous offences interstate and in the Territory. The complainant was therefore also charged with furnishing a false name and Police advised the credit cards etc from his wallet would be retained until he provided information verifying his claim that he had legally changed his name.

31. One Search too Many

The complainant alleged that Police constantly harassed her over a period of 18 months to 2 years. She alleged that on one of the occasions her house was raided, Police let themselves in, she was not home at the time, no search warrant was left, her house was ransacked and Police did not provide any information about why they were there. As a result of one of the raids the complainant alleged her house was featured on television, in the newspaper, and a clipping of the newspaper article featured in a Labor Government's pamphlet tackling drugs. The complainant stated that neither she nor her partner had ever been charged with any offences relating to the search warrants. The complainant stated that on the last occasion her house was raided, Police attended in company with a Customs Officer and a sniffer-dog. In relation to this search, she alleged that:

- Police would not allow her to follow them around the house while they were undertaking the search;
- Police would not allow her to go to the toilet;
- Police slammed her partner's finger in a door and injured it
- Police failed to allow her cousin to get properly dressed
- Police stole cannabis out of her bedroom

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The investigation examined the execution of the search warrant upon her premises which was the subject of media publication; and the execution of a search warrant where police were accompanied by a Customs Officer and sniffer-dog.

In relation to the search which was the subject of media publication the JRC concluded, after having read the media release, the NT News article and having watched the NTD 8 news item, that these did not contravene the NT Police Media Policy and did not specifically identify the complainant or her residence in any way. The JRC did note however that the wide-angle shot of the complainant's house, as was shown on the NTD 8 News may have made it identifiable to some people but Police had no control over what the journalist did after the Police information was released. The JRC has concluded that this issue of complaint was not sustained.

In relation to the second search, the JRC was satisfied that Police were executing a lawful warrant when they searched the complainant's house and there was ample evidence that the complainant strongly objected to the search by verbally abusing and physically threatening Police. The JRC therefore concluded that police were justified in having the complainant handcuffed and removed to the police van.



It was clear that the complainant was subjected to a body search, however the JRC was unable to conclude whether the search was a pat search or a strip search as there were two conflicting versions of events.

The JRC also noted that after the complainant was handcuffed and while being taken to the van she requested to go to the toilet. It was clear from the evidence that she was escorted back inside her residence, however she was very aggressive and abusive and there were also difficulties with her partner. The complainant then refused to use the toilet and so she was escorted back to the Police van. The complainant remained in the rear of the Police van for some time before again asking to go to the toilet. Ten minutes after she made this request she was uncuffed and taken to the toilet. The complainant then remained inside her residence uncuffed. The JRC concluded that although this issue of complaint was sustained, the complainant contributed to the delay by being aggressive and threatening. When the complainant did show signs of calming down she was given access to the toilet as soon as was practicable.

The JRC further concluded that the complainant's partner tried to help by forcing his way into the toilet area and as a result there was a struggle where he was pushed out of the way by Police and in the process jammed his finger in the door. There was no evidence however to suggest that the injury to the partner's finger was caused by anything other than an accident. The JRC concluded that this issue of complaint was not sustained.

With respect to the complaint that Police failed to allow the complainant's cousin to get properly dressed the JRC found that by the cousin's own admission, when he was given the chance to get properly dressed he took the stance that he had been in the towel for so long he may as well remain as is. The JRC was of the opinion that although the complainant's cousin wasn't seen to as soon as possible, this was understandable given the circumstances surrounding the search and the complainant's own behaviour. The JRC concluded that while this issue of complaint was substantiated it was not prepared to find the conduct unreasonable given the circumstances.

While there was evidence to suggest that there was a small quantity of cannabis in the complainant's bedroom the night before the search and that the cannabis was not there after the search, there was no evidence to support the allegation that police stole the cannabis.

32. Role Plays

Two juveniles attended a Shopping Centre where they were confronted by another juvenile, who spat on them. On returning home and confiding the incident to their father (an off duty Police Officer) he attended the shops and then a Youth Centre. On identifying the offender at the Youth Centre the father grabbed the boy and confronted staff attached to the Centre as to what action was being taken. The father then released the boy and began liaising with staff, whereupon other persons in the area began to trash the recreation area of the Centre.



The father was asked to leave the premises by Centre staff so that they could calm things down and at the same time a juvenile allegedly punched the son several times in the face and he was restrained by the father and handed over to Centre staff. With staff assisting the father, both he and his son then left the premises and went home. Police then attended the Centre and the residence of the off duty Police Officer in an attempt to disperse the crowd and ascertain what action had to be taken. No one was apprehended and the matter resolved itself without further incident. The off duty Police Officer was on recreation leave at the time of the incident.

In relation to the above incident, the mother of the boy grabbed by the father at the Centre complained that an off duty Police Officer “grabbed” her son by the throat, jerked him back and forth and that insufficient action was taken by Police with respect to the behaviour of the father who was an off duty Police Officer.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). Based on the evidence, the JRC concluded that at the time the father who attended at the Centre was not acting in the execution of his duties as a Police Officer; nor had he placed himself on duty or attempted to influence the situation in his capacity as a member of the NT Police Service.

As the father was not acting or purporting to act as a member of the NT Police Force during the course of the incident, in accordance with the *Ombudsman (Northern Territory) Act*, no further action was taken in relation to this issue of complaint.

In relation to the second issue, the JRC concluded that there was no evidence to suggest a complaint had been made to Police in relation to the conduct of the father and therefore there was no legal requirement for Police to take any further action. On this basis the JRC was unable to sustain the issue of complaint that Police did not take action with respect to father’s conduct.

Although there was no legal requirement for the Police Officers to take any further action in relation to the incident at the Centre, it was the JRC’s opinion that best practice would have suggested that, as a juvenile was involved, it would have been preferable for them to have contacted the complainant in relation to the incident. Such action would have ensured the mother was made aware of the facts surrounding the incident and her views sought as to what further action she wished to take. In this regard the JRC recommended that the views expressed by the JRC be brought to the attention of the Police Officers concerned for their information.

33. Hysterics

The complainant contacted my Office to say that early one morning, two Police Officers came around to her house and spoke with her 16 year old daughter, about coming to the Police Station to make a statement in relation to an assault that just occurred involving her daughter and a man. Her daughter told Police she would



come to the station later in the morning to make the statement. The same Police Officers came back half an hour later, barged into her house and arrested her daughter for assault.

The complainant woke up hearing screaming and came out to see the two Officers dragging her daughter away. She asked the Police Officers to stop and tell her what was going on but they did not listen. There was a scuffle in which her daughter bit the hand of one of the Officers and he then punched her in the chest. Her daughter was taken to the Watchhouse and the complainant went in a separate vehicle. Once there, the complainant was not allowed to see her daughter for some time, despite her requests. Her daughter told her later that she had been stripped by a male Police Officer in the cells.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). It was established that Police had been legally entitled to enter the complainant's home, and that they believed, based on information given to them by the daughter several days earlier, that the daughter was over the age of 18 years. As the parent of a juvenile the complainant was entitled to be informed of the arrest. The JRC found that the complainant had been abusive and aggressive towards Police, and that with the benefit of hindsight, some attempt could have been made to calm the complainant down and explain what was happening, however, Police acted in good faith and the JRC recommended that no further action should be taken in this regard.

The JRC found that the daughter was resistant and abusive, as well as violent. In order to get her to the Watchhouse she had to be restrained and carried. The video evidence indicated that once at the Watchhouse she continued to aggressively thrash and scream. Having decided to arrest the complainant's daughter, her response dictated how Police dealt with her. She had to be manhandled to affect the arrest. The JRC found that an Officer did hit the complainant's daughter in the ribs, but this was a reflex reaction to his having been bitten on the hand by her while he was attempting to arrest her. Once in the Police van, she attempted to strangle herself with her clothing.

The JRC found that at the Watchhouse, the two female Auxiliaries took the complainant's daughter's clothing off, however there were male Police Officers present to assist them, as the daughter continued to thrash and scream. She was kept lying on her stomach during this process. Unfortunately, because of this, she was able to conceal a cigarette lighter, which she then tried to set the cell alight with.

The daughter had been placed in the observation cell and stripped as a direct result of her attempts at self-harm. She was given a blanket to wrap around herself, but this had to be taken from her when she tried to start the fire. She was then asked about putting her clothes back on and responded with abuse. The JRC found that there was only one other female Officer who could have assisted in the strip, but she was tasked with calming down the complainant at the front counter.



The JRC concluded that this was not unreasonable given the extremely difficult circumstances in which Police found themselves. It is not standard practice to allow visitors to Watchhouse cells, however an exception was made in this case, but the delay in allowing the complainant to see her daughter was brought about by the need to calm both parties down first. There were no recommendations arising out of this complaint.

34. Improper Conduct

Two Police Officers were on routine patrol of a remote community when they sighted the complainant in the company of another youth who subsequently fled the area upon the arrival of Police. Following a request from one of the Officers, the complainant, a minor, got into their vehicle and was taken to a vicinity where he and the Officer then got out for a brief period. The complainant was later taken back to the place where he had been picked up.

The complainant, with the assistance of an interpreter, later lodged a formal complaint against the Officer who had 'apprehended' him, alleging that the Officer had grabbed his shirt and punched him in the chest. He was also of the view that the Officer was taking the law into his own hands and was abusing his police powers.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC found that the Officer had 'apprehended' the complainant in relation to a private matter. Though the JRC was unable to determine whether the Officer physically assaulted the complainant, it accepted that the Officer concerned lost his temper and verbally abused the complainant. In addition, the JRC also found that the Officer had failed to follow proper procedure in relation to the questioning of persons under the age of 18.

The Officer was subsequently charged with disciplinary offences relating to his conduct in question and the other Officer was formally cautioned for assisting a colleague pursue a private matter while on duty.

35. Fearful Perceptions

It was alleged that Police attended a rural residence and unlawfully entered and threatened the occupants. It was alleged that the Police Officers threatened one of the occupants stating that if he didn't let them in he would be arrested. The Police Officers then entered the premises without permission and looked around. On leaving the premises, it was further alleged that they then threatened to get a search warrant and come back in the early hours of the morning and bash their door in or down.

A detailed investigation of the complaint was conducted by the Professional Responsibility Division of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).



The JRC concluded that the entry into the premises by the Police Officers, to try and locate a known suspect in a robbery, was lawful and authorised under the *Police Administration Act*.

The JRC was also of the opinion that the situation where Police attended at the premises and advised the occupants that they could enter without a warrant and might return at any time with a warrant would have made them feel intimidated and possibly threatened.

In relation to the occupants and their children being unnecessarily exposed to fear and anxiety by the behaviour of Police, the JRC concluded that there was no evidence to support the allegation. The JRC however, had no doubt that the comment by Police that they would return with a warrant was one that obviously caused concern to the occupants. However given the nature of the investigation, the elusive nature of suspect, the confrontational manner of one of the occupants and the uncertainty as to his involvement in the theft, the failure of Police to provide further details was understandable.

In view of the anxiety suffered by the occupants, the JRC recommended that the Commissioner of Police forward a letter advising them that, although Police acted lawfully, the Northern Territory Police regretted that they had suffered some anxiety in regards to the welfare and safety of their children as a result of their dealings with Police.



Appendix F

FREEDOM OF INFORMATION

INTRODUCTION

The object of the *Information Act* (the Act) is to extend, as far as possible, the right for 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.

The Office of the Ombudsman is a 'public sector organisation' for the purposes of the Act and the information held by it may be the subject of an application under the Act. The Act requires an agency to make a decision on application within 30 days, but this may be extended if consultations are required. An applicant may have to pay processing charges. Internal review of decisions is available to applicants whose applications are refused. External review, through the Information Commissioner, will be available as of 1 July 2004.

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 Commission can be found as follows:

- organisation (refer page 50 of this Annual Report)
- functions (refer page 48 of this Annual Report)

INFORMATION HELD BY THE OFFICE OF THE OMBUDSMAN

Broadly speaking, the Ombudsman holds information in the following categories:

- (a) information related 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 related to the Ombudsman's role as the chief executive of a NT agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation; and



(c) information related to the Ombudsman's management of his 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 housed in Darwin, although Alice Springs has some administrative files relating to its own operations. There are also files of documents 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.

Such 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. Some information may be accessible under the *Information Act* and complainants will generally have a greater right of access to their own file than a third party (see 'Procedures for Providing Access to Information' below).



3. FOI request files

The office keeps files relating to requests under the *Information Act* for access to documents in the possession of the Ombudsman. A register of such requests will also be kept by the Ombudsman.

Some information on these files may be accessible (see 'Procedures for Providing Access to Information' below).

4. 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.

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

5. Annual reports

Copies of the current Annual Report and some previous Annual Reports are available on the Ombudsman's website at www.ombudsman.nt.gov.au . Some printed copies of the current Annual Report are available free of charge soon after publication (subject to availability).

6. 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 on the Ombudsman's website at www.ombudsman.nt.gov.au .

7. Manuals and guidelines

The Ombudsman has the following manuals:

- **FOI Manual:** The Manual provides Ombudsman staff with guidance on dealing with FOI requests.
- **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.

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).



8. 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. 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 provides substantial protection for investigation information);
- (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; or
- (c) As required under the *Information Act*. The Act creates a general right of access to documents held by government sector organisations, subject to exemptions which recognise the need to protect sensitive personal and commercial information and some government records. Where a person makes a request under the Act, an agency must respond within specified times and the applicant is able to seek internal and external review of any adverse decision.

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
- **FOI Manual:** \$50.00 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 via these arrangements are free.



3. Access Under the Information Act

A person may apply for access to information under the provisions of the *Information Act*. A processing charge may apply. Inquiries about this process should be directed to the FOI Coordinator on 8999 1974. An application form can be obtained by phoning 8999 1818.

PROCEDURES FOR CORRECTING INFORMATION

Inquiries about correcting personal information should be directed to the relevant Case Officer or the FOI Coordinator on 8999 1974.



Appendix G

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