

# OMBUDSMAN FOR THE NORTHERN TERRITORY OF AUSTRALIA

## Twenty-Ninth Annual Report 2006-2007

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

Dear Chief Minister

In accordance with the provisions of Section 28(1) of the *Ombudsman (Northern Territory) Act 1978*, the Annual Report on the Office of the Ombudsman for the year ending 30 June 2007 is submitted to you for tabling in the Legislative Assembly.

Yours sincerely

Carolyn Richards  
Ombudsman

October 2007

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## STATEMENT OF ACCOUNTABLE OFFICER

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

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

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

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

CAROLYN RICHARDS  
Ombudsman  
October 2007

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## 1. INTRODUCTION AND OVERVIEW

### OMBUDSMAN'S FOREWORD

It has been said that the right to complain is a human right. Complaints about government demonstrate a healthy and robust democracy in which government allows itself to be accountable to the people it governs and agrees to the scrutiny of its public service by an independent officer. The Commonwealth Ombudsman, Professor John McMillan, has pointed out that in 2004 there were 60,000 complaints in Australia to public sector Ombudsmen. In the Northern Territory during this reporting period there were 1613 people who approached the Ombudsman either for information, explanation or to pursue a complaint.

Without an office such as the Ombudsman, these people would have to resort to a Court, if within their financial capacity. Realistically most would do nothing but allow their anger and disappointment with government to fester, leading to despondency and lack of confidence at one end of the scale and, at the other end, alienation or disregard for the rule of law. In other words, without a forum to express grievances and belief in being heard, society's members may not adhere to the fabric of their society's belief system.

This report is intended to inform the Legislative Assembly about the grievances expressed by Territorians as well as the operation of the Ombudsman during the reporting period.

#### **Complaints Handling Project for Government Agencies**

The number of people approaching this Office has declined since 2004/05. This reduction in approaches corresponds with a concerted education effort by this Office to impart to all government agencies the benefits of establishing a responsive complaints management system complying with the Australian and International standards. Establishing such a system not only benefits the agencies' clients but leads to improved administration of the agency itself. The concept that "A complaint is a Gift" has been well accepted at management level.

Some agencies manage complaints well. They are customer service focussed, have taken great strides in training their staff, publicise their willingness to listen and respond respectfully to complaints and manage the dissatisfaction of their clients. I mention and commend two such agencies for their extensive efforts in establishing well resourced, responsive, complaint handling systems - PowerWater and NT Housing. In 2004/05 The Ombudsman received 58 complaints about Power & Water. This year the total number was six. NT Housing in 2004/05 generated 76 complaints to the Ombudsman and this year the number was 9.

The role of the Ombudsman is not only to receive complaints from individuals and to resolve them but to find out the reason or underlying cause of those complaints and

use that information to improve public administration. The agencies and their staff providing services are likely to have more knowledge, more experience and more ideas about how, why and what made a customer dissatisfied. It follows that the expertise within agencies, if it is coupled with the will to improve, will result in a quicker, more flexible and better informed response to a complaint than this office. This is because the Ombudsman's Office has to spend time finding out how an agency does its business, what its policies and practices are, what the options are for resolving the client's grievance and what can be done, if anything, to reduce or eliminate the grievance arising again.

The Ombudsman is there for the public when efforts by the agency are not successful. In a great number of complaints, once communication is facilitated by the Ombudsman between the agency and its client, resolution is achieved. This requires the agency to accept the concept that it does not matter if the customer is always right or not, what must be remembered is that the customer is always the customer.

Some people are sceptical when they receive an explanation from an agency and are reluctant to accept that all that can be done has been. It is sometimes necessary for them to be reassured that an independent impartial umpire, the Ombudsman, has examined the information given by an agency before they will accept a decision or result. This is understandable when the relationship with the agency is impaired for whatever reason. Agencies however can and should accept responsibility for repairing those relationships and learn from complaints about what caused the mistrust or grievance and whether anything can be done to prevent a recurrence. This ought to be part of an agency's continuing quality improvement and risk management agenda.

Over the reporting period I have personally attempted to stimulate agencies to establish or improve complaint handling systems. I was well received by all Chief Executive Officers and Boards of Management of the 16 agencies to whom I made presentations.

### **Procurement Processes within Northern Territory Government**

In March 2006 The Department of Information and Corporate Services established a new framework and process for the calling of tenders for the supply of goods and services to Northern Territory Government. A perusal of past annual reports reveals that complaints about the operation of government procurement processes were prolific. During the reporting year there has been not a single complaint about procurement processes to the Ombudsman.

I am aware that the current framework incorporates the ability for an unsuccessful tenderer to request a briefing with a procurement officer and receive an explanation about the criteria used to assess the tender and the tenderer's rating on that criteria. The criteria themselves are published so that tenderers are aware of them in advance. The process is more transparent and accountable. In the future, for contracts over one million dollars, the percentage rating given to each criteria will be made known to tenderers thus making the process even more transparent.

There are occasions when independent Probity Consultants are engaged to assess the operation of a particular tender if a tenderer's complaint is not resolved within DCIS. This change in procurement processes, with its emphasis on transparency combined with a complaints handling process, and the resultant lack of complaints demonstrates the value of improved public administration. The dividends include greater public confidence, less unproductive time spent on responding to mistrustful customers, improved efficiency and a process that is accepted as fair and which achieves consistency.

### **New Functions for the Ombudsman**

On 30<sup>th</sup> May 2006 the commencement of the *Telecommunications (Interception) Act 2001* was proclaimed. This Northern Territory legislation enables law enforcement agencies in the Territory to be approved by the Commonwealth Attorney General under the Commonwealth *Telecommunications (Interception & Access) Act* as authorised to intercept telecommunications. These Acts impose on a law enforcement agency a regime of accountability and controls to limit the possibility of abuse of such an intrusive power. One such mechanism is regular inspection, audit and reporting by the Ombudsman to monitor compliance with the legislation that has set the parameters within which the power may be used.

In late 2006 NT Police were approved by the Commonwealth Attorney General as an agency authorised to use telecommunications interception for the purposes of law enforcement and maintaining law and order. An officer from the Ombudsman's Office has undertaken the necessary training to acquire the capacity to perform the monitoring function given to the Ombudsman. The other Ombudsmen in Australia, the Commonwealth Ombudsman and the Commonwealth Attorney General's Department have provided invaluable assistance with training and appropriate IT for this Office and I acknowledge my indebtedness and express my appreciation to them for their generosity.

Reports as required have been provided to the Minister of Police, who in turn is required to report to the Commonwealth Attorney General. The results of the reports from all jurisdictions in Australia are tabled in the Commonwealth Parliament. The Police Minister also receives reports direct from the Commissioner of Police and examines the reports from the Ombudsman and, by comparing the two, is in a position to identify any variance.

The *Surveillance Devices Amendment Bill* was introduced in to the Legislative Assembly this year. It gives the Ombudsman similar obligations to those under the *Telecommunications Interception and Access Act* of inspecting and reporting on compliance by NT Police with the legislation empowering police to use surveillance devices. Reports are to be given to the Minister who must table a report in the Legislative Assembly. The Commonwealth Ombudsman may also report to the Minister assigned the administration of the Act.

Commencement of the amendment will necessitate further training for an officer within the office. The International Ombudsman Institute is offering high quality training in December 2007 in Toronto and the Director of Investigations will be attending with the approval of the Chief Minister.

## Review of the Ombudsman Act

Amendments to the *Ombudsman (Northern Territory) Act* have been proposed and consideration of the draft bill has occupied a portion of my time over the last twelve months. I anticipate the amendments being introduced in the next reporting year. Strategic issues over the next year will be training staff, and educating other interested parties about the changes.

## Summary

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

- Sufficient extra funding has been allocated to the Office to enable improvements to our IT and the contract has been awarded.
- Improvements in the time taken to finalise complaints have occurred, particularly in relation to complaints against police.
- Some 131 recommendations were made to improve processes and practices of which 95% were agreed to.
- Monthly visits to the Ombudsman's website continued to increase.
- The project to give presentations to all agencies about their own internal complaints handling and provide them with access to all the necessary resources and aids has been completed.
- The Operations Manual for the Office has been revised and updated.
- A compliance audit was conducted by the Auditor General which resulted in updating the Property and Accounting Manual and redesign of some forms to improve risk management and was otherwise satisfactory.
- All staff undertook training in how to manage unreasonable conduct (see page 56).
- I represented the Territory in Canberra for the 30<sup>th</sup> anniversary of the Commonwealth Ombudsman and showcased the Territory at a seminar in Old Parliament House thanks to a photo gallery provided by Tourism NT.

Finally I must thank the hard working staff of my office. They continue to provide a professional and effective service to complainants and agencies even when, at times, working under quite stressful situations. I am also indebted to the camaraderie and support staff offer each other and myself. This Office has made substantial improvements in productivity over the past few years and this is attributed in the main to the manner in which staff have gone about their business.

CAROLYN RICHARDS  
OMBUDSMAN



## 2. ABOUT THE OFFICE OF THE OMBUDSMAN

### FUNCTIONS OF THE OMBUDSMAN

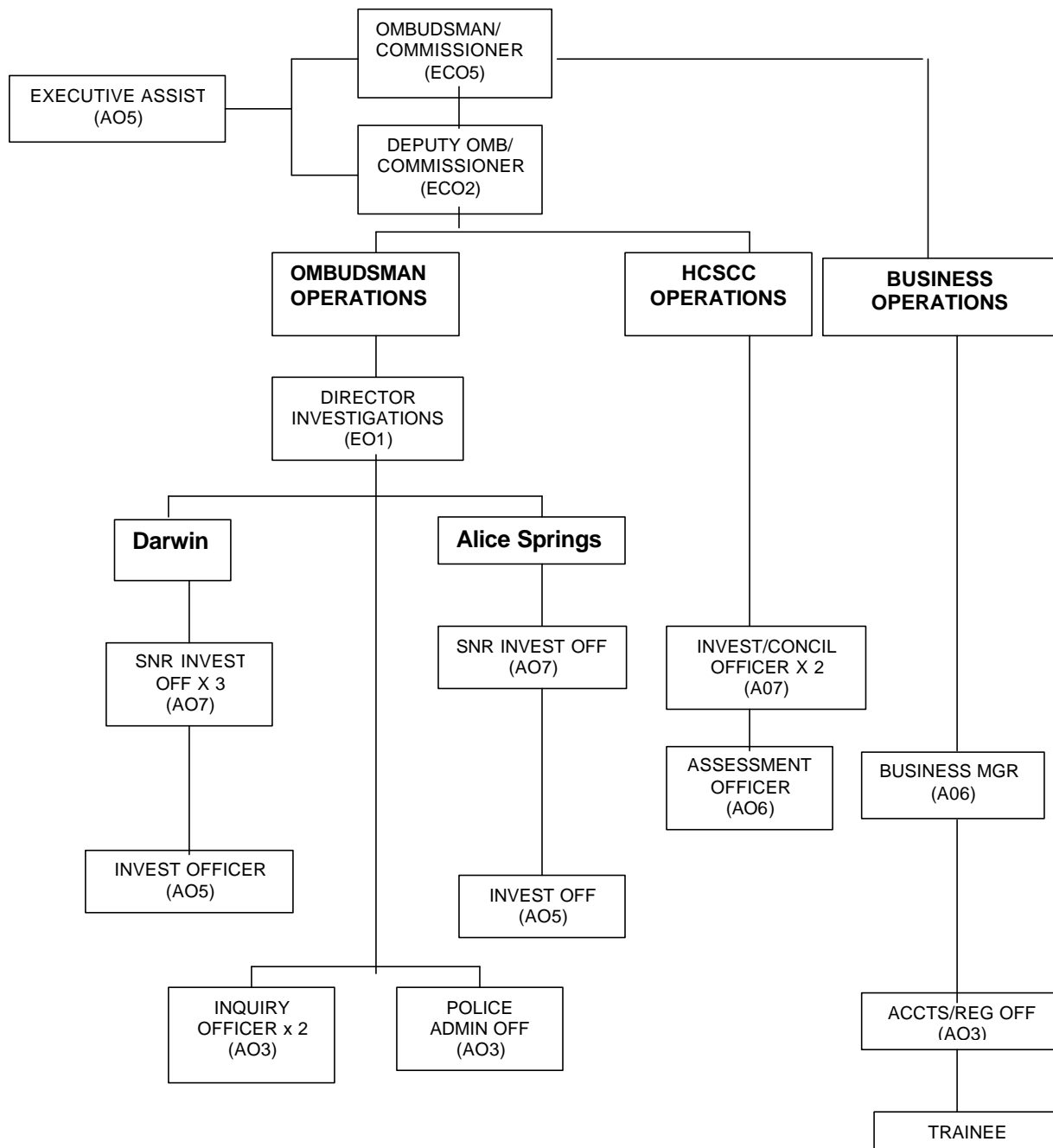
The functions of the Ombudsman are:

1. To investigate any administrative action by, in, or on behalf of, any Northern Territory Government Agency or Local Government Council to which the *Ombudsman (Northern Territory) Act* applies.
2. To 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. To monitor and report on compliance with the *Telecommunications (Interception) Northern Territory Act* and the Commonwealth *Telecommunications (Interception and Access) Act* by law enforcement agencies within the Northern Territory.
4. Pursuant to Section 9 of the *Health and Community Services Complaints Act* the Ombudsman is also appointed as the Commissioner for Health and Community Services Complaints. The Commission reports separately to the Legislative Assembly.
5. Pursuant to a co-location agreement with the Commonwealth Ombudsman, to provide administrative support to a representative of the Commonwealth Ombudsman's Office who is co-located within the Office of the Ombudsman in Darwin. The Alice Springs Office acts as the representative of the Anti-Discrimination Commission.
6. Pursuant to Section 48 of the *Legal Practitioners Act 1974* and by virtue of the role as Ombudsman for the Northern Territory, to act as a Statutory Member of the Legal Practitioners Complaints Committee.
7. To act as a member of the Northern Territory Law Reform Committee.
8. To consider requests from the Law Society of the Northern Territory for assistance in carrying out its functions.

### OMBUDSMAN SERVICE STANDARDS

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

## ORGANISATIONAL STRUCTURE



**Note:**

The organisation chart includes reference to the Health and Community Services Complaints Commission (HCSCC) to illustrate the relationship between relevant positions in the Ombudsman's Office, and to show the shared human resources included under the expenses of the Office of the Ombudsman.

## STAFFING

**Table 1: Ombudsman's establishment**

Position Level	Ombudsman	HCSCC	Total
Ombudsman ECO5 <sup>1</sup>	1		1
Deputy Ombudsman ECO2 <sup>2</sup>	1		1
Executive Level 1	1		1
Administrative Officer 7	3	2	5
Professional Level 2	1		1
Administrative Officer 6	1	1	2
Administrative Officer 5	4		4
Administrative Officer 3	3		3
Trainee	1		1
<b>Total</b>	<b>16</b>	<b>3</b>	<b>19</b>

During the financial year the position of Director Investigations was reclassified from an Administrative Class 8 to an Executive Level 1 after becoming responsible for the additional functions of managing and conducting all inspections and audits and reporting to the responsible NT Minister and the Federal Attorney General under the *Telecommunications (Interception) Northern Territory Act* and the *Surveillance Devices Act* (when enacted). Ms Julie Carlsen, the previous Director Investigations was the successful applicant.

The Legal/Investigation Officer position (P2) remained vacant for the majority of the financial year due to an effective funding shortfall and has been reclassified from the Professional stream to an Administrative Officer 7.

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

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

### 3. PERFORMANCE

#### OVERALL PERFORMANCE

The overall performance of the Ombudsman during 2006/07 is as follows:

<b>Performance Measures</b>	<b>Unit of Measure</b>	<b>2004/05 Achieved</b>	<b>2005/06 Achieved</b>	<b>2006/07 Achieved</b>
Quantity	1. Number of approaches	2352	2000	1613
	2. Number of access and awareness visits	30	25	28
Quality	1. Percentage of reviews of decisions requested	% 3	% 4	% 1
	2. Percentage of consumer satisfaction feedback	61	57	60
Timeliness	1. Percentage of complaints closed within 90 days.	%	%	%
	a) General	94	97	90
	b) Police (180 days)	54	64	79
	2. Percentage of formal investigations resolved within 180 days	0	0	0 <sup>3</sup>

<sup>3</sup> During the year, one investigation was finalised and it took 317 days.

## ACTIVITY 1: RESOLUTION OF COMPLAINTS

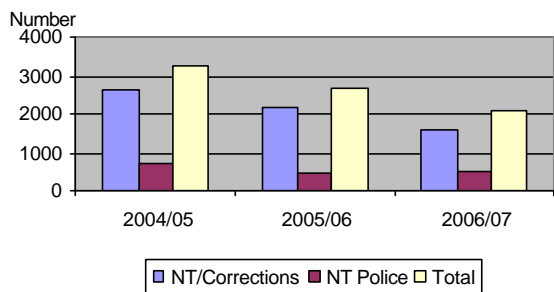
### OUTPUTS

1. Accept inquiries and complaints.
2. Assess complaints in a timely, fair and independent manner.
3. Investigate complaints in a timely, thorough and independent manner.
4. Take appropriate action as a result of investigations.

### TOTAL APPROACHES

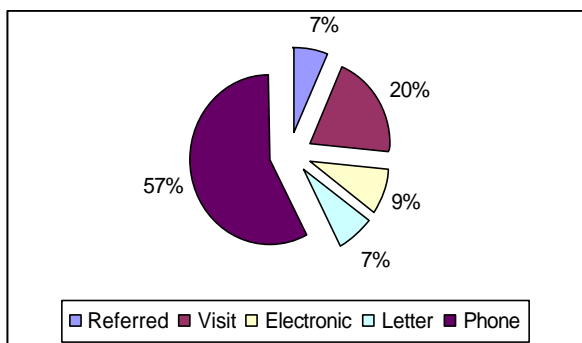
Total approaches to the Office are made up of all inquiries and complaints received in person, by telephone, by email, via the internet or in writing whether related to the “General” area (NT Agencies, Corrections and Local Government) or NT Police.

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



This year there has been a very slight increase in the number of total approaches for police (488 to 495), however there was a 25% decline in the general jurisdictions. This has culminated in a 20% decrease in the number of approaches overall.

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



People can approach the Ombudsman’s Office in a number of ways. 57% of all approaches to the Ombudsman were made by telephone and 20% in person.

Walk-in complaints (visits) have substantially increased over the past two years from 4% to 20% of approaches.

The majority of referred complaints are from Police.

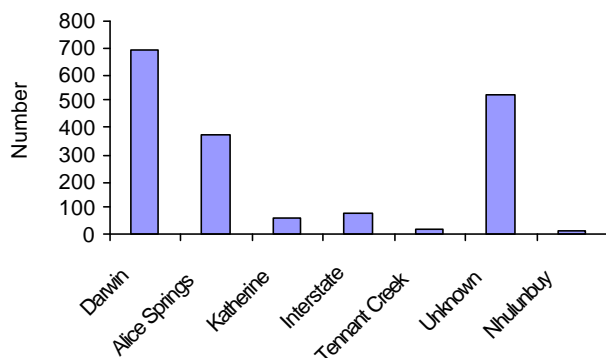
**Table 2:** Comparison between approaches received over past three years

Approaches	2004/05	2005/06	2006/07
Inquiries	2141	1787	1307
Complaints	1134	883	774 <sup>4</sup>
<b>Total Approaches</b>	<b>3275</b>	<b>2670</b>	<b>2081</b>
Inquiries to complaint	923	670	468
<b>Net Approaches</b>	<b>2352</b>	<b>2000</b>	<b>1613</b>

Compared to last year there has been a 27% decrease in the number of inquiries received while the number of new complaints dealt with has decreased by 12%.

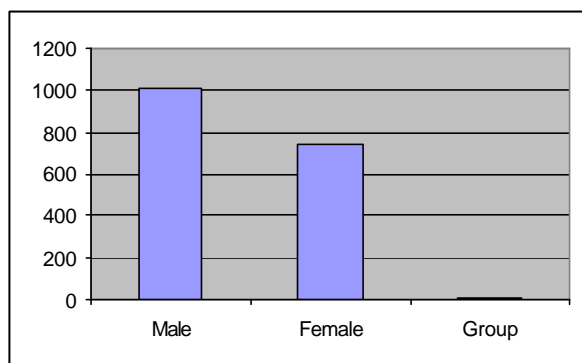
Of the net approaches to the Office, 48% were dealt with as formal complaints under the Act. In the previous year 44% of net approaches were dealt with on a formal basis.

**Chart 3:** Geographic source of complaint



The majority of complainants came from the Darwin area (39%), followed by Alice Springs (21%). The large number of unknown (30%) is because of the number of complaints received that are out of jurisdiction and in these cases the location of the person is not requested.

**Chart 4:** Gender breakdown



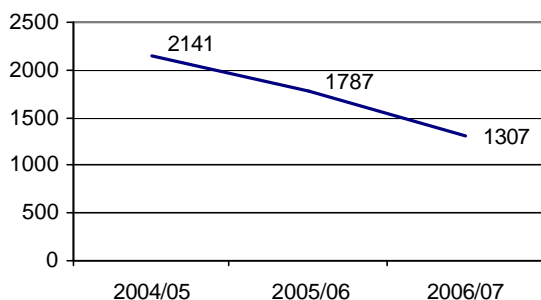
Overall the male:female ratio is 57:43. however within the Corrections area the ration is 93:7. This high ratio of male complainants within the prison system has a significant impact on the overall ratio.

<sup>4</sup> Within this figure are 310 complaints which were referred back to the agency for direct resolution with the complainant. Once referred back, the Ombudsman took no further action in relation to the complaint and it was closed

## INQUIRIES ONLY

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

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



There was a 27% decrease in the number of inquiries received in 2006/07 when compared to 2005/06. Over the past two years there has been a 38% reduction in the number of inquiries received.

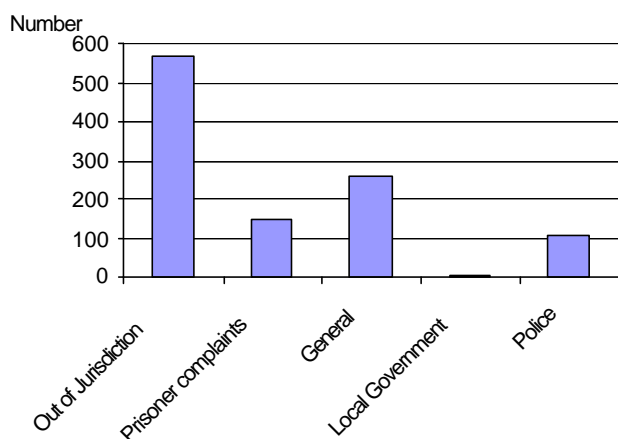
The major reductions were associated with enquiries from prisoners (23%) and out of jurisdiction (33%).

During the financial year, 1,307 inquiries were recorded. Of these, 214 became cases and were transferred to the complaint data base and have been included in the complaint statistics. This can be summarised as follows:

**Table 3: Summary of Net Inquiries**

Jurisdiction	All Inquiries	Becoming Cases	Net Inquiries
Out of Jurisdiction	570	2	568
Corrections - Prisoner complaints	183	33	150
General	357	95	262
Local Government	24	17	7
Police - against police officers	173	67	106
<b>Total:</b>	<b>1307</b>	<b>214</b>	<b>1093</b>

**Chart 6: Net inquiries by jurisdiction**

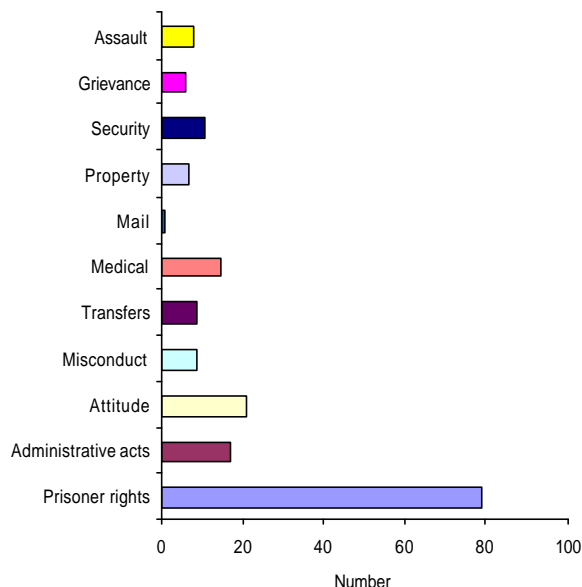


52% of the net inquiries received by the Ombudsman were out of jurisdiction (59% in 2005/06). In these cases the inquiry would have been referred elsewhere, relevant information provided or the inquiry closed.

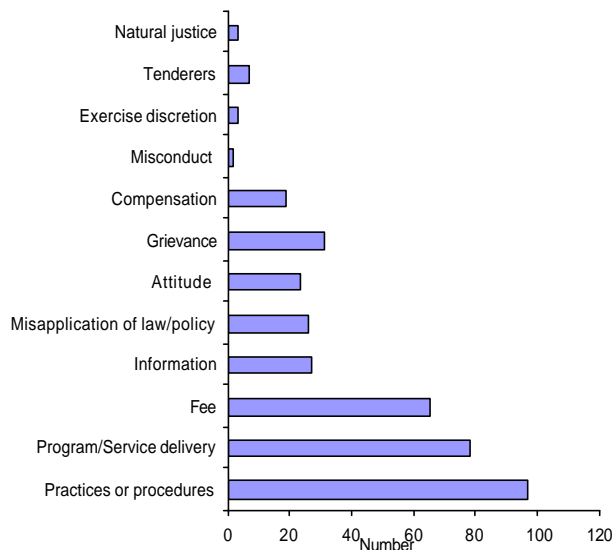
The "General" area which consists of NT Government agencies received 24% of the net inquiries with Prisoner complaints amounting to 14%

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

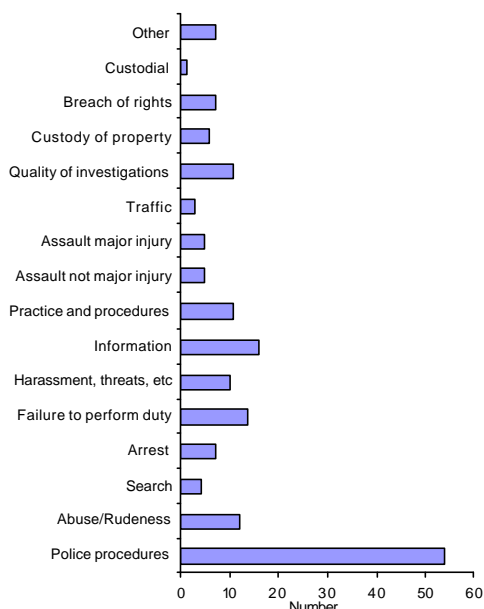
**Chart 7: Inquiry Issues – Correctional Services**



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



**Chart 9: Inquiry Issues – Police**



The primary issue of complaint for prisoners related to their rights or lack of them (43%).

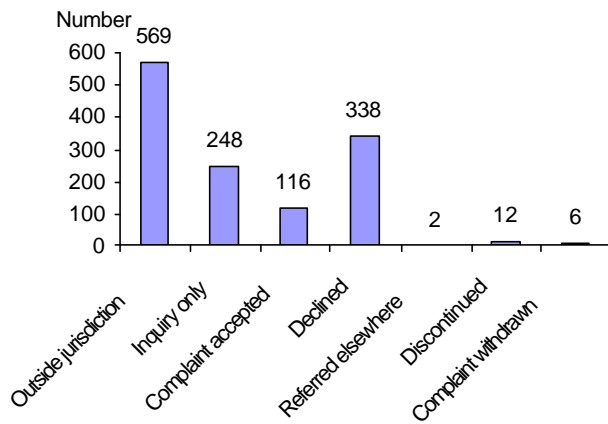
In the General/Local Government area the primary issue was practices and procedures (25%).

With complaints against police, the main issue was police procedures (31%).



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

**Chart 10: Inquiry Outcomes**



A large proportion of inquiries could not have a recorded outcome as they were out of jurisdiction (44%).

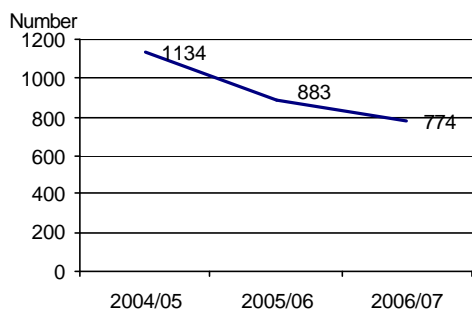
Of the remainder, 19% were inquiries only (ie seeking advice or information) and a further 26% were declined in the majority of cases so that the person could approach the agency with the complaint in the first instant.

## COMPLAINTS ONLY

### OVERVIEW OF ALL COMPLAINTS

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

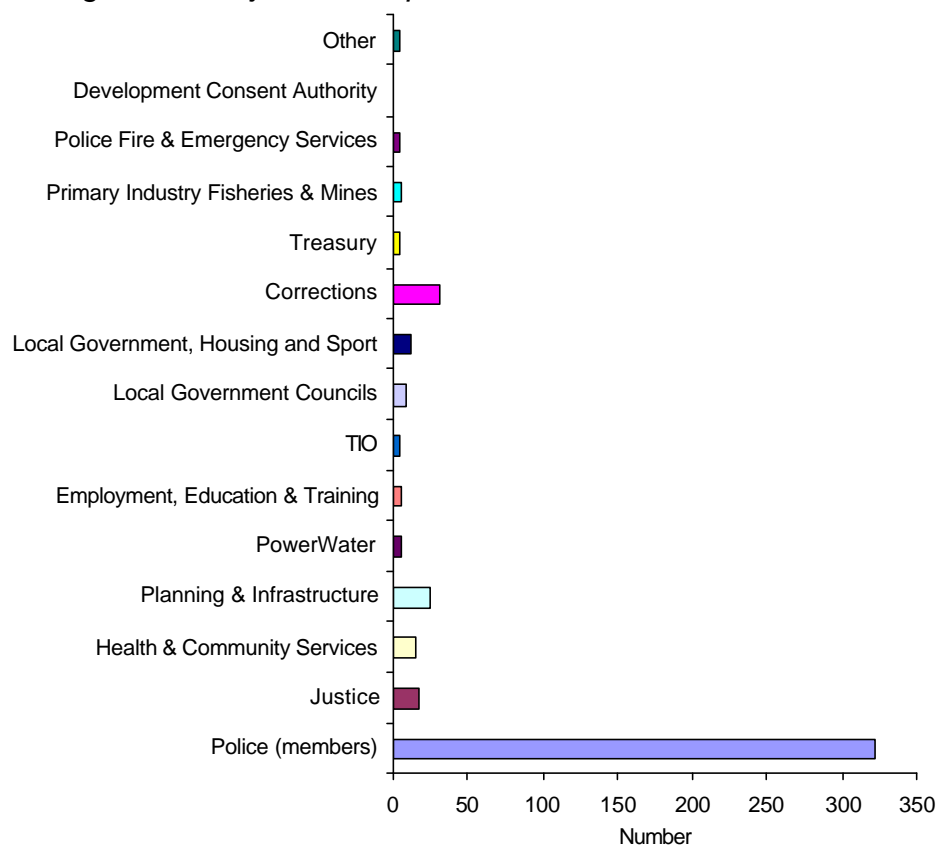
**Chart 11: All Complaints – 3 year comparison**



There has been a 12% reduction in the number of complaints received when compared to 2005/06. However, when compared to 2004/05 there has been a 30 % decrease.

Chart 12 provides a breakdown of the 464 complaints (774 less 310) actioned by the Ombudsman. It can be seen that complaints against NT Police members accounted for 69% (57% in 2005/06), while 7% related to complaints from prisoners (16% in 2005/06).

**Chart 12: Agencies subject to complaints**



Agencies included in the Other category are Charles Darwin University (2); Office of the Commissioner for Public Employment (1); Natural Resources, Environment and the Arts (1).

A detailed breakdown of all the complaints actioned by the Ombudsman can be found at Appendix B pages 66 to 69.

The analysis which follows relates to the 464 complaints actioned by the Ombudsman and is reported on under the following headings:

- Northern Territory Agencies (excluding NT Police) (142); and
- NT Police – complaints against police officers (322)

## NORTHERN TERRITORY AGENCIES (EXCLUDING NT POLICE)

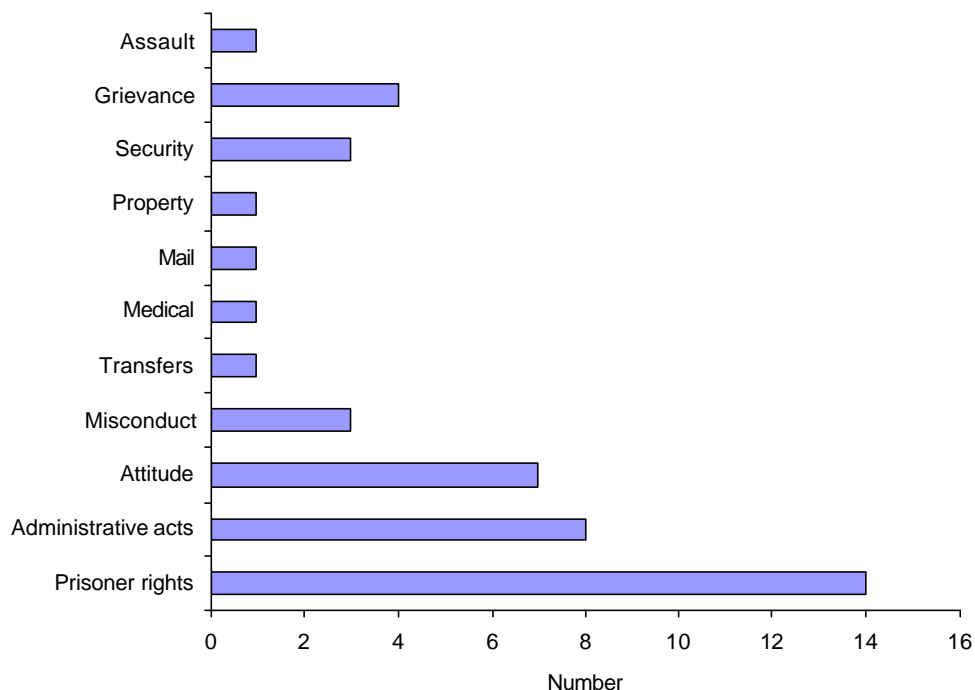
### ISSUES COMPLAINED ABOUT

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

#### Correctional Services

There were 31 complaints actioned by the Ombudsman in respect of Correctional Services, raising 44 issues of complaint.

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



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

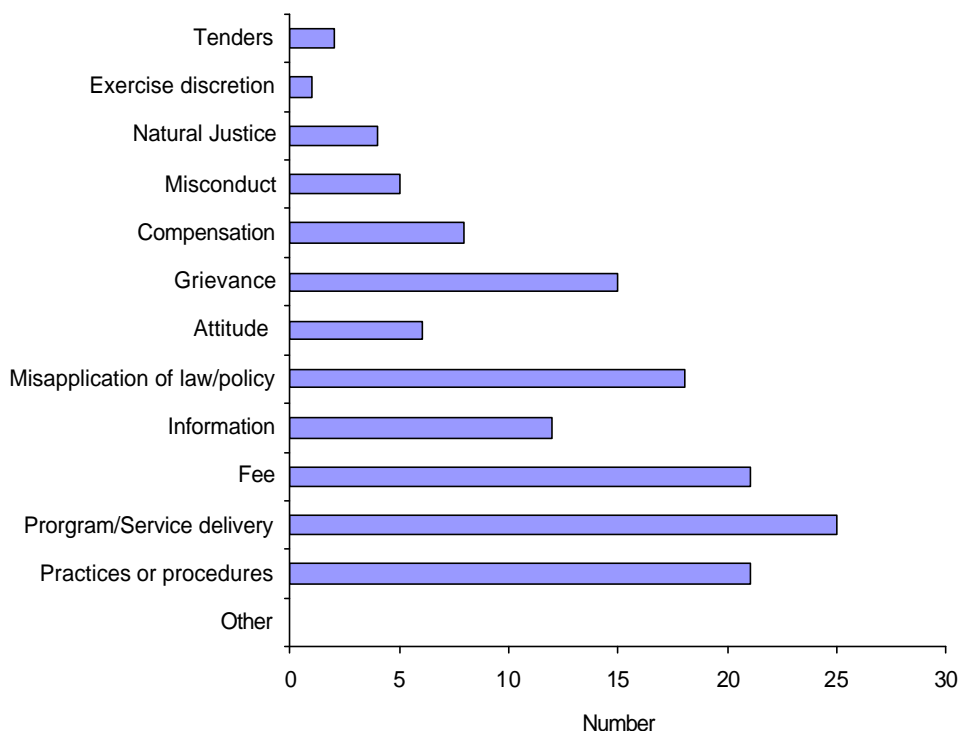
Issues	2004/05	2005/06	2006/07
	%	%	%
Prisoner rights	45	31	32
Administrative acts	13	15	18
Attitude	10	7	16
Medical	5	8	2
Misconduct	5	7	7
Property	5	9	2

Issues about prisoners' rights remain the major concern (32%) followed by administrative acts or omissions (18%). Of some concern is the increase in complaints relating to the attitude/behaviour of staff.

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

There were 111 complaints actioned by the Ombudsman in respect of NT agencies, excluding NT Correctional Services and NT Police, raising 138 issues of complaint.

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



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

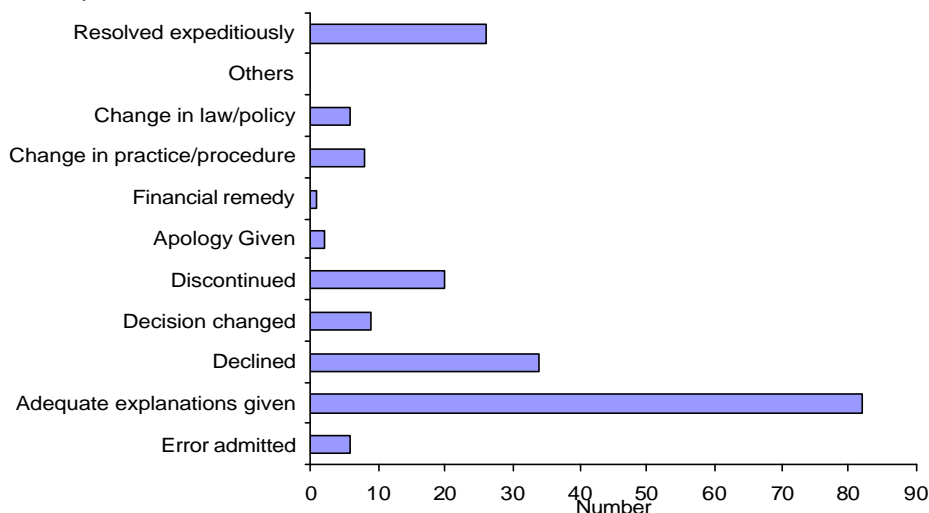
Issue	2004/05 %	2005/06 %	2006/07 %
Practices & procedures	33	30	15
Service Delivery	11	17	19
Fees	10	9	15
Information	10	6	8
Misapplication of law/policy	9	10	14
Attitude	6	7	5

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

## OUTCOMES OF FINALISED COMPLAINTS

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

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

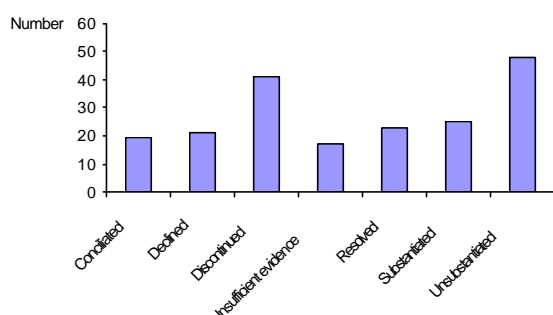


Of significance is the fact that:

- 22% of complaints were finalised because an adequate explanation was provided (32% in 2005/06).
- 18% of cases were declined for investigation after the details were obtained (31% in 2005/06). Reasons for declining included referral back to the Agency to resolve, investigating the matter further was unnecessary or unjustified, the matter was more than 12 months old or there was a remedy available before a court or tribunal.
- 13% of complaints were resolved expeditiously between the complainant and agency with the assistance of the Ombudsman (10% in 2005/06).
- Only 4% (8% in 2004/05) of cases resulted in a change in practice or procedure.

## Extent to which outcome favoured the complainant

**Chart 16:** Issue determinations



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

**CASE STUDIES****Correctional Services****Who Assaulted Who?**

A prisoner complained he had been assaulted by a prison officer. He said he was ordered from his cell and marched to a private room which had no video surveillance. He said it was common knowledge among the prisoners that the room is used by prison officers to give prisoners a 'hiding'.

The prisoner admitted to throwing some punches but was adamant that he was hit first and only reacted in self-defence. As a result of the altercation he was charged with assault after the prison officer made a report to police. Police also took a complaint of assault from the prisoner but the investigation was finalised with no charges being laid.

After making inquiries I determined that appropriate action was being taken in relation to the complaint of assault. NT Correctional Services had acted in accordance with their Directives by reporting the matter to NT Police, which is the most appropriate body to investigate such matters. Whether or not the actual facts of what occurred in the room can ultimately be ascertained, a court hearing is the most likely forum to bring out the truth. NT Correctional Services undertook to conduct an internal investigation if, at the completion of the court case, anything untoward regarding the conduct of prison officers or the practices of the prison had been identified. I was satisfied with this undertaking and closed my file on this issue.

I did however pursue the issue of why a private room without video surveillance is used by prison officers, when clearly the practice is giving rise to rumours among prisoners that prison officers are using it to assault prisoners.

In response, I was informed that there are large sections of the prison without video surveillance, so the room is not unusual in this respect. The room is used both for private interviews, for example between prisoners and their lawyers, and for security purposes when prison officers deem it unsafe for discussions between prison officers and prisoners to occur in an open area. Regarding the latter use, the Superintendent maintained that there was nothing inappropriate about using the room for this purpose. However he agreed that the prison could 'work smarter' to avoid allegations of the sort made in this case. He advised that in future prison officers using the room to speak to prisoners would do so only with the approval and presence of senior staff at the level of Chief Prison Officer or above.

I was satisfied with this change of procedure and advised the complainant of the outcome of my inquiries. At the time of writing the criminal case has been finalised and the complainant was found not guilty. Inquiries are currently being undertaken to ascertain what consideration NTCS has given to conducting an internal investigation.

**Even Prisoners Have a Right to be Treated Fairly**

A complaint was received from a prisoner whose recent application for a lower security rating had been refused. He alleged that unproven and false reports by prison officers about his alleged poor behaviour were preventing him from achieving a lower security rating. This meant that he was not entitled to certain privileges available to lower rated prisoners. He also feared the adverse reports and his high security rating would affect his ability to obtain parole.

In NT correctional centres, security assessment of prisoners is conducted in order to place them at the lowest level of security consistent with the safe custody of the prisoner, the good order and management of the facility and the effective protection of the community. The security rating structure has six categories, ranging from maximum to open and including protection and remand categories. A classification and security assessment committee regularly reviews the security rating of individual prisoners. It does this by reviewing reports on the prisoners from prison officers and civilian staff who work with the prisoner. It also reviews the prisoner's misconduct history and incident reports on the prisoner's file which record instances of adverse behaviour. After consideration of all relevant information it makes a recommendation to the Superintendent of the respective correctional facility.

In this particular case I first considered the adequacy of the security assessment and review procedure. I found no immediate grounds for concern, noting that the procedure would appear to support the public administration principles of impartiality, fairness, transparency and accountability.

I then considered the adequacy of the process used in this particular instance, which was the subject of the complaint. I reviewed the documents referred to by the classification and security assessment committee in determining that the complainant's security rating should not be reduced. I found that the committee had adhered to NT Correctional Services policy with respect to obtaining all relevant information and making its recommendation in accordance with the appropriate criteria. The prisoner had been found guilty of a prison misconduct within the past six months and this was grounds for determining he was not suitable for a reduced security rating.

However, I did find some deficiencies with respect to the practices of the correctional centre in obtaining the information relevant to determining a prisoner's security rating. I found that there was no clear direction given to staff providing reports on the prisoner regarding the period of time that is relevant in reviewing a prisoner's behaviour. Without specifying an assessment period it is not possible for the assessment committee to be confident that the reporting staff member is commenting on a prisoner's current or recent behaviour, as opposed to their past behaviour. Since it is important in the security classification process to be able to identify whether a prisoner's behaviour has improved (or deteriorated) over time, there is a need to ensure the reports are specific to the timeframe relevant to the assessment.

As a result, I recommended that the classification assessment manual be amended to include guidelines on the assessment periods that are applicable to each criteria, and that the forms clearly state the applicable assessment period. My recommendation was accepted and I was advised that the changes would be incorporated into the new Offender Management System, which is due to replace the current database shortly.

I also found some significant problems with the system of recording incidents involving prisoners, these incident reports being reviewed by the assessment committee. Prison staff are required to document all incidents they witness which may affect the good order and security of the correctional centre. In the majority of cases these incidents relate to adverse behaviour of one or more prisoners.

Where the behaviour of a prisoner as recorded in an incident report merits a prison misconduct charge, the prisoner is advised of the charge in writing and given an opportunity to defend himself in a hearing before the Superintendent or delegate. However, it may be determined that no charge should be laid against the prisoner for the alleged misconduct. In this case, it is usual practice for the incident report to be filed on the prisoner's file, with no further action being taken. In some cases, the prisoner may not be aware of the report, or if aware, not know exactly what has been reported about him.

The principle concern about this process is that – unlike in the case of a prison misconduct charge - the prisoner is not afforded the opportunity to dispute the information or to defend himself against the allegations made in the incident report. Yet these reports are reviewed by the classification and security assessment review committee and used in its determination of the security rating of a prisoner.

I raised my concerns with NT Correctional Services, which acknowledged there was a need to improve accountability and procedural fairness in the process of incident reporting. It partially accepted my recommendation that prisoners sight the incident report, agreeing that an incident report will be brought to the attention of the prisoner concerned, except where it was deemed by a senior officer that to do so would disrupt the good order and management of the prison. The reporting form will also be amended to prompt all prison officers who have dealings with the report to record the action taken, as a means of enhancing accountability.

These actions do not entirely satisfy my concerns with the incident reporting process and further consideration is being given to this matter in relation to several other complaints by prisoners.



### No Rehabilitation Programs for Maximum Security Prisoners

Complaints were received from two male prisoners who were concerned that they could not access any rehabilitation programs as they are housed in maximum security. In particular both had formally requested to attend an Anger Management program. The prison had informed them that they would only be able to do programs if they could show by their behaviour that they should be re-classified to medium security, as no programs were available in the maximum and remand block. One prisoner thought this was a “catch 22” as he recognised that he had anger management problems and wanted to do the program to help him to change his behaviour. The second complainant had been in maximum security for around sixteen months and had not had access to any formal rehabilitation programs in this time except for a spiritual guidance program run by the chaplain. He expressed frustration at the lack of opportunities to assist him in addressing his behaviour and the lack of other meaningful activity for maximum security prisoners.

In response to my enquiries, Correctional Services re-affirmed that no rehabilitation/treatment programs were available to male maximum security inmates, as *“the security arrangements within the Institution do not allow for the movement of maximum security prisoners”* to mainstream areas to attend programs.

My Office noted the findings of the March 2004 report of the Adult Custodial Services Review commissioned by NT Correctional Services:

*Programming is not provided in maximum or remand in either facility. The principle that program resources are best targeted at high risk offenders is well established in the research literature. Arrangements need to be made to add program space in the maximum remand areas and deliver programs there, or to send maximum / remand inmates to programs in the rest of the institution, and make appropriate security arrangements.*

*Programming for high risk offenders is the best way to protect society and the most cost effective use of resources because of its greater impact... Significant savings from predicted expenditures are possible. (p42)*

Recommendation 53 of the Review called on NTCS to *“identify the highest risk cases in their care, and use Integrated Offender Management to target them with intensive programming and follow-through in the community.”*

The NT Government has committed itself to the implementation of all recommendations of the Custodial Services Review over four years from March 2004. In addition the NT Department of Justice Strategic Plan 2005-2009 identifies as a *“strategic priority”* to *“effectively manage adult and juvenile offenders and detainees with a strong focus on rehabilitation and reintegration.”* This reflects the Australian Standard Guidelines which state that prisoners are to be *“provided with opportunities to address their offending behaviour and actively encouraged to access evidence-based intervention programs.”*

I was advised that the new Integrated Offender Management System was due to go on-line in 2007. This is an electronic case management system that assists in the matching of prisoners to appropriate programs and education where they are available. At December 2006, individual case management of prisoners did not yet occur in any systematised way in either institution.

Both institutions expressed their intentions to begin to offer treatment programs to maximum security prisoners in 2007. I was made aware of genuine efforts on the ground to achieve this aim. Programs management across both institutions had been re-structured. New staff (psychologists, treatment intervention workers and Indigenous Liaison Officers) had been recruited. Darwin Correctional Centre was exploring offering individual program sessions for maximum security inmates. At the same time, I was made aware that resource constraints and recruitment difficulties, especially in Alice Springs, were significantly hampering these efforts. Alice Springs Correctional Centre could not specify any particular plans for 2007 in the area of treatment programs for maximum security prisoners but stated that educational options would be expanded.

I was concerned that at December 2006 there were still no treatment intervention programs available in maximum or remand areas in either prison in the NT.

In addition, no arrangements had been made in either institution to allow male maximum or remand inmates to attend programs in mainstream (that is, in areas of the prison they are not currently allowed to access). Nor had I been informed of any plans to this effect. I acknowledge that such a move would require appropriate security arrangements to be put in place and would have resource and staffing implications.

While it was clearly unsatisfactory that these prisoners still had no access to rehabilitation programs, I determined to close the file in December 2006 believing that no more could be achieved at that stage. I undertook to conduct a review of the situation after six months. In mid 2007 I will assess the Department's progress in rehabilitation making programs available to remand and maximum security prisoners across the NT.

### **Action Needed to Uphold Prisoner Rights**

The rights of persons incarcerated in correctional centres are, by both necessity and design, significantly curtailed. Aspects of life taken for granted by people 'on the outside' are in the main "privileges" for prisoners, liable to be rescinded for bad behaviour.

There are however certain minimum standards, set by the Office of the High Commissioner for Human Rights and endorsed by Australian jurisdictions. These include, among other things, the right of prisoners to be permitted, under necessary supervision, to communicate with their family and reputable friends at regular intervals. In practice, this means permitting prisoners to receive visits, to speak with family and friends by telephone and to correspond in writing, to a reasonable extent.

My Office has in recent months received a number of complaints from prisoners concerning the difficulty of accessing the telephone in their block during 'unlock'. I am advised that each block in both the Darwin and Alice Springs Correctional Centres has only one telephone handset. At times, some blocks may hold over 50 prisoners – indeed M Block at Darwin Correctional Centre has held over 100 prisoners. Each prisoner is permitted (subject to any Loss of Privilege decisions) to make one 11 minute telephone call per hour during unlock. While theoretically this is a generous policy, one can clearly see how difficult it may be for prisoners in the more populated blocks to obtain access to the one handset available to them during the approximately five-hour period of unlock.

Information obtained from Professional Standards Unit indicated that NT Correctional Services fully recognised the problem and the impact it had on prisoners' ability to have regular communication with family and friends by telephone, however the Department lacked the funds to rectify the problem.

In view of the fact that the issue is one of resourcing and political priorities, rather than administrative decision-making, I wrote to the Minister for Correctional Services, noting my concern that prisoners may not be having the contact with family and friends that would be considered to meet the international standards and seeking to identify the priority that the Government is placing on this matter.

The Minister provided an update on the resource situation by advising that funding has now been approved to install more telephone lines at the Darwin Correctional Centre, to enable more handsets to be installed. Priority was being given to the blocks with the highest population and work was expected to be completed by June 2007. Similar upgrades were planned for the Alice Springs Correctional Centre in the near future.

I am now able to advise prisoners complaining about access to the telephones that action is being taken to address the problem.

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

### Building Expectations (Department of Planning & Infrastructure)

A complaint was received against the Department of Planning and Infrastructure for failing to overturn a decision by the Home Building Certification Fund (HBCF) to reject the complainant's claim against the fund in relation to moisture penetration through the walls of their house. Although the Director set out the reasons for the decision, the complainant was of the view that it was unreasonable because the Director based his decision on a general policy rather than on the evidence, which the complainant believed, supported the claim.

My inquiries included determining if the Department acted reasonably in this instance and whether there was any objective method Building Advisory Service (BAS) could have used to determine the issue of non-compliance, rather than relying on the policy. In summary, the Director of Building Control refused to overturn the decision of the HBCF to reject the claim, referencing the BAS's policy for the assessment of claims in relation to peeling exterior paint. He informed the complainant that the HBCF only made payments for claims relating to substantiated non-compliance with the Building Code of Australia (BCA).

The Director's decision was that as the initial application was made over one year after the house was completed and there was no evidence of moisture ingress at that time, the BAS concluded in accordance with the policy that the peeling paint was evidence of poor workmanship rather than non-compliance with the BCA. He further determined that as the second application was made several years after the house was completed, the ingress of moisture that had occurred by then was evidence of lack of maintenance rather than non-compliance. Hence in his view there was no valid claim against the HBCF.

The Department advised that once a building permit has been issued it is the role of the certifier and the builder to ensure that the house is built in accordance with the certified drawings. The certifier undertakes inspections at certain specified stages of the work (e.g. siting of the building, pre-pouring the slab, waterproofing of wet areas, etc.) and overall ensures that what is drawn has been built. The certifier completes an inspection record after inspections, and relies on these as proof that what has been completed to date is in accordance with the drawings and the BCA.

The builder has a responsibility to ensure that accepted building practices and systems are utilised in the construction of the house, including those referred to in the BCA either directly or indirectly. Examples include appropriately sized fixings and adhesives, and application of paints and sealers where required. To confirm that this has been the case, the builder signs a statutory declaration stating that he/she has built in accordance with the building permit (commonly referred to as a Builder's Declaration).

The certifier cannot and is not expected to inspect every aspect of construction. This is the role of a site supervisor and goes beyond the role of the certifier. The BCA makes no provisions for how long the waterproofing system must stay in place as this is specific to the products used and the manufacturer's recommendations and requirements. This is an issue of quality of the products used as well as workmanship, as opposed to compliance.

BAS has found that a single skin external wall that has not been adequately waterproofed at the time of construction will show evidence of moisture ingress during the first wet season, hence the one-year timeframe adopted by BAS. After the first wet season the waterproofing system may deteriorate due to the exposure of the wall, quality of the products used and quality of workmanship used to apply the waterproofing. This becomes an issue of maintenance, not compliance with the BCA, and is the responsibility of the property owner to address.

The Director of Building Control advised this Office that in the case of the home several factors indicated that some form of waterproofing had been applied, including evidence of a coat beneath the peeling paint seen in photographs taken at the time of the first claim; evidence of the same coat during a recent inspection; no evidence of moisture ingress at the time of the first claim approximately 18 months after the home had been completed; and the recent claim showing evidence of moisture ingress which appeared to have taken six and a half years to manifest.

It is not the role of the Ombudsman to assess the technical merits of the policy. Rather, our role is to satisfy ourselves that the policy is in line with relevant legislation, has a rational basis and meets all the requirements of good administration such as being fair and realistically able to be complied with. After considering the information available, the Ombudsman was of the view that there were no grounds for concern regarding the policy. It provided a reasonable basis for assessing compliance with the BCA, in the absence of an objective method. While the detail of the policy may be debatable – e.g. whether one year is sufficient to determine that the sealant was compliant – these are technical issues which the Ombudsman would only look at if there was some evidence that there was insufficient basis for the rule.

The Ombudsman concluded that the decision of the Director of Building Control was not unreasonable on the basis of the information available. No evidence could be found of maladministration in the matter and the Ombudsman was unable to assist any further.

#### **Not Easy Listening (Department of Natural Resources, Environment and Arts)**

A complaint was received from a suburban resident against the Department for failing to take appropriate action in relation to loud music emanating from an adjacent public recreation park. The complainant was frustrated at being told that nothing could be done to alleviate a situation which made life in the home unbearable at times.

The complainant was concerned not with the existence of the park per se, but with the Department's decision to permit the playing of music on certain occasions. In this respect, the Department advised that they had only received complaints from the complainant but were aware that the neighbour also had concerns. Although the Department had responded to these concerns and taken certain action, the complainant felt they were not sufficient. The Department advised that there was nothing else it could do, short of banning music events at the park altogether, and this was not being contemplated.

In considering the complainant's arguments, the Ombudsman noted that the Department was only aware of there being an adverse impact on two households in the surrounding neighbourhood. The reason why others did not appear to be affected was unknown. The fact that the majority of households did not appear to have a problem suggested that, had they undertaken a survey of the area, the Department would have concluded that there was an overall benefit to the community in permitting occasional music events.

The Ombudsman further noted that there was legislation to deal with complaints of excessive noise and that the Department appeared to be complying with this legislation and to have put reasonable conditions in place to limit the impact of the noise from music events. The Ombudsman concluded that the Department had no further obligation to take additional steps to reduce the noise levels in the circumstances.

The Ombudsman's inquiries found that the Department had not acted unreasonably or breached any legislation or principles of administrative law. As the Ombudsman was unable to assist any further, the complainant was advised that if she considered any of the permit conditions were being breached in the future (i.e. noise levels are over acceptable limits, music continues beyond the set deadline or speakers are not pointed away from houses), she should contact the Chief District Ranger and if dissatisfied with the response, to take it up with the Chief Executive of the Department.

#### **Sense and Sensitivity (Department of Justice – Office of Births, Deaths & Marriages)**

A complaint was received against the Office of Births, Deaths and Marriages ("BDM"). The complainant stated that she attended the BDM Office to register the name of her stillborn baby daughter. She wished to give her daughter the father's surname. However, BDM staff would not allow it since the father's signature was not on the form - a breach of the applicable policy at the time. The complainant felt that the BDM policy was wrong, unfair, or inflexible, in its application to stillborn babies, and further, that BDM staff members had been rude and unhelpful, causing further distress. Following inquiries into the relevant legislation and policy, the Chief Executive Officer (CEO) of the Department of Justice, advised that it had been the longstanding practice of the Office to refuse to register a surname identical to the surname of a nominated "father" who has not acknowledged

paternity. In these circumstances, such a name is generally regarded as a prohibited name as its registration would be contrary to the public interest pursuant to section 20 of the Births, Deaths and Marriages Registration Act. The chief concern being that registration may interfere with the rights or interests of the nominated father. Registration of a child under a surname can have significant implications for the nominated father, who may or may not bear any relationship to the child.

While the policy had a sound basis it was acknowledged that there might be circumstances where a departure from the usual policy was warranted, particularly in the case of a child who is stillborn or dies soon after birth. Having carefully considered the policy aims inherent in the legislation and the Prohibited Names Policy, the Registrar decided in this case to allow registration of the child in the nominated father's surname. The Registrar also indicated that the Prohibited Names Policy would be reviewed. Specific reference to the policy regarding the nominated father's surname was to be included in the revised policy, along with an indication that consideration would be given to a different approach if the child had died before registration and the father was not available."

In light of the Department's decision to review and amend their policy and the reasonableness of its response to the matter, the Ombudsman decided that no further action was warranted.

In regards to alleged treatment of the complainant by BDM staff members, the CEO acknowledged the complainant's distress and offered to apologise to the complainant if she felt that any staff of the Office had treated her unfairly or had not treated her with appropriate sensitivity. The Registrar, subsequently met with all staff of the Office to discuss the policy and to reinforce the need for staff to deal with similar situations in a sensitive manner. The Ombudsman was satisfied that the Department had adequately dealt with the complaint of staff rudeness and declined to take any further action in the matter.

#### **Spray Drifters (Department of Primary Industry Fisheries and Mines)**

A complaint was received about the way in which officers from the Department's Chemical Services handled a resident's complaint about agricultural chemical spray drift emanating from a neighbouring property. The complainant questioned the neighbour's farming practices and also objected to being advised to plant a buffer zone to mitigate the spray drift onto her land. The complainant was of the view that there should be controls and legislation requiring the sprayer to plant the buffer.

I advised the complainant to consider lobbying her local Member of Parliament, to approach the Department regarding a review/change to the law; the issue of the impact of spray drift on humans; the issue of requiring the farmer to plant effective buffer zones around their property.

The complainant also raised issues relating to noise and she was advised that these were the responsibility of the Department of Natural Resources, Environment and the Arts. The complainant was asked to contact that Department regarding those issues.

In regard to the issue of the responsibility for installing the "buffer zone", the department advised that there was no formal policy and it was not specifically covered by legislation. The complainant was provided with an information pamphlet on planting buffer zones and advised that there may be some coverage of buffer zones contained in other legislation dealing with land clearing and/or land planning, which was not a function of the Department.

In regard to the issue of delay in being contacted by the Chemicals Co-Coordinator, the Department advised that on receipt of the form it was assigned for investigation within a few days. However, there was a minor delay in arriving at the property because the officer had difficulty locating it. On arrival, samples of fruit were taken and sent for testing for Organo Phosphate and Carbaryl residues. However, none were found above the quoted detection limits.

It was also explained that for a particle of pesticide to have drifted the distance involved, it would be extremely small and invisible to the naked eye and even more unlikely to have formed “crystallised dust” as crystallisation is a slow process in the natural environment involving increase of concentration.

The Department advised that it only had authority to investigate possible spray drift damage to crops or plants. The Act was not written with the intention of investigating residential premises for spray drift and it did not empower the Chemicals Advisor to enter residential premises uninvited. By way or remedying the situation, the A/CEO undertook to develop a new sampling procedure for residential premises and also a protocol designed to avoid any confusion to members of the public.

The Department also provided an assurance that remedial action was being considered, where appropriate, to improve aspects of its administrative processes and the standard of information available to the public through its website and Incident Report Form. The Department advised that although its website contained enough information on spray drift management and details of other organisations to contact, it would nevertheless; consider adding additional information. The Department also advised that it would endeavour in future to clearly explain to complainants, what its powers and responsibilities were and what outcomes the Department could achieve for complainants.

The Ombudsman found that the legislation, in its present form, was designed to only afford protection to stock and plants; not humans. Despite this, the Department did endeavour to assist complainants where it could by investigating complaints when received.

Seeing that the Department had proactively undertaken to remedy the relevant potential deficiencies, the Ombudsman declined to make any formal recommendations but requested to be notified when the rest of the Department’s initiatives were completed and implemented. The file was closed after informing the complainant of the outcome and providing alternative suggestions/avenues to assist her further with other issues that were not within the Ombudsman’s jurisdiction.

#### **Mistaken Identity! (Department of Planning and Infrastructure - MVR)**

A complaint was received alleging that MVR had mistakenly registered the wrong vehicle when the complainant attended to transfer her new vehicle into her name and pay the registration fee. The complainant subsequently received a Traffic Infringement Notice (TIN) for driving an unregistered car. She contended that she should not have to pay the penalty as she was not responsible for the fact that her car was not registered. She also sought a refund of the registration fee for the car she did not intend to register.

As a result of our inquiries, MVR acknowledged that an administrative error had occurred which resulted in the wrong vehicle being registered and agreed to refund the total registration fee. MVR also apologised to the complainant but declined to consider any refund of the traffic infringement penalty on the grounds that it is the owner’s responsibility to ensure the details on the registration certificate displayed on a vehicle are correct.

There is a process for disputing a TIN, set out in the *Fines and Penalties (Recovery) Act*. As a legal process existed to allow for the penalty to be disputed, the Ombudsman concluded that MVR had not acted unreasonably in refusing to accept responsibility for the matter as a result of her decision not to utilise this option.

Enquiries were undertaken regarding whether the Department should have taken any action against the motor vehicle trader who sold her the vehicle. These enquiries identified that the trader had lodged a Notice of Disposal on 29 May 2006 which listed the complainant as the new owner of the vehicle. While this was outside the 14 day timeframe required under the *Motor Vehicles Act*, it was not considered excessive so as to justify inquiries on my part as to why the Department did not take action against the dealer.

The Ombudsman closed the complaint knowing that the Department was unlikely to make any further concessions on the matter. In closing, the complainant was informed that her complaint had resulted in a number of recommendations being made to MVR to improve its administrative processes.

### **Excess Power Bill (PowerWater)**

A complainant alleged that PowerWater failed to send her a bill, which would have alerted her of a large leak in the water pipes after the meter was read in mid 2006. Instead, PowerWater sent a letter advising that her water consumption was higher than normal. On finally receiving another bill for the next quarter, the water consumption component of their bill was extremely high. The complainant alleged that she was not aware of the excessive water usage until she received the latest bill; and that if she had been made aware of the extreme use of water she would have attended to the problem earlier.

Following inquiries, PowerWater admitted its failure to issue the bill after reading the meter in mid 2006 and apologised for the error. They also processed a waiver for the period between the time when they read the meter in mid 2006 and when the plumber attended the property and repaired the meter a month later. In effect, PowerWater reduced the bill for water consumption by \$583 and also agreed to let the complainant pay the remainder of the bill off in reasonable installments over 12 months.

Given PowerWater's frank admission and resolution of the matter to the complainant's satisfaction, the Ombudsman declined to investigate the matter any further.

### **Animal Antics (Veterinary Board of the NT)**

A complaint was received against the Veterinary Board of the Northern Territory, alleging that they took an unreasonable amount of time to investigate a complaint with respect to treatment received by a friend's dog.

On receipt of the complaint the Board reviewed its complaint processes and identified some inherent deficiencies. At the time of receiving the complaint, the Board was undergoing some administrative changes and as a consequence this led to the delay in the handing down of the decision with respect to her complaint. The Board then implemented measures designed to address instances such as these from recurring. The Ombudsman reviewed a copy of these new measures and was satisfied with the actions taken by the Veterinary Board.

In addition, the Ombudsman advised the complainant that the Veterinary Board was an authority that operates under the NT Veterinary Act (2001) and should she not be satisfied with the outcome of a particular matter in the future then there was an appeals remedy through the Local Court in accordance with the provisions contained within section 36 (3) NT Veterinary Act (2001). The Ombudsman took no further action in the matter.

### **Growing Pains (Darwin City Council & Development Consent Authority)**

A complainant contacted the Office with two issues of complaint against developments in the city. The first complaint related to an approval by the Consent Authority concerning the development of two towers and an 8 Storey block of flats in the city. The second complaint related to the Darwin City Council's (DCC) decision in relation to the sale of a piece of land on the Gardens Golf Links for the development of a 100 unit 4 Storey Tourist Hotel.

In respect of the first complaint, I advised the complainant that as the decision was made by the Consent Authority under the *Planning Act*, and an appeal could be made to the Appeals tribunal, I could not take any further action in the matter as it was outside jurisdiction.

As a result of inquiries conducted by this Office into the second issue of complaint, it was established that at the Darwin City Council meeting in January 2006 there was an item discussed relating to a proposal to develop an area on the Darwin Golf Links site. During these discussions two Aldermen declared a conflict of interest. Consequently, a Probity Committee was established in order to seek advice on the use, development and leasing of the Golf Course. In March 2006, the Darwin City Council, based on a report from the Probity Committee, decided that they would not proceed further with the development proposal. The two Aldermen declared an interest at the onset of this meeting and left the chambers.

In May 2006, A Notice of Motion was raised in respect of the aforementioned Probity Committee Report. That motion was carried and the decision was rescinded. The Council also made a decision to exclusively deal with the developers for a period not exceeding 6 months under certain conditions. During this meeting one of the Aldermen declared an interest in the proposal and left the Chambers prior to Council proceeding with the proposal. In July 2006 a formal presentation was delivered to Council by the developer and in November 2006 the development proposal was formally withdrawn.

The complaint stemmed around the interpretation of Darwin City Council's Land Disposal Policy and their interpretation of same with particular reference to 5.3.8 of that Policy (*Circumstances for an Alternative Process*) which requires the proposal to achieve the specific policy and strategic goals of Council.

The specific goals of Council are outlined in the Action Plan of Darwin City Council 2004 – 2008. Within Section 2 (Economic Development) of the Action Plan, at Issue 2.2, Tourism, it clearly states that the goal is to promote Darwin as a major tourist destination. This was a major purpose of the proposed development put forward by the developers.

The Ombudsman found that Darwin City Council at no point in the negotiations acted inappropriately and that both Alderman had been transparent in disclosing their interests at the onset of the proposal. In fact the Aldermen declared their interests at all subsequent meetings that involved the discussion of the said development. As Darwin City Council had adhered to their Strategic Goals contained within their Action Plan document and acted appropriately the Ombudsman concluded that due process had been adhered to and declined to investigate the matter any further.

#### **Feeling Neglected! (Department of Natural Resources, Environment and the Arts - NRETA)**

A complainant alleged that NRETA had refused to pay him compensation for installing a bore at his expense, when other residents had their bores, pumps and piping installed for free by NRETA.

My inquiries indicated that NRETA had been attempting to eradicate the Cabomba weed from the Darwin River since 2004. In an effort to eradicate the weed, NRETA has been treating the river with a herbicide which meant that Darwin River residents could no longer use the river as a potable water source. NRETA commenced carting water to the residents who were reliant upon the river for their water supply.

However, the cost of this exercise was significant, and NRETA determined that they would fund the installation of ground water infrastructure for effected residents. The funding was approved by Cabinet, and to be eligible for the funding the land owner had to be solely reliant upon the river water for their potable water supply. Eight residents were thought to satisfy the criteria including the complainant. When NRETA contacted the complainant, he advised that he had already installed a bore. In light of the fact that he no longer required an alternative water supply NRETA advised that he was no longer eligible for funding.

I queried with NRETA as to whether or not they had considered making an ex gratia payment to the complainant in light of the circumstances. An ex gratia payment, is a payment of money that is made or given as a concession (or favour) without legal compulsion. The *Financial Management Act* allows for the Northern Territory Government to make ex gratia payments in circumstances where it considers proper to do so. NRETA indicated that they had not considered this possibility.

For NRETA to make an ex gratia payment, the approval of the Treasurer and the Minister responsible for the Department or Agency is required. The Ombudsman therefore suggested to the complainant that he write to the CEO of NRETA and to the Minister setting out his circumstances and request that the Northern Territory Government consider making an ex gratia payment to him. The Ombudsman wrote to the Department supporting an ex gratia payment for the complainant and declined to pursue the matter any further.



### **Cracks in the Surface (Darwin City Council)**

A local ratepayer in the suburbs contacted my Office with a complaint against the quality of workmanship of Council's contractors. The contractors had replaced their internal concrete driveway some eighteen months earlier as part of upgrading an adjacent storm water drainage system adjacent to their nature strip outside their driveway.

The complainant advised that the problem for them was that some eighteen months down the track, the driveway began to crack all the way across and started to break up along the crack line, which looked most unsightly. The complainant said that they had owned the property for some time and had done considerable renovations to improve their property. The complainant was of the belief that it was not unreasonable to expect that a concrete driveway intended for vehicles to be driven over it, should be reinforced when constructed and for it to then be able to last for more than eighteen months without cracking. The complainant also said that as a matter of principle, it was also not unreasonable to expect that the finished product would have been at least the same quality or standard of their original driveway that had to be dug up and replaced by the contractors at the time.

After assessing the situation the Ombudsman believed it was possible to resolve the situation expediently without the need for a formal investigation. Consultation was undertaken with the Council's CEO and the complainant to arrange for a site visit of the property to determine if Council had a duty of care or some residual responsibility to fix the problem quickly and if not, what else could be done. To Council's credit, they quickly agreed to the site visit.

The Acting CEO, the Technical Director, the complainant and an Ombudsman investigator all met on site to inspect the driveway. Following an inspection and discussion on site, Council undertook to promptly repair the driveway rather than go down the path of any potential litigation and the costs involved with that process. A short time later, Council wrote to the complainant confirming its undertaking to replace the cracked driveway and forwarded a copy to my office.

The complainant contacted the Ombudsman to express satisfaction about the speedy and informal resolution of the problem. The Ombudsman commended the Council on its responsiveness and swift action to resolve the matter. Although not always possible, this is a fine example of where parties can work together to achieve a good expedient outcome.

### **Agency Fails to Respond (Consumer and Business Affairs)**

In November 2004 the complainant wrote to Consumer and Business Affairs (CABA) reporting breaches of the *Associations Act* by an incorporated association of which she was a member. The complainant alleged that the association had conducted a flawed investigation, imposed a penalty, and failed to consider an appeal, contrary to the duty to afford natural justice under section 39 of the Act.

In May 2005 the complainant approached my office, concerned that she had yet to receive any formal reply from CABA despite repeated follow-up requests. I initially declined her complaint under section 18(1A)(a) of the *Ombudsman (Northern Territory) Act*, on the basis that she should attempt to resolve her complaint in the first instance by writing to the Commissioner for Business Affairs.

The complainant wrote to the Commissioner, alleging that his failure to enforce the *Associations Act* left members of associations with no protection where self-regulation fails. Again the complainant received no reply despite her consistent requests. Between July 2005 and December 2005, my Office made numerous requests of CABA to provide a formal response to the complaint. In December 2005, thirteen months after her first letter, CABA finally provided its formal reply, advising the complainant that her November 2004 complaint about the association was outside their jurisdiction as it was an "internal" matter. It also provided the complainant with a new Fact Sheet developed to clarify the powers of the Commissioner, to be "uploaded onto the website shortly".

At my specific request, CABA provided the complainant with an apology for the delay in response.

Following this outcome, my Office repeatedly invited CABA to outline what procedural changes would be made to ensure that similar problems of delay and miscommunication would not recur. When none were forthcoming, I remained concerned about whether CABA had adequately addressed the underlying issues raised in the course of the matter, namely:

1. CABA had no written procedure setting out the handling of complaints/reports about associations from members of the public.
2. Record-keeping on preliminary enquiries following reports about associations appeared to be scant or non-existent.
3. It appeared that the CABA policy about what will and will not be investigated in relation to associations is unclear or undefined. An example is the distinction drawn between an internal matter (deemed outside jurisdiction) and an external matter.
4. It was not clear whether any action had been taken by CABA in relation to the association complained of, despite it being the subject of frequent complaints, and despite it having been found by CABA to have a poor record of internally resolving disputes.
5. The Fact Sheet, although now available on request, had yet to be uploaded to the CABA website as at August 2006 despite CABA's promise. In any case, it failed to give practical guidance to people in the complainant's situation.

In April 2006 I made a number of informal recommendations:

1. That CABA develop written procedures for the receipt and processing of complaints/reports from members of the public about incorporated associations, including timeliness benchmarks and record-keeping processes.
2. That CABA include in its policy documents and public information brochures:
  - a) A definition of "internal matter"
  - b) A clear and practical explanation of other options available to complainants, including internal dispute resolution methods under the association's constitution, a Special General Meeting of the association, the Community Justice Centre, or legal action under section 109 of the *Associations Act*.
3. That CABA consider opening a preliminary enquiries file into issues surrounding the specific association's governance and internal disputes processes.

The Commissioner declined to implement any of the recommendations. He asserted that it was "inappropriate" to record all contact with associations. He declined to clarify his jurisdiction by defining an "internal matter", arguing that this would be "difficult" given the diversity and the complexity of associations.

While this outcome is clearly unsatisfactory, I determined that a formal investigation would not be likely to advance matters. The powers of the Ombudsman are limited to recommendation only and therefore, given the Commissioner's views, no further outcome was likely to be achieved by pursuing the complaint.

#### **A sticky situation (Pine Creek Community Government Council and the Department of Local Government, Housing and Sport)**

This was a complaint about the July 2005 Pine Creek Community Government Council elections. A candidate for both President and ordinary member of the Council had died after nominations and two days before scheduled polls. The result was that the number of remaining candidates then matched the number of available seats.

This was a situation which neither the Pine Creek Community Government Scheme nor the *Local Government Act* or Regulations specifically covered. An urgent decision was required as to whether the polls should be cancelled and remaining candidates declared elected or whether fresh nominations should be called.

The Department advised the Council CEO to call a meeting of councillors in order to gauge community feeling about whether the deceased candidate might have had any chance of election. The problem was that most of the councillors were standing for re-election, and therefore had a conflict of interest. Despite this, they passed a motion calling for the candidates to be declared elected.

The Council CEO, on advice from the Department, then declared the council.

The complainant, a Pine Creek resident, was concerned that the actions of the Department and the Council were unlawful or unsound. The Ombudsman found the complaint to be partially substantiated.

Preliminary inquiries revealed that the accepted principle in the context of municipal council, state, territory and federal elections would require that fresh nominations be called in such a situation. On the other hand, a majority of Northern Territory community government council constitutions provided for declaration of the council.

The Ombudsman found the decision of the Council CEO to declare council rather than calling for fresh nominations, and the Department's advice to this effect, to be valid in that they were reasonably open on both legal and policy grounds. However, it would have been more appropriate for the Department to have advised the Council CEO to make the decision alone, without reference to the views of councillors, many of whom had stakes in the outcome of the election.

The Ombudsman was advised of a number of initiatives which would address the underlying issues of the complaint. These were:

- An amendment to the Pine Creek Community Government Scheme to provide clarity in such a situation in future
- Face to face training for the Pine Creek Community Government Council on conflict of interest obligations
- The drafting of a Code of Conduct for all councillors in the Northern Territory
- A major review of the *Local Government Act* and Regulations, including a review of all Community Government Council Schemes
- The redrafting of Community Government Council Schemes which currently have no provisions providing for the death of a candidate
- Consultations with Community Government Councils on other provisions including default to the *Local Government Act* in appropriate situations, where their Scheme is silent on a matter

In light of these substantial outcomes, the Ombudsman considered the complaint to be successfully resolved.

## NORTHERN TERRITORY POLICE

During the course of the financial year the Ombudsman received 322 complaints against police (313 in 2005/06). Of these, 269 (84%) were investigated by NT Police as follows:

- JRC 34 (11%)
- Nil JRC 97 (30%)
- CRP 138 (43%)

The remaining 53 complaints were finalised by the Ombudsman after undertaking preliminary inquiries and assessing the issues of complaint without the need to undertake an investigation.

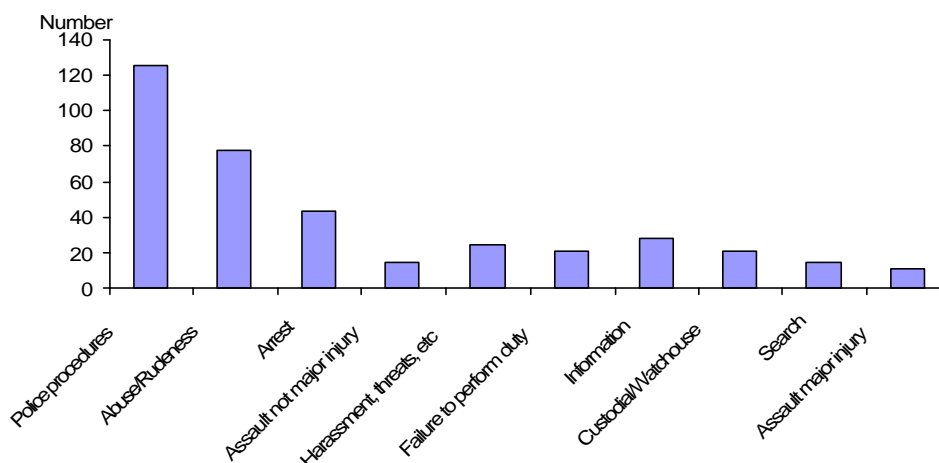
Although there was a slight increase in the number of complaints against police (313 to 322) the Ombudsman was able to improve the average time taken to close these complaints. As can be seen from the following figures, there has been a significant improvement in this regard over the past two years.

- 2004/05 – 54% closed within 180 days
- 2005/06 – 64% closed within 180 days
- 2006/07 – 79% closed within 180 days

### ISSUES COMPLAINED ABOUT

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

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



Additional issues complained about were quality of investigation (10), Juveniles (9), breach of rights (7), corruption/favouritism (6), other conduct (6), traffic (6), custody of property (4), firearms (3), inadvertent wrong treatment (3) and warrants (2)

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

Issues	2004/05 %	2005/06 %	2006/07 %
Policy and procedures	23	28	29
Abuse and rudeness	13	17	18
Arrest	7	11	10
Assault - minor	7	8	3

Issues about policy and procedures remain the major concern and are similar to last year. This was followed by issues associated with abuse and rudeness. Issues associated with minor assault have substantially reduced from 8% in 2005/06 to 3% in 2006/07.

### HOW COMPLAINTS WERE FINALISED

In all, 307 complaints were finalised in 2006/07.

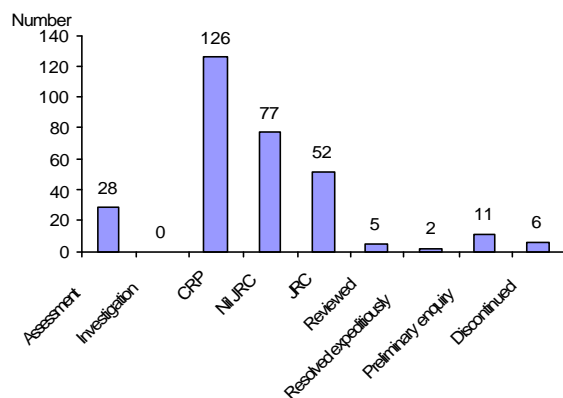
Complaints against police are dealt with in various ways depending upon the severity of the allegation and the seriousness of the conduct complained about. Chart 18 provides a summary of the way complaints against police were finalised.

An explanation of the acronyms used in the Chart follows:

- **JRC** – The Joint Review Committee (JRC) is established pursuant to the ‘Guidelines Between Commissioner of Police & Ombudsman For The Handling Of Complaints Against Police’ and is charged with the oversight of the investigations into the more serious complaints against police. The JRC comprises the Commander of the Ethical and Professional Standards Command (EPSC) as a representative of the Commissioner of Police and the Deputy Ombudsman as a representative of the Ombudsman. These complaints are initially investigated by the EPSC and their report together with all documents are reviewed by the Ombudsman’s Office and a joint report on the outcome of the investigation is then signed off by the JRC and provided to the complainant and the Commissioner of Police. The complainant may seek a review of the JRC decision by the Ombudsman.
- **Nil JRC** – These are complaints that, by agreement with the Ombudsman’s Office, are investigated by the EPSC without oversight by the JRC. The outcome of the EPSC investigation is provided direct to the complainant and a copy is provided to the Ombudsman. The complainant may seek a review of the Nil-JRC report by the Ombudsman and, if that occurs, all the evidence and documents obtained by the EPSC are provided to the Ombudsman.
- **Complaints Resolution Process (CRP)** – These are complaints where, by agreement with the Ombudsman’s Office, after considering details of the complaint, the complaint is conciliated directly between the Police Force and the complainant and an agreement is signed between the parties once concluded.
- **Investigation** – A matter investigated solely by the Office of the Ombudsman.

- **Reviewed** – These are matters that have been finalised under either the Minor Complaints Resolution Process, the Nil JRC process or the JRC process which are then referred by the complainant for personal review by the Ombudsman.
- **Preliminary Enquiries** – These are complaints where the Ombudsman’s Office undertakes initial inquiries into the matters complained about to assist in determining the substance of the complaint. Where it is found that there is no substance to the complaint no further action is taken.
- **Resolved Exeditiously** – These are complaints which are resolved quickly by the Ombudsman’s Office direct with the complainant through the provision of information or advice.

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



Of the 307 complaints finalised, 83% were referred to police to investigate and respond to the complainant directly (87% in 2005/06). Of these, 41% were resolved through the Complaints Resolution Process (CRP) and 25% through the Nil JRC process. 17% of the complaints finalised were through the Joint Review Committee (JRC) process (28% in 2005/06).

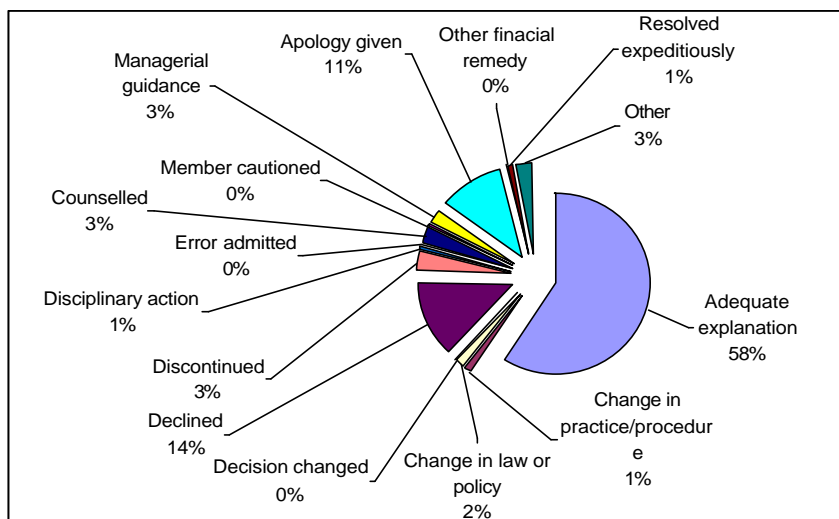
I am particularly pleased that:

- there has been a significant reduction in the number of complaints requiring oversight by the JRC. Reduced from 28% in 2005/06 to 17% this financial year.
- of the 307 complaints finalised, 41% were resolved by utilising the CRP process (38% in 2005/06).
- 15% of complaints were finalised without the need to be referred to Police to investigate or respond to. They were either found to have no substance, were discontinued or were resolved expeditiously.

### OUTCOMES OF FINALISED COMPLAINTS

Chart 19 shows the outcome of complaints. As can be seen the most frequent outcome (58%) was to provide an adequate explanation to the complainant. This was followed by the issuing of an apology by police (11%).

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



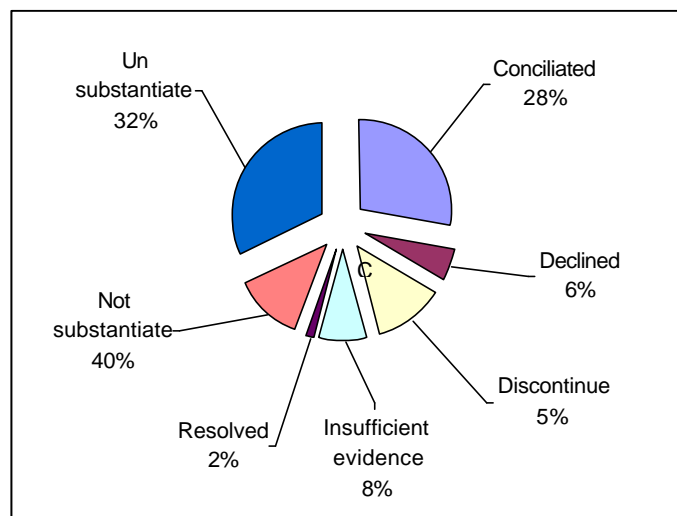
Action was directly taken against members of the NT Police as follows:

- Managerial guidance (3%)
- Counselling (3%)
- Discipline (1%)

### Extent to which outcome favoured the complainant

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

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



As was the case last year, 40% of the issues of complaint were not substantiated. 28% were conciliated (23% in 2005/06).

8% of issues could not be determined one way or the other because there was insufficient evidence to make such a decision.

**CASE STUDIES - POLICE****False Report by Juvenile Nearly Leads to Charge**

A lawyer acting on instructions from a client made a complaint to this Office. It was reported that this client, a juvenile, was arrested in 2006 and conveyed to the Darwin Watch House and whilst being searched by Police, with his feet apart, another male Police Officer came up behind him, placed his hand on the complainant's head and slammed it into the counter. The complainant reported that his forehead was sore and bruised and that when he asked for a Panadol for the injury to his head he was sworn at by Police.

The complainant stated that he requested his Nanna be called, which the police did, however his Nanna had no way of getting to the Police Station. The Police allegedly advised her that they would ring the Magistrate. The complainant also stated that he requested the Police call a youth worker which he did not believe they did. He further complained that he was not immediately taken to the Don Dale Centre and was held in the Darwin Watch House until morning when he was taken to court.

A detailed investigation of the complaint was conducted by the Ethical and Professional Standards Command (EPSC) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The JRC viewed the CCTV footage of the Darwin Watch House and observed the complainant enter the Watch House front counter. He was seen waving to other persons in custody; removing his personal items; being searched by one officer who can be seen lifting the complainant's hair and requesting that he remove an earring which he did; he was handed a blanket and walking unaided to observation cell. Whilst in the cell the complainant could be seen wetting toilet paper and throwing it at the CCTV camera. There was no evidence that at any time the complainant was assaulted or treated in the manner described by him. The footage clearly showed that his allegation of assault against the Police was false. The audio recording from the watchhouse did not support the complainant's assertion that he had asked for Panadol or the services of a youth worker. In relation to the issue of him not immediately being taken to the Don Dale Centre, it was found that the Don Dale Centre had advised they would not take him as he was behaving in an unruly manner. The CCTV footage supported that the complainant's behaviour whilst in custody was unacceptable and the decision to hold him in the cells overnight was reasonable.

The JRC found the allegation that the complainant was assaulted by the Police to be false. The complainant's lawyer was contacted and advised that this Office was seeking a submission as to why the complainant should not be prosecuted for making a false report. The complainant's lawyer requested that her client be given the opportunity to see the recording prior to making any submission and this request was accommodated.

Due to several delays the statute of limitation (Section 52 of the Justices Act) for charging the complainant for making a false report expired. As the period for proceeding with charges against the complainant had expired no further action could be taken in relation to his making a false report.

**Gun Fired for PR Exercise!**

A person complained to this Office on behalf of several Aboriginal women. The ladies and children were visiting the Northern Territory for 'Sorry Business'. During their trip the ladies had an argument and the Police were called. The women indicated that the attending Police threatened them, swore at them and as the Police were leaving they spun their wheels stirring up dust. After re-fuelling and leaving 'town' the women's vehicle was subsequently pulled over by a police officer. This officer is reported to have pulled out his service firearm and said to the occupants "is this gun empty or is it loaded"? They then alleged that he shot a bullet from the gun and said "How's that kids?"

A detailed investigation of the complaint was conducted by the Ethical and Professional Standards Command (EPSC) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC).



The Police were interviewed in relation to the first incident. Admissions were made that some swearing did occur, however not made or meant to be in a derogatory manner. The Police were reminded to adhere to their Code of Ethics as part of this investigation.

In relation to the allegation that a police officer pulled out his firearm and discharged a bullet admissions were also made. The officer said that he removed his firearm from its holster whilst situated near the driver's side door of the complainant's vehicle. He fired a shot into the nearby scrub and across a public road. The officer maintained that it was due to an occupant of the vehicle initiating a conversation about his firearm and that he only discharged it as a "PR Exercise". The occupants in the car advised the Office of the Ombudsman that they were scared and frightened by the officer's actions.

The JRC found that the officer was acting against general orders when he discharged his firearm. He also admitted that he did not submit the required Use of Force Report. They also found that the officer was not authorised to use his weapon in the way that he did during the incident, nor did it appear from the evidence, that he had justification or excuse.

The JRC recommended that the Commissioner of Police take immediate disciplinary action against the officer in regards to the unauthorised discharge of his firearm, and for his failure to submit the required Use of Force Incident Report. The Office of the Director of Public Prosecutions was approached with a view to charging the officer. The Office of the Ombudsman was informed that charges were preferred.

#### **The Naked Truth**

A lawyer representing a client made a complaint against Police to this Office. The complainant had advised that she was at a Darwin Nightclub. She was accused by a patron of stealing and the Police were called. The complainant was arrested and reported that she had difficulties getting into the Police vehicle cage as she was wearing a skirt. She allegedly advised the Police of these difficulties and in response they forcibly put her into the vehicle.

She further reported that at the watch house she was put into a cell. She stated that she was cold as she had not been given a blanket and there were no mattresses in the cell and she had to lie on the floor. She then reported that two female officers came into the cell after they saw the complainant 'trying to straighten her bra strap' and pushed her so she was lying face down on the ground. The complainant stated that the Police were pulling her arms back with such force that she believed they would pop out and a knee was in her upper back. She stated that her skirt was forcibly removed with her legs being 'twisted' in the process, even though she allegedly told the Police that she was menstruating. The complainant reported that she was crying, arguing and struggling with the Police to avoid having her clothing forcibly removed. The complainant stated her top and bra were then removed and she was left naked in the cell for a period of 5-6 hours. During this time she called out to police asking for her clothes and she stated that the Police just laughed at her. She reported feeling humiliated particularly as she was menstruating and that on release she was not given back her underwear, bra and jumper.

Preliminary inquiries pursuant to section 17A of the Ombudsman (Northern Territory) Act were made. The Watch House CCTV footage was obtained by the Office of the Ombudsman. The footage showed the complainant wearing three quarter length jeans and not a skirt as reported by the complainant. The footage also showed the complainant being provided with a blanket upon her reception and that the cell in which she was initially placed contained two mattresses. The complainant could be seen taking these mattresses over to the camera in an attempt to block the vision. The complainant also took toilet paper and wound it around her head/neck area. She could be seen biting and pulling at a mattress seam and trying to remove some length of material hanging from her jeans.

The Police then enter this cell removing the mattress and blanket. At this time the complainant was not forced to lie on the floor. After attempting again to remove the length of material from her jeans the Police removed the material themselves. The complainant struggled with Police and she was seen to be removed from this cell to be placed into an observation cell. One of the uses of this cell is to watch persons who may attempt self harm.

The complainant is then seen removing her bra completely. She is alone in the cell. An officer enters and takes the bra without force. The complainant then takes off her t-shirt and begins to tear it into strips. The Police enter and remove the top without force. Left alone again the complainant takes off a 'tube top' leaving herself topless. The Police enter and remove this top and, whilst there, attempt to remove her jeans. The complainant is seen struggling with the Police and the techniques used by the Police are viewed as being in line with their training. No unreasonable amount of force was used and her legs were not 'twisted' as reported by the complainant. The techniques were acceptable Police practices covered by the OSTT manual.

The complainant was naked in the cell for a period of 2+ hours. During this time she is seen on her hands and knees rocking backwards and forwards and it appears that she pushes one hand into her mouth and forces herself to vomit. She is seen running her hands through the vomit and spreading it across the floor and also rolls in it. Once she was no longer deemed to be a threat her underpants, jeans and tube top were handed to her, which she put on. She was handed a blanket and moved to another cell with the blanket and a mattress provided.

In view of this Office's findings the complaint was held open for 14 days to allow the complainant the opportunity to review the information provided by this Office with her lawyer. As a result, the matter was not progressed and the complaint withdrawn.

#### **Almost Got Away With It**

The complainant had been in a short term relationship and when she broke this off her ex-partner did not take it well. The complainant reported to the Police on numerous occasions that her ex-partner was making threats against her. On one particular occasion this person is alleged to have committed criminal offences that were reported to the Police.

The complainant approached this Office stating that the Police had failed to take any action and that they had not provided a valid reason for this. She sought the assistance of this Office to assess whether the action/inaction of the Police in relation to their investigation was satisfactory.

Preliminary inquiries were made pursuant to section 17A of the Ombudsman (Northern Territory) Act. As a result of these inquiries, the Police were notified that based on the information provided by the complainant that criminal action was deemed appropriate. A couple of days prior to the expiry of the statute of limitation and almost 6 months after the offences a brief was compiled and lodged with the Office of the Director of Public Prosecution.

#### **Home Sweet Home.**

A complaint was lodged on behalf of her underage son. The complainant called Police alleging that her daughter had assaulted her. Police attended the complainant's home and due to the domestic situation decided that it was best to have the daughter stay elsewhere for the night. The daughter left and the Police were asked to get some of her clothing from the house, but the complainant refused. At this time the complainant's juvenile son arrived home. Hearing about the alleged assault on his mother by his sister he wanted to leave the house, find his sister and confront her. The Police advised the son that they had a duty to keep the peace and told the son to stay away from his sister. The matter became heated with the Police spraying both the complainant and her son with OC spray. The son was subsequently arrested. The complainant contacted this Office stating that her son was unlawfully arrested, sprayed with OC unnecessarily and received injuries in the melee.

A detailed investigation of the complaint was conducted by the Ethical and Professional Standards Command (EPSC) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC needed to be satisfied that the actions taken by Police were reasonably available to them and were consistent with their requirements to act fairly, lawfully and appropriately. With this in mind, and with reference to section 123(1) of the *Police Administration Act*, the JRC was not prepared to find that the complainant's son's arrest was unlawful or otherwise unreasonable in the circumstances.

It was the perception of the Officers that night that had the son attended the residence where his sister was staying, the situation might have greatly escalated. The son stated that he didn't like being questioned by the Police on that night and that he ultimately attempted to physically resist Police attempts to stop him from finding his sister. This led to his arrest.

The JRC found that the Police were faced with a very difficult and precarious situation, and that their decision to arrest the complainant's son was reasonably open for them to make considering all the available evidence provided to the investigation into the complaint against Police. The JRC found that the level of physical resistance by the complainant's son made it clearly open to the Police to use the OC spray, which was the minimal amount of force they could have used to effect the arrest.

It was the JRC's opinion that the method used by police to control the complainant's son was not of a prolonged or disproportionate nature. Importantly, it was in accordance with their training and not outside police guidelines. The JRC found that it was probable that the complainant's son's injuries were sustained during his dealings with police. Indeed, the injuries complained about were not inconsistent with the type of injury reasonably expected to be suffered by a person who had undergone 'ground stabilisation' due to their resistance and non-compliance to police direction.

### **I'm Not Guilty**

A relative of an intellectually disabled Aboriginal man made a complaint to this Office that his brother was unlawfully arrested, assaulted and detained by Police. Further, that during his interaction with the Aboriginal Community Police Officer's some of his property was damaged. This incident started when Aboriginal Community Police Officers (ACPO's) saw the complainant's brother wearing what they believed was an Australian Protective Services (APS) shirt.

When police officers approached the male person and questioned him about the shirt, it is alleged that he confirmed to them he was a Protective Service Officer. When asked for ID the ACPO reports that he was told that it had been left at home. Further questioning revealed that the male was not an employee of the APS. He was allegedly asked to attend the station whilst further inquiries were made whereupon he became aggressive and swore at the ACPO.

The male was then physically apprehended and conveyed to the Police station where he was held for a period of time whilst enquiries were undertaken. The ACPO indicated that the male was not under arrest but was simply taken back to the station to enable further enquiries. The male was later 'released' by the Watch Commander, however the ACPO who took the male home forced his way into his home, physically removed the shirt and is alleged to have damaged an Aboriginal painting whilst scuffling with the male.

A detailed investigation of the complaint was conducted by the Ethical and Professional Standards Command (EPSC) of the Northern Territory Police on behalf of the Ombudsman, under the supervision of the Joint Review Committee (JRC). The JRC considered the complaint of unlawful and/or unreasonable arrest in relation to the actions of the arresting ACPO.

Police powers of arrest without warrant are contained in section 123 of the Police Administration Act. The NT Police General Orders, which are the instructions that police must generally abide by in their duties, provide more detail. General Order A7 'Arrests' makes it clear that an arrest is a serious matter and should only be contemplated as a last resort. The arresting officer must be reasonably satisfied that the person has committed an offence before he makes a decision to arrest. The ACPO believed the offence committed was the offence of 'impersonating a police officer' (Section 63A of the AFP Act), he also believed that the wearing of the APS shirt was also an offence.

There are two tests of whether an arrest is reasonable. The first test (the 'objective test') is whether any appropriately qualified person could reasonably conclude that the arrest was justified, while the second test (the 'subjective test') is whether the arresting officer could justify the arrest in his or her own mind.

The JRC formed the view that the arrest did not meet the objective test, because the complainant's appearance and the appearance of the shirt did not support the ACPO's conclusion that the complainant was seriously attempting to impersonate a police officer. The JRC was of the view that the arrest also did not meet the subjective test because the ACPO was unable to clearly explain his own actions. He acknowledged being unfamiliar with the section of the legislation which he considered had been contravened and this fact should have caused the ACPO to be cautious about making any firm conclusions about what offence, if any, might have been committed. Furthermore, the ACPO acknowledged being unclear of the fact that by instructing the complainant to accompany him to the police station he was in effect carrying out an arrest.

The JRC found that the ACPO did not exercise sufficient judgement in determining whether arresting the male was the appropriate action in the circumstances. In particular the JRC felt he should have given more consideration to:

- his own lack of familiarity with the relevant legislation,
- the fact that the evidence of the offence was not clear cut, and
- the unlikelihood of any adverse outcome, such as danger to the public or failure to bring the complainant to justice, arising from the decision not to effect an immediate arrest.

The JRC acknowledged that the ACPO was genuinely attempting to proceed with caution by taking the complainant back to the police station in order to explore the matter further before he made a recommendation to have the complainant charged. However this did not justify an arrest that was otherwise unwarranted. The JRC found that the complaint of unreasonable arrest was substantiated.

With respect to whether the arrest was lawful or not, the JRC found that the ACPO was empowered by virtue of having completed the relevant training, to effect arrests. However, on the basis of the above conclusion he did not have reasonable grounds to believe that the complainant had committed an offence, and with reference to section 123 of the *Police Administration Act*, the JRC concluded that there was no lawful basis for the arrest.

After determining that the shirt was an 'old issue' and not in current service, the OIC of the watch house gave the ACPO instructions which he appeared to have misinterpreted. He believed that his instruction was for the complainant to hand back the shirt or remove the patches. The complainant was taken home and walked to the front door of his house. At this time the ACPO asked for the shirt to be handed over or the patches taken off. The complainant swore at the ACPO's, opened the door and turned to shut the door. The ACPO put up his arm to deflect the door from hitting him and it swung back. A struggle then ensued. The complainant and ACPO had a differing version as to what actually happened. The ACPO states he was handed the shirt and the complainant states it was forcibly removed after the ACPO forced entry into his home and that the opening of the door knocked him to the ground. The ACPO stated he had the power to retrieve an item which he had reasonable grounds to believe may have been obtained unlawfully. He was aware that the power to enter a place such as a person's house without warrant is only authorised if the offence carries a penalty of six months or more, but acknowledged he was not aware of the penalty for the offence of unlawful possession. The ACPO left the house with the shirt. A short time later the OIC was contacted and a complaint was made about the force used to enter the premises and remove the shirt.

In this particular instance the JRC was not satisfied the ACPO had a full understanding of the power he was exercising in entering the premises without permission. Instead, the ACPO appeared to be reliant on his belief that he was carrying out the instructions of his supervisor. The JRC concluded that the ACPO did not act reasonably or with due attention to his powers.

The JRC recommended to the Commissioner of Police that NT Police offer an apology for the actions of police in entering the home and removing the shirt from the person and premises. The NT Police had already commenced disciplinary action, remedial training and counselling against the ACPO and therefore did not make further recommendations.

### Serial victim

Police came to the complainant's house and arrested him for the 'rape' (sexual intercourse without consent) of a woman. Authorised by warrant, they took photographs of the house. The complainant declined to respond to the allegations, on legal advice. He was then charged with indecent assault and two counts of sexual intercourse without consent, and bailed. After a committal hearing the matter went to trial and the complainant was convicted of sexual assault with circumstances of aggravation and sentenced to 16 months imprisonment. Five days later he was bailed and granted leave to appeal because the NT Police gave the Director of Public Prosecutions (DPP) some information which, if it had been available at the time of the committal or trial, would likely have resulted in the charges against him being dropped or dismissed.

The further information was that the same alleged victim had made an identical statement to Police about another man, five months after her report of rape against the complainant. The description of the events leading up to the alleged offence in each case were substantially similar. However, in relation to the second matter, the police took no action.

His complaints were:

- The style of arrest: He complained that "at no time did the Police indicate they wanted to hear my version of events without the threat of arrest". Police did not visit to speak to him; they came to his house "armed with a warrant" and "intent on making an arrest". He told the Ombudsman that by contrast, the second man was not arrested and not charged, merely spoken to by Police.
- Police 'sat on' evidence: Police had possession of the similar evidence in the other matter, a month before the complainant's committal, and yet they failed to pass it on to the DPP.
- Police had the motivation to prosecute the complainant maliciously. Some years earlier, the complainant had been instrumental in causing an enquiry into Police corruption in the NT to be conducted.

A detailed investigation of the complaint was jointly conducted by the Ethical and Professional Standards Command of the Northern Territory Police (EPSC) and the Ombudsman, under the supervision of the Joint Review Committee (JRC).

The evidence gathered showed that in relation to the second incident, the same procedures were followed. (Medical examination and statement taken from alleged victim, search warrant issued). However, when police approached the man from the second incident he immediately volunteered that consensual sex had occurred and that the alleged victim had done or said nothing to make him believe that it was other than consensual. He also volunteered to go to the station and give a statement to this effect. In view of the law that in such cases the man must intend to have sex with the woman and that he must intend that this be without the woman's consent, the police officers attending at the time felt that a prosecution would be unlikely to succeed. They did not arrest the man, but advised him that they may be in contact with him again. They forensically tested the items seized under the search warrant, and spoke to the alleged victim again. In due course the investigation file was closed.

It was established that a senior officer in the complainant's case had been preparing for a meeting at the DPP just before the complainant's trial was to start. She came across the statement of the victim made in the second case, and noted marked similarities. She felt this was suspicious, but was concerned not to breach the privacy of the victim. She nevertheless mentioned the matter in passing to the DPP officers she spoke to that day. The DPP later made information from the second matter available to the defence who applied for bail, and successfully appealed the conviction.

The DPP is obliged to disclose to the defence any information which would cause reasonable persons conducting the prosecution to think that cross examination based upon it might elicit answers materially affecting the credibility of the witness. As the investigating officers for the DPP, they are therefore bound to pass on to the DPP any information which may come within this disclosure requirement.

The investigation found that there were various links which could have been made between the two cases by various police involved in the second case.

However, the JRC concluded that the informal sharing of information between investigating officers did not in practical terms operate to reflect the requirements of the DPP disclosure guidelines. In addition the level of awareness of the disclosure requirement amongst all officers involved in either matter was very low.

The JRC noted that there was at the time no specific training in the DPP disclosure guidelines given to Police, particularly senior Police. At the same time, there was clear direction to Police regarding confidentiality of information.

The Police data base can make links with repeat victims between cases, but its operating instructions did not require or facilitate this at the time. "Alerts" in relation to repeat victims were seen as inappropriate on privacy grounds.

Because of these factors, the JRC was not prepared to recommend that disciplinary action be taken against any individual officer. It recommended, however, that Police practices and training should be improved. It also recommended a review of the linking facility within the police database to cross reference alleged victims.

Only one of the officers who dealt with the complainant's case at any stage had been a serving member during the earlier corruption inquiry. He had not been involved in the inquiry. He had met the complainant in the course of his work before, and he denied any malicious action. His only involvement in the complainant's arrest was to charge the complainant and to approve the file being referred to prosecutions. The JRC examined his decisions in this regard and found that all procedures had been followed, and that on the information to hand at the time, those decisions were appropriate. All other officers denied any malice, and had been largely unaware of the complainant's identity or the previous corruption inquiry. No conclusion of malicious prosecution could be reached.

## ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES

### OUTPUTS

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

### HIGHLIGHTS

During the year, the Ombudsman made 131 recommendations to government agencies, local councils and the NT Police of which 125 were adopted and implemented in some form.

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

**Table 7: Recommendations made**

	2004/05	2005/06	2006/07
Recommendation made	108	244	131
Recommendation adopted	102	230	125

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

Examples of significant investigations undertaken by the Ombudsman follow.

### WILL I EVER GET OUT OF HERE?

In 2000 the complainant was released from a Correctional Centre on parole after serving four and a half years of a nine year sentence for aggravated robbery. A year later he had his parole revoked because he committed further offences whilst on parole and was taken back into custody.

For the following two years, whilst at the Correctional Centre, he was told by prison staff that he had a release date of 2010 "with remissions". In late 2003 the complainant was transferred to another Correctional Centre. Soon after his arrival there, he was informed that he had no remission, and that his release date would be in 2013.

The prisoner first complained to Correctional Services and, being dissatisfied with the response, lodged a complaint with this Office. In his complaint, he alleged that when he asked a prison officer why his release date was now 2013 not 2010, the officer said words to the effect that "*things were done differently in (this correctional centre)*".

When preliminary enquiries were commenced by this Office, it was noted that an Own Motion Ombudsman investigation (“the Own Motion Investigation”) had been conducted in 1998/99 into several incidents involving miscalculation of release dates by NTCS wherein:

- it was determined that several prisoners at that time had been incarcerated for longer than they should have been; and
- the department (at the time, NTCS was a separate department) had undertaken to initiate substantial improvements to the process of preparing, interpreting and checking warrants of commitment or imprisonment.

The Own Motion Investigation did not finalise with a report and recommendations. Instead, the Ombudsman consulted with the NTCS by meetings and correspondence. The consultation focused on how the NTCS would ensure release dates were accurate, and what legal obligation NTCS had to notify affected prisoners about an error in their release dates. Ultimately, in relation to the accurate calculation of release dates, the Ombudsman’s Office advised NTCS that they were *“satisfied that the main concern that I had in respect of the administrative procedures and practices used for calculating release dates was immediately and effectively dealt with by NTCS”*. The file was closed in 2002, following protracted correspondence on the issue of letting prisoners know about errors made in release dates.

This complaint (received in late 2003) indicated that there may have been a breakdown in implementing the changes to administrative practices foreshadowed by the NTCS at the end of the Own Motion investigation. Preliminary enquiries into the issues raised by the new complaint were undertaken by this Office.

Following these enquiries it was determined that the complainant’s complaint should be the subject of formal investigation. The issues of complaint being:

- (a) That NTCS calculated the release date for the complainant incorrectly.
- (b) That the NTCS failed to correct the error and gave the complainant the wrong information for nearly two years.
- (c) That the explanation provided by NTCS to the complainant regarding the corrected error was inappropriate.
- (d) Whether the changes undertaken to be made by NTCS in 1998/9 have been effected and if not why not.
- (e) Whether there are presently any other prisoners in the NT affected by problems with calculations with release dates.

The investigation was split in two parts with the prisoner’s direct issues of concern, (a) to (c) being addressed expeditiously, without having to wait for the completion of the longer process of investigating systemic issues. The first part of the investigation was completed and an investigation report was issued in June 2005. The Ombudsman found issues (a) and (b) to be substantiated, but not (c) and recommended that the NTCS Commissioner issue the complainant with a written apology for the error made in calculating his release date in November 2001, and for the perpetuation of that error until December 2003. In addition, it was recommended that the practices at both Correctional Centres be varied such that a copy of the hand written records of calculation of release dates by staff and the Deputy Superintendent at each Correctional Centre be placed on the prisoner’s file in every instance in the future.



The second part of the investigation into issues (d) and (e) has now been finalised and it was found that only some of the changes previously recommended had been implemented and some were in the process of being implemented by NTCS and other branches of the Department of Justice (of which NTCS is now a part).

The investigation noted that the department, and the NTCS in particular:

- had introduced more detailed and formal requirements for checking warrants and release dates via the Superintendent's Instructions for each Correctional Centre;
- had introduced more formal steps for Correctional Centre staff to take for assistance where they are unable to collaboratively resolve the release date (specifically, conferring with staff from the other Correctional Centres, and writing to the DPP);
- practise a three tier system of checking the release date calculation within each Correctional Centre and upon transfer of a prisoner;
- allow the Correctional Centres to get departmental legal assistance in interpreting the legislation for calculating the release date;
- had undertaken to review the Superintendent's Instructions and Commissioner's Directives to ensure that they articulate current practices;
- made any error in the calculation of release date a matter which is required to be reported in the Superintendents' monthly reports to the NTCS Director;
- had adopted a transparent approach to notifying prisoners of errors in calculation;
- planned to change the Commissioner's Directive to add a requirement that the Superintendent of each Correctional Centre conduct twice yearly sentence audits;
- had obtained the approval of the Attorney General to undertake drafting of a standard form of Warrant as recommended by the Warrants Working Party;
- were trialling a standard form of Warrant preliminary to submitting changes to the regulations.

The Ombudsman's Office was satisfied that the above measures were addressing the key concerns previously identified with the system. Some of the more important measures such as the audits and the standard form of warrant were however not yet in place. In addition, the Commissioner's Directives and the Superintendents' Instructions did not in all cases reflect current practices.

The following recommendations were therefore made:

1. That NTCS proceed with a review of the Superintendent's Instructions for checking and processing warrants at each Correctional Centre so that they are consistent with each other wherever possible and so that they reflect current practices.
2. That the NTCS proceed with a review of Commissioner's Directive 2.1.13 to reflect current practices in particular in relation to:
  - i. allowing reception staff in the first instance to contact court staff for clarification of the wording of a warrant, if necessary, and within 24 or 48 hours of receipt of the prisoner;
  - ii. requiring that the Superintendent seek a legal opinion from the department when the release date cannot be agreed upon by prison staff and their counterparts in the other prison;
  - iii. giving guidance to the Superintendent as to what matters should be referred to the DPP to be taken back to court;

- iv. inclusion of a provision outlining action to be taken in the event that a matter is taken back to court for clarification and remains unresolved.
3. That NTCS proceed with its undertaking to amend Commissioner's Directive 2.1.13 to require a biannual audit of sentence release dates.
4. That the Commissioner's Directive 2.1.13 be amended to reflect the practice of notifying a prisoner immediately an error in release date is detected.
5. That Commissioner's Directive 1.7.6 be amended to include the event of "detection of an error in release date calculation" in the list of Level Two incidents requiring appropriate action under that Directive.

I have now been advised that all recommendations have been implemented except recommendation three. The department advised, that in view of the other changes made as a result of this investigation, they had reconsidered the need for this measure and the Ombudsman's Office accepted their reasoning.

### **CONSUMER AND BUSINESS AFFAIRS SLOW IN RESPONDING TO COMPLAINT**

In November 2004 the complainant wrote to CABA reporting breaches of the *Associations Act* by an incorporated association of which she was a member. The complainant alleged that the association had conducted a flawed investigation, imposed a penalty, and failed to consider an appeal, contrary to the duty to afford natural justice under section 39 of the Act.

Six months later the complainant approached my office, concerned that she had yet to receive any formal reply from CABA despite repeated follow-up requests. I initially declined her complaint and suggested she first write to the Commissioner of CABA.

The complainant wrote to the Commissioner, alleging that his failure to enforce the *Associations Act* left members of associations with no protection where self-regulation fails. Again the complainant received no reply despite her consistent requests. Between July 2005 and December 2005, my Office made numerous requests of CABA to provide a formal response to the complaint. In December 2005, thirteen months after her first letter, CABA finally provided its formal reply, advising the complainant that her November 2004 complaint about the association was outside their jurisdiction as it was an "internal" matter. It also provided the complainant with a new Fact Sheet developed to clarify the powers of the Commissioner, to be "uploaded onto the website shortly".

At my specific request, CABA provided the complainant with an apology for the delay in response.

Following this outcome, my Office repeatedly invited CABA to outline what procedural changes would be made to ensure that similar problems of delay and miscommunication would not recur. When none were forthcoming, I remained concerned about whether CABA had adequately addressed the underlying issues raised in the course of the matter, namely:

- CABA had no written procedure setting out the handling of complaints/reports about associations from members of the public

- Record-keeping on preliminary enquiries following reports about associations appeared to be scant or non-existent.
- It appeared that the CABA policy about what will and will not be investigated in relation to associations is unclear or undefined. An example is the distinction drawn between an internal matter (deemed outside jurisdiction) and an external matter.
- It was not clear whether any action had been taken by CABA in relation to the association complained of, despite it being the subject of frequent complaints, and despite it having been found by CABA to have a poor record of internally resolving disputes.
- The Fact Sheet, although now available on request, had yet to be uploaded to the CABA website as at August 2006 despite CABA's promise. In any case, it failed to give practical guidance to people in the complainant's situation.

I made a number of informal recommendations, namely that CABA:

1. Develop written procedures for the receipt and processing of complaints/reports from members of the public about incorporated associations, including timeliness benchmarks and record-keeping processes.
2. Include in its policy documents and public information brochures:
  - a) A definition of "internal matter";
  - b) a clear and practical explanation of other options available to complainants, including internal dispute resolution methods under the association's constitution, a Special General Meeting of the association, the Community Justice Centre, or legal action under section 109 of the *Associations Act*.
3. Consider opening a preliminary enquiries file into issues surrounding the specific association's governance and internal disputes processes.

The Commissioner initially declined to implement any of the recommendations. He asserted that it was "inappropriate" to record all contact with associations. He declined to clarify his jurisdiction by defining an "internal matter", arguing that this would be "difficult" given the diversity and the complexity of associations.

At a meeting between my Office and the Commissioner in October 2006, I was advised that enquiries from the public to Business Affairs increased five-fold in two years (being the period during which the complainant in this matter had contact with the Department). The Department was now developing complaint handling procedures for CABA (for both reports from the public and complaints about CABA itself). These procedures are expected to be in place in July 2007. It was also reported that CABA had sought further funding to improve its record and document maintenance.

The Acting Commissioner later confirmed that a clear explanation about alternative options for the public would be included in their fact sheets. He would not however, be drawn on the definition of "internal matter".

In relation to the specific association's governance, I was advised that the association has been advised that the matter is "clearly internal", and thus outside the jurisdiction of the Commissioner. Members of the association had been advised of the options available to them.

While this outcome is still unsatisfactory in regard to the response to concerns about the association complained of, and in defining "internal matter" for the benefit of members of the public, I determined that a formal investigation would not be likely to advance matters. The powers of the Ombudsman are limited to recommendation only and therefore, given the Commissioner's views, no further outcome was likely to be achieved by pursuing the complaint. There were however, some significant improvements in public administration eventually gained through this complaint.

### **PRISON OFFICER RETALIATES AGAINST PRISONER BECAUSE OF COMPLAINT**

A prisoner alleged that a prison officer (in conjunction with a close associate) took retaliatory action against him because he lodged a complaint against the prison officer. After receiving the complaint the following issues of complaint were identified:

- Whether Alice Springs Correctional Centre (ASCC) management properly investigated the complaint he lodged against the prison officer.
- Whether ASCC management properly investigated a complaint made against the complainant by the prison officer regarding an alleged threat to assault.
- Whether the prison officer and his associate made false and misleading reports about the complainant's actions and behaviour.
- Whether the complainant had been unreasonably disadvantaged as a result of the "*adverse behaviour*" allegations being made by the prison officer.
- Whether the prison officer was or had been engaging in behaviour calculated to provoke retaliation on the complainant's part.

The Ombudsman conducted a number of inquiries in relation to the matter, including interviewing the complainant and another prisoner, viewing the prisoner's file, holding discussions with the Professional Standards Unit of NT Correctional Services (NTCC) and receiving written and personal responses from the current Superintendent of the ASCC. The Ombudsman's findings arising from the preliminary enquiries were as follows:

1. In relation to the issue of whether the prisoner's complaint against the prison officer was properly investigated, the Ombudsman concluded that the allegation was put by the ASCC to the prison officer. However there was no evidence of what date this occurred and it was not possible to include or exclude subsequent action by the prison officer as retaliatory or not, because it was not clear whether he was aware of the complaint at the time.
2. In relation to whether ASCC management properly investigated a complaint made against the complainant by the prison officer regarding an alleged threat to assault, the Ombudsman found they could not criticise the actions of the ASCC in breaking up a situation which had the potential to escalate. There was evidence

to support the fact that the relationship between prisoners and prison officers in L Block (verified by another prisoner) was deteriorating and that this had security implications which needed to be addressed.

3. In relation to whether the prison officer and his associate made false and misleading reports about the complainant's actions and behaviour, the Ombudsman concluded that in each instance the prison officer's actions could not be seen as retaliatory. This was because it could not be established whether the prison officer was aware of the complaint against him at the time of making the incidents reports.
4. In relation to the changes to the prisoners living and working arrangements the Ombudsman concluded that there were other factors, apart from any recriminations which the prison officer, which would have justified the reclassification. However the Ombudsman was concerned about the process, the low level of accountability in the checking of file notes and the reasons given for the refusal of the reclassification. As a result, the Ombudsman recommended that the concerns be addressed and the Superintendent agreed to take action in this regard.

These enquiries established that there was no basis for an investigation of prison officer misconduct. They did however identify a number of concerns about how various matters involving the complainant were handled and these were referred to the ASCC. As a result, the Superintendent gave an undertaking to:

- give managerial guidance to personnel on various issues;
- have input himself in the complainant's next reclassification;
- ensure that prison officers were made aware of their responsibility to write accurate, timely and accountable file notes and that the system for checking file notes by supervisory staff was properly in place;
- place a copy of the Ombudsman's report on the complainant's file so that the information established by this Office was available for future reference; and
- review the information given to prisoners about holding tobacco for others, and make the necessary changes to ensure prisoners were aware that this was not permitted.

In addition, a complaint to this Office earlier in the year had lead to an agreement by NTCS that in future, prisoners would be told when an adverse report was placed on their file, therefore allowing the prisoners to take any issue they might have with the report to the Superintendent, via the prisoner complaint process.

## ACTIVITY 3: TELECOMMUNICATIONS (INTERCEPTION) NORTHERN TERRITORY ACT – INSPECTION OF NT POLICE RECORDS

### OUTPUTS

1. Inspections undertaken.
2. Report the Minister for Police, Fire and Emergency Services.

### HIGHLIGHTS

In the 2006/2007 financial year the NT Ombudsman undertook one inspection of NT Police records in accordance with Section 9 of the *Telecommunications (Interception) Northern Territory Act*. The inspections are undertaken to ascertain and report to the Minister for Police, Fire and Emergency Services the extent to which the officers of NT Police have complied with the requirements of Part 2 of the Act.

Only one inspection was required during 2006/07 and this was carried out on 5 April 2007. The annual report was issued to the Minister for Police, Fire and Emergency Services on 29 August 2007.

As per the legislation, two inspections will be held during the course of 2007/08.

## ACTIVITY 4: ACCESS AND AWARENESS

### OUTPUTS

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

### HIGHLIGHTS

The program has two distinct objectives:

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

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

I am disappointed to report that over the past three financial years activities associated with access and awareness have had to gradually be reduced because "efficiency dividends" continue to impact on the funds available for discretionary activities. Access and awareness visits have reduced by 40% over the past three years as follows:

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

2004/05	2005/06	2006/07
30	25	19

### ACCESS AND AWARENESS AT THE NATIONAL LEVEL

#### National and International Collaboration

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

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

## **DIFFICULT OR UNREASONABLE BEHAVIOUR OF COMPLAINANTS**

I am especially grateful to the New South Wales Ombudsman, Bruce Barbour, who has generously provided, in Darwin, training for all my staff and other invited agencies in techniques for managing difficult behaviour by some complainants.

Several years ago it was recognised by all Ombudsmen and other complaint agencies that a large proportion of resources was expended on a small number of people who complained frequently, were unable to accept the results of an investigation into their complaints, were prolix and prolific communicators, had unrealistic expectations and were prone to be hostile or aggressive.

A study was conducted (and continues) of the common features of the behaviour of the querulents by Professor Mullen of the Australian Institute of Criminology. The study was funded by the Commonwealth, New South Wales, Victorian and Western Australian Ombudsmen. As a result of the research the New South Wales Ombudsman has developed a training program for complaint handlers on techniques and strategies to manage the difficult or unreasonable behaviours commonly used by some complainants who seem to be obsessed by engaging in the complaint and investigation process. These small number of people cause staff a great deal of stress, sometimes fear, and consume time disproportionate to the nature of the complaints and to other complainants.

The research continues and a second round of advanced training is being offered in Darwin to my staff and other invited agencies. This training is conducted for payment of expenses only by senior staff of the New South Wales Ombudsman. I express publicly my gratitude to Bruce Barbour, New South Wales Ombudsman.

The support, information and collaboration of these offices is essential to maintain professionalism and access best practice and current information. It provides assistance that is otherwise unaffordable. I publicly express my gratitude to those named as well as to the Independent Commission Against Corruption and the Crime and Misconduct Commission.

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

### Deputy Ombudsman

- November 2006 – Meeting of all Australian Deputy Ombudsman - Sydney
- May 2007 – Meeting of all Australian Deputy Ombudsman - Perth



### Director Investigations

- May 2007 – Telecommunications Interception Conference - Sydney

### Senior Investigation Staff

- November 2006 – 6<sup>th</sup> National Investigations Symposium - Sydney

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

A detailed breakdown of sessions and conferences attended is provided at Appendix A, page 64. All but one of the access and awareness visits have been confined to Darwin and Alice Springs which is where staff are based and the cost is minimal.

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

It is the Ombudsman's experience that a large number of complaints would not have come to us for investigation had the agency concerned managed the complaint better before the aggrieved person found it necessary to go to a higher authority. More effective complaint management by agencies not only reduces the number of complaints being referred to the Ombudsman; it is also more likely to result in a better outcome for both the complainant and the agency. There are a number of reasons for this:

- Dealing with a problem as soon as it occurs is generally easier to rectify than if there is significant delay between the problem and the attempt to fix.
- Early resolution takes far less time and resources than if the problem is allowed to continue, when it often becomes larger and more complicated to resolve.
- Direct discussion between the aggrieved party and the decision maker enhances the possibility of a mutually agreeable outcome.
- Effective internal complaints processes provide valuable opportunities for agencies to learn from their mistakes.

In 2005 the NT Public Sector Complaints Handling Project was commenced by the Ombudsman to assist NT government agencies to enhance their internal complaints handling processes. Initially agencies were asked what systems they already had in place, whether it met the Australian Standard and what assistance they might benefit from. The assistance offered included assistance to establish a complaints handling system or to review a system already in place; improving understanding of the key principles and elements of a complaints handling system and short course staff training in areas not currently offered by DCIS.

Of 23 agencies within the Ombudsman's jurisdiction, which includes all statutory bodies established for a public purpose:

- six (6) were identified as actively seeking assistance in establishing or improving their internal complaints management processes;
- six (6) were identified as being likely to benefit from assistance; and

- eleven (11) were identified as not requiring any specific assistance, either because they did not have extensive dealings with members of the public, or because they already had well established complaints handling processes.

The Ombudsman visited all the agencies seeking or likely to benefit from assistance and gave a presentation on the benefits and value of establishing an accessible, fair, complaint management system in every agency. Agencies were provided with some valuable resources on establishing effective complaints handling systems. For this purpose the Ombudsman had obtained the permission of the Queensland Ombudsman's Office to use some of their materials which they had developed for a very similar project in that State. These included a set of fact sheets on the different facets of a complaints handling system and an audit sheet to assist agencies to develop a system that meets the Australian and International Standards. The Ombudsman also pointed agencies to these standards and provided a list of other resources, most of which are freely available on the internet.

Feedback from the agencies indicates that the resources have been useful and that there has been progress in some agencies in developing or improving their complaints handling processes. For other agencies, progress largely depends on commitment at the senior levels, as well as the availability of the necessary time and resources to devote to the purpose. I speculate that another reason for the decline in approaches to my Office has been contributed to by improvement within agencies of their own complaint management systems and especially in making the public aware that "It is OK to complain". All agencies were responsive to the message that complaints are a gift. Proper management of them is good customer service and a review of the cause of complaints is a management tool for improving public administration.

### **Written Material**

The Office has continued to distribute its pamphlets and posters throughout the Northern Territory and to target organisations and consumer groups. During the year the Ombudsman redesigned and distributed new pamphlets for prisoners and the general public. Ombudsman posters were also designed and distributed.

### **Community Newsletters**

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

### **Advertising**

The Office advertised in newspapers and newsletters during the year.

### **Website**

People throughout the Northern Territory, and indeed worldwide, can access the Ombudsman through our website [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). By logging onto the site people can make a complaint, access information (including the latest Annual

Report), review our legislation or ask questions without the need to formally contact the Office.

During 2006/07 the number of people accessing the website were:

	<u>2005/06</u>	<u>2006/07</u>
Total visits:	7,946	31,001
Total page views:	18,607	51,564
Average visits per day:	22	85
Average visits per week:	153	596
Average visits per month:	660	2583

I speculate that enormous increased use of the website may be one of the factors accounting for the 20% decline in approaches over the last 12 months.

## ACTIVITY 5: MANAGEMENT OF OFFICE OF THE OMBUDSMAN

### OUTPUTS:

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

### CORPORATE GOVERNANCE

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

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

### EQUAL OPPORTUNITY

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

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

- Balancing work, family and cultural responsibilities.

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

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

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

## **TRAINING AND DEVELOPMENT**

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

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

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

Expenditure on staff training and development during 2006/07 amounted to \$17,400 for sixteen employees.

This is represented by a total figure of 450 training hours and comprised 47 training opportunities.

The key areas of focus for training activities for 2006/07 were: technical skills and professional training such as investigative and mediation skills, conflict management and resolution and IT application training.

Training to implement the commencement of the *Telecommunications (Interception)* Act which invests the Ombudsman with the function of monitoring compliance by NT Police with Commonwealth Legislation was successfully completed by the Director of Investigations.

The Ombudsman for the NT is committed to the government's apprentice program. In 2006/07 one apprentice successfully completed a Certificate III in Business and one apprentice commenced in February 2007.

## **OCCUPATIONAL HEALTH AND SAFETY**

Health, safety, security and well being of staff continue to be monitored in accordance with the Occupational Health and Safety Management Plan. The presence of health and safety risks within the Office is consistently being assessed as low. During the year there were nil reported days lost as a result of reported injuries.

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

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

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

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

- Workstation assessments as required by a DCIS OH&S Consultant.
- Workplace Inspection of the Alice Springs office.
- Implement recommendations following a formal OH & S workplace inspection of the Darwin Office by a DCIS OH & S Consultant in June 2006 including:
  - Electrical equipment testing and tagging
  - Design and display a building evacuation floor plan
  - Update furniture with ergonomic workstations as required

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

## **INFORMATION ACT ANNUAL REPORTING REQUIREMENTS**

Section 11 of the *Information Act* sets out the information a public sector organisation must publish annually in relation to its process and procedures for accessing information. A detailed description of the Office's obligations under Section 11 of the Act are provided at Appendix C, pages 70 to 73.

## RECORDS MANAGEMENT

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

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

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

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

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

The Ombudsman's Office commenced a project to implement the whole of Government Information Management system TRIM in June 2007. It is estimated this project will be completed by June 2008. TRIM will enable the commission to manage their records effectively and assist in working towards being fully compliant with the *Information Act* and the NTG Standards for Records Management.

## Appendix A

### ACCESS AND AWARENESS SESSIONS

As part of the public awareness program the following occurred:

**Talks:**

Speaker	Date	Details
Senior Investigation Officer	5 July 2006	NTPS Prison Officer Recruits
Deputy Ombudsman	31 July 2006	Police Recruit Squad 86
Investigation Officer, Alice Springs	17 August 2006	Alice Springs Inter-Agency Meeting
Investigation Officer, Alice Springs	18 August 2006	Alice Springs Women's Shelter, Staff Meeting
Investigation Officer, Alice Springs	12 September 2006	Aboriginal Community, Santa Teresa
Ombudsman	22 September 2006	CDU / ANU Criminal Law Practice Students
Ombudsman and Senior Investigation Officer	3 October 2006	CEO and staff, Department of Business, Economic & Regional Development re complaints management
Investigation Officer, Alice Springs	3 October 2006	Disability Advocate, Alice Springs
Investigation Officer, Alice Springs	5 October 2006	Sexual Assault Counsellor, Sexual Assault Referral Centre, Alice Springs
Investigation Officer, Alice Springs	18 October 2006	Project Officer, Sex Worker Outreach Project, Alice Springs
Investigation Officer, Alice Springs	18 December 2006	Carers NT, Alice Springs
Ombudsman	2 February 2007	NT Correctional Services Management, Darwin
Senior Investigation Officer, Alice Springs	9 February 2007	NT Correctional Services Management, Alice Springs
Ombudsman	14 February 2007	NT Police Commissioned Officers
Ombudsman	14 February 2007	Treasury, Finance Officers in Training
Enquiry Officer	5 March 2007	Prison Officer in Training Course
Ombudsman	30 April 2007	Monthly Network Group of Palmerston Residents



Ombudsman	16 May 2007	Darwin 2007 Leadership Conference
Enquiry Officer	19 June 2007	Prison Officer in Training Course

### Conferences/Meetings

Director Investigations, two Senior Investigation Officers	2-3 November 2006	6 <sup>th</sup> National Investigations Symposium, Sydney
Deputy Ombudsman	28 November 2006	Deputy Ombudsman Meeting, Sydney
Deputy Ombudsman	24/25 May 2007	Deputy Ombudsman Meeting, Perth
Director of Investigations	May 2007	Telecommunications Interception Conference, Sydney

## Appendix B

### DETAILED COMPLAINT STATISTICS FOR 2006/07

#### AGENCIES THE SUBJECT OF COMPLAINTS

The following is a detailed breakdown by agency of the 774 complaints accepted by the Office of the Ombudsman. Agencies not included in the following table have not been the subject of any complaints.

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

AGENCY	2005/06	2006/07
<b>Charles Darwin University</b>	<b>3</b>	<b>3</b>
<b>Development Consent Authority</b>	<b>0</b>	<b>2</b>
<b>Employment, Education and Training</b>	<b>6</b>	<b>4</b>
College	1	0
High School	0	1
Strategic Services and Operations	1	0
NT Worksafe	1	2
Primary School	3	1
<b>Health and Community Services</b>	<b>20</b>	<b>15</b>
Community Services	18	12
Health Services	0	1
Executive and Legal	0	1
Strategic Policy and Financial Services	1	0
Health Professions Licensing Authority	1	1
<b>Justice</b>	<b>30</b>	<b>18</b>
Births, Deaths and Marriages	0	1
Community Corrections	1	0
Consumer Affairs	5	2
Correctional Services (Administrative)	4	2
Office of Courts Administration	1	0
Fines Recovery Unit	4	6
Magistrates Court	3	1
Supreme Court	0	1
Public Trustees Office	6	1
Racing, Gaming and Licensing	5	2
Small Claims Court	1	0
Office of the Information Commissioner	0	2
<b>Local Government, Housing and Sport</b>	<b>23</b>	<b>12</b>
Animal Welfare Unit	1	0
Local Government	1	2
Pool Fencing Authority	3	1
Territory Housing	18	9
<b>Natural Resources, Environment and the Arts</b>	<b>0</b>	<b>1</b>
Park Management	0	1

<b>AGENCY</b>	<b>2005/06</b>	<b>2006/07</b>
<b>Office of the Commissioner for Public Employment</b>	<b>1</b>	<b>1</b>
<b>Planning and Infrastructure</b>	<b>0</b>	<b>24</b>
Construction Division	0	3
Lands Group	0	9
Strategic and Business Services Group	0	1
Transport Group	0	11
<b>Police, Fire and Emergency Services</b>	<b>8</b>	<b>4</b>
Police Administration (not member)	5	4
Emergency Services	1	0
Fire Services	2	0
<b>Power and Water Corporation</b>	<b>18</b>	<b>6</b>
Electric Generation and Supply	15	5
Non Electricity Sewerage Drainage or Water Issues	2	1
Public Water Supplies	1	0
<b>Primary Industries, Fisheries and Mines</b>	<b>3</b>	<b>6</b>
Fisheries	0	2
Minerals and Energy	2	0
Primary Industry Group	1	4
<b>Territory Insurance Office</b>	<b>6</b>	<b>4</b>
<b>Treasury</b>	<b>2</b>	<b>3</b>
Commissioner of Taxes	2	3

### **CORRECTIONAL SERVICES**

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

### **LOCAL GOVERNMENT COUNCILS**

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

### **NT POLICE**

<b>NT Police</b>	<b>313</b>	<b>322</b>
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## REFERRED TO AGENCY

	2005/06	2006/07
Referred to Agency <sup>5</sup>	322	310

## ISSUES IN COMPLAINTS RECEIVED

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

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

### NT AGENCIES (INCLUDING LOCAL GOVERNMENT)

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

### CORRECTIONAL SERVICES

Issues	2005/06	2006/07
Prisoner rights and privileges	39	14
Administrative acts or omissions	19	8
Attitude/Behaviour of staff	9	7
Misconduct	9	3
Transfers	5	1
Medical/Health issues	10	1

<sup>5</sup> These complaints were referred back to the agency for direct resolution with the complainant. Once referred back, the Ombudsman took no further action in relation to the complaint and it was closed.

Mail	4	1
Property issues	11	1
Security measures/issues	9	3
Grievance/Complaint procedures	9	4
Assault	3	1
Practice and procedures	0	0
<b>Total</b>	<b>127</b>	<b>44</b>

### NT POLICE

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

## Appendix C

### FREEDOM OF INFORMATION

#### INTRODUCTION

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

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

(a) in the nature of an investigation, audit or inquiry; and (b) taken by any of the following:

- (i) the Ombudsman;
- (ii) the Health and Community Services Complaints Commissioner.

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

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

- organisation (refer page 10 of this Annual Report)
- functions (refer page 9 of this Annual Report)

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

The Ombudsman holds information in the following categories:

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

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

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

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

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

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

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

### **2. Complaint files**

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

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

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

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

### **3. Legal opinions**

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

Access to information contained in legal opinion files are predominately covered by privilege from release but may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

#### 4. Annual reports

Copies of the current Annual Report and some previous Annual Reports are available for downloading on the Ombudsman's website at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). Some printed copies of the current Annual Report are available free of charge soon after publication (subject to availability).

#### 5. Brochures

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

#### 6. Manuals and guidelines

The Ombudsman has the following manuals:

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

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

#### 7. Service Standards

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

### DISCLOSURE OF INFORMATION

The information the Ombudsman holds may be disclosed:

- (a) As required by law (although the relevant legislation provides substantial protection for investigation information); or
- (b) On request, for example in relation to information sought by a complainant about the investigation of his or her own complaint, where the documents are routine,



an ongoing investigation will not be prejudiced and there is no other interest likely to be adversely affected by disclosure.

## **PROCEDURES FOR PROVIDING ACCESS TO INFORMATION**

### **1. Documents available**

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

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

### **2. Administrative Arrangements for Access to Information**

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

### **3. Access Under the Information Act**

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

## **PROCEDURES FOR CORRECTING INFORMATION**

Inquiries about correcting personal information should be directed to the relevant Case Officer.

## Appendix D

### SERVICE STANDARDS OF THE OFFICE OF THE OMBUDSMAN

#### THOSE WE SERVE:

The Ombudsman's clients are:

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

#### OUR COMMITMENT:

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

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

#### **Fairness**

We promise that:

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

#### **Independence**

We promise to be independent, objective and impartial.

#### **Professionalism**

We will:

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

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

### **Accountability**

We will strive to:

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

### **Accessibility**

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

### **Timeliness**

Where possible:

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

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

### **Courtesy and Sensitivity**

We will always strive to:

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

### **Our Expectations of You**

All we ask is that you:

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

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

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

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

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

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

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

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

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

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

## Appendix E

### FINANCIAL STATEMENT OVERVIEW

For the Year Ended 30 June 2007

During the 2006-07 financial year the Office of the Ombudsman for the Northern Territory and the Health and Community Services Complaints Commission received total operating revenue of \$2,202,000. This amount includes \$27,000 for Agency Agreements with the Commonwealth Ombudsman; \$10,000 Apprentice/trainee incentive funding; \$5,000 Project Employment funding; \$1,854,000 output revenue and \$306,000 for services received free of charge from the Department of Corporate and Information Services.

Operating expenses comprised \$1,523,000 for employee expenses, \$259,000 for the purchase of goods and services, \$306,000 for services received free of charge from the Department of Corporate and Information Services. Depreciation and Amortisation totalled \$9,000.

The net result for 2006/07 is a surplus of \$104,000 and can be attributed primarily to the receipt of Cabinet approved appropriation for the upgrade to the case management system of \$64,000 which will not be completed until the 2007/08 financial year.

#### CERTIFICATION OF THE FINANCIAL STATEMENTS

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

We further state that the information set out in the Operating Statement, Balance Sheet, Statement of Changes in Equity, Cash Flow Statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2007 and the financial position on that date.

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

.....  
CAROLYN RICHARDS  
OMBUDSMAN FOR THE NT  
October 2007

.....  
RACHELLE TAN  
A/BUSINESS MANAGER  
October 2007

**OPERATING STATEMENT**  
For the year ended 30 June 2007

	NOTE	2007 \$'000	2006 \$'000
<b>INCOME</b>			
Output Revenue		1,854	1,864
Sales of Goods and Services		37	42
Interest Revenue			
Goods and Services Received Free of Charge	4	306	290
Other Income		5	0
<b>TOTAL INCOME</b>	3	2,202	2,196
<b>EXPENSES</b>			
Employee Expenses		1,523	1,597
<i>Administrative Expenses</i>			
Purchases of Goods and Services	5	258	282
Repairs and Maintenance		1	1
Depreciation and Amortisation	8	9	9
Other Administrative Expenses <sup>1</sup>		306	290
<b>TOTAL EXPENSES</b>	3	2,098	2,178
<b>NET SURPLUS/(DEFICIT)</b>	11	104	18

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

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

**BALANCE SHEET**  
As at 30 June 2007

<b>ASSETS</b>			
<i>Current Assets</i>			
Cash and Deposits	6	184	32
Receivables	7	9	4
<b>Total Current Assets</b>		193	36
<i>Non-Current Assets</i>			
Property, Plant and Equipment	8	52	54
<b>Total Non-Current Assets</b>		52	54
<b>TOTAL ASSETS</b>		245	90
<b>LIABILITIES</b>			
<i>Current Liabilities</i>			
Payables	9	(54)	(27)
Provisions	10	(192)	(174)
<b>Total Current Liabilities</b>		(245)	(201)
<b>TOTAL LIABILITIES</b>		(245)	(201)
<b>NET ASSETS</b>		0	(111)
<b>EQUITY</b>			
Capital	11	92	98
Accumulated Funds		(91)	12
<b>TOTAL EQUITY</b>		0	111

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

**STATEMENT OF CHANGES IN EQUITY**  
For the year ended 30 June 2007

	NOTE	2007 \$'000	2006 \$'000
BALANCE OF EQUITY AT 1 JULY		(111)	(138)
<b>Capital</b>	11		
Balance at 1 July		(98)	(107)
Equity Injections		7	9
Equity Withdrawals		0	0
Balance at 30 June		(92)	(98)
<b>Accumulated Funds</b>	11		
Balance at 1 July		(12)	(30)
Surplus/(Deficit) for the Period		104	18
Balance at 30 June		91	(12)
<b>BALANCE OF EQUITY AT 30 JUNE</b>		<b>0</b>	<b>(111)</b>

[This Statement of Changes in Equity is to be read in conjunction with the notes to the financial statements.](#)

**CASH FLOW STATEMENT**  
For the year ended 30 June 2007

	NOTE	2007 (Outflows) / Inflows	2006 (Outflows) / Inflows
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Operating Receipts</b>			
Output Revenue Received		1,854	1,864
Receipts From Sales of Goods And Services		60	66
<b>Total Operating Receipts</b>		<b>1,914</b>	<b>1,930</b>
<b>Operating Payments</b>			
Payments to Employees		(1,506)	(1,594)
Payments for Goods and Services		(256)	(304)
<b>Total Operating Payments</b>		<b>(1,762)</b>	<b>(1,898)</b>
<b>Net Cash From/(Used In) Operating Activities</b>	12	<b>152</b>	<b>32</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
<b>Equity Injections</b>			
Equity injection			9
<b>Total financing receipts</b>			<b>9</b>
<b>Net cash from/(used in) financing activities</b>			
Net Increase/(Decrease) in Cash Held		152	41
Cash at Beginning of Financial Year		32	(9)
<b>CASH AT END OF FINANCIAL YEAR</b>	6	<b>184</b>	<b>32</b>

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



**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

**INDEX OF NOTES TO THE FINANCIAL STATEMENTS**

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

**INCOME**

4. Goods and Services Received Free of Charge

**EXPENSES**

5. Purchases of Goods and Services

**ASSETS**

6. Cash and Deposits
7. Receivables
8. Property, Plant and Equipment

**LIABILITIES**

9. Payables
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**OTHER DISCLOSURES**

12. Notes to the Cash Flow Statement
13. Financial Instruments
14. Commitments
15. Contingent Liabilities and Contingent Assets
16. Events Subsequent to Balance Date
17. Write-offs, Postponements and Waivers

## NOTES TO THE FINANCIAL STATEMENTS For the year ended 30 June 2007

### 1. 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.

Additional information in relation to the Ombudsman for the NT and the Health and Community Services Complaints Commission and its principal activities may be found in both of the Annual Reports.

### 2. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Basis of Accounting

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

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

The form of Agency financial statements is consistent with the accrual budget format and the requirements of Australian Accounting Standards, including AASB 101, AASB 107 and AAS 29. The format also requires additional disclosures specific to Territory Government entities.

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

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

#### (b) Agency and Territory Items

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

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

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

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

The Central Holding Authority recognises and records all Territory items, and as such, these items are not included in the Agency's financial statements.

**(c) Comparatives**

Where necessary, comparative information for the 2005-06 financial year has been reclassified to provide consistency with current year disclosures.

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

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

**(e) Changes in Accounting Policies**

There have been no changes to accounting policies adopted in 2006-07 as a result of management decisions.

**(f) Goods and Services Tax**

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

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

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

**(g) Income Recognition**

Income encompasses both revenue and gains.

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

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

***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 income. 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 and specified conditions associated with the sale have been satisfied.

***Rendering of Services***

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

***Interest Revenue***

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

***Disposal of Assets***

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

***Contributions of Assets***

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

**(h) Repairs and Maintenance Expenses**

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

**(i) Interest Expenses**

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

**(j) Cash and Deposits**

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

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

**(k) Inventories**

General inventories are all inventories other than those held for distribution and are carried at the lower of cost and net realisable value. Cost of inventories includes all costs associated with bringing the inventories to their present location and condition. When inventories are acquired at no or nominal consideration, the cost will be the current replacement cost at date of acquisition.

Inventories held for distribution are those inventories distributed at no or nominal consideration, and are carried at the lower of cost and current replacement cost.

**(l) Receivables**

Receivables include accounts receivable and other receivables and are recognised at fair value less any allowance for uncollectible amounts. The collectibility of receivables is reviewed regularly, and part of this process is to assess, at reporting date, whether an allowance for doubtful debts is required.

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

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

- **Acquisitions**

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

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

- **Complex Assets**

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

- **Subsequent Additional Costs**

Costs incurred on property, plant and equipment subsequent to initial acquisition are capitalised when it is probable that future economic benefits in excess of the originally assessed performance of the asset will flow to the 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 expected useful lives.

- **Construction (Work in Progress)**

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

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

- **Revaluations**

Subsequent to initial recognition, assets belonging to the following classes of non-current assets are revalued with sufficient regularity to ensure that the carrying amount of these assets does not differ materially from their fair value at reporting date:

- Land;
- Buildings;
- Infrastructure Assets;
- Heritage and Cultural Assets;
- Biological Assets; and
- Intangibles.

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 at cost.

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 are in accordance with the Treasurer's Directions and are determined as follows:

	<u>2007</u>	<u>2006</u>
Buildings	N/A	N/A
Infrastructure Assets	N/A	N/A
Plant and Equipment	10 Years	10 Years
Leased Plant and Equipment	N/A	N/A
Heritage and Cultural Assets	N/A	N/A
Biological Assets	N/A	N/A
Intangibles	N/A	N/A

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

***Assets Held for Sale***

Assets held for sale, consist of those assets which management has determined are available for immediate sale in their present condition, and their sale is highly probably within the next twelve months.

These assets are measured at the lower of the asset's carrying amount and fair value less costs to sell. These assets are not depreciated. Non-current assets held for sale have been recognised on the face of the financial statements as current assets.

## NOTES TO THE FINANCIAL STATEMENTS For the year ended 30 June 2007

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

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

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

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

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

### **(n) Leased Assets**

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

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

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

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

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

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

### **Payables**

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

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

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

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

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

- wages and salaries, non-monetary benefits, recreation leave, sick leave and other leave entitlements; and

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

- other types of employee benefits.

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

**(p) Superannuation**

Employees' superannuation entitlements are provided through the:

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

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

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

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

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

**(r) Commitments**

Disclosures in relation to capital and other commitments, including lease commitments are shown at note 14 and are consistent with the requirements contained in AASB 101, AASB 117 and AAS 29.

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



**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

**3. OPERATING STATEMENT BY OUTPUT GROUP**

	Note	Ombudsman's Office		Health and Community Services Complaints Commission		Total	
		2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000
<b>INCOME</b>							
Output Revenue		1,267	1,355	587	509	1,854	1,864
Sales of Goods and Services		37	42			37	42
Goods and Services Received Free of Charge	4	287	260	19	30	306	290
Other Income		5				5	
<b>TOTAL INCOME</b>		<b>1,596</b>	<b>1,657</b>	<b>606</b>	<b>539</b>	<b>2,202</b>	<b>2,196</b>
<b>EXPENSES</b>							
Employee Expenses		1,096	1,180	428	417	1,524	1,597
<i>Administrative Expenses</i>							
Purchases of Goods and Services	5	184	206	74	75	258	281
Repairs and Maintenance		1	1			1	1
Depreciation and Amortisation	8	9	9			9	9
Other Administrative Expenses <sup>(1)</sup>		287	260	19	30	306	290
<i>Grants and Subsidies Expenses</i>							
Current							
Capital							
Community Service Obligations							
Interest Expenses							
<b>TOTAL EXPENSES</b>		<b>1,577</b>	<b>1,656</b>	<b>521</b>	<b>522</b>	<b>2,098</b>	<b>2,178</b>
<b>NET SURPLUS/(DEFICIT)</b>	11	<b>19</b>	<b>1</b>	<b>85</b>	<b>17</b>	<b>104</b>	<b>18</b>

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

<sup>1</sup> Includes DCIS service charges.

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

	2007 \$'000	2006 \$'000
<b>4. GOODS AND SERVICES RECEIVED FREE OF CHARGE</b>		
Corporate and Information Services	306	290
Internal Audits and Reviews		
	<hr/> 306 <hr/>	<hr/> 290 <hr/>
<b>5. PURCHASES OF GOODS AND SERVICES</b>		
The net surplus/(deficit) has been arrived at after charging the following expenses:		
<b>Goods and Services Expenses:</b>		
Consultants <sup>(1)</sup>	7	16
Advertising <sup>(2)</sup>	2	1
Marketing and Promotion <sup>(3)</sup>	5	5
Document Production	15	11
Legal Expenses <sup>(4)</sup>	6	6
Recruitment <sup>(5)</sup>	1	3
Training and Study	20	21
Official Duty Fares	14	8
Travelling Allowance	3	3
(1) Includes marketing, promotion and IT consultants.		
(2) Does not include recruitment advertising or marketing and promotion advertising.		
(3) Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.		
(4) Includes legal fees, claim and settlement costs.		
(5) Includes recruitment related advertising costs.		
<b>6. CASH AND DEPOSITS</b>		
Cash on Hand	1	1
Cash at Bank	184	32
On Call or Short Term Deposits		
	<hr/> 184 <hr/>	<hr/> 32 <hr/>
	<b>2007</b> <b>\$'000</b>	<b>2006</b> <b>\$'000</b>
<b>7. RECEIVABLES</b>		
<b>Current</b>		
Accounts Receivable	7	2
Less: Allowance for Doubtful Accounts Receivable	<u>( 0 )</u>	<u>( 0 )</u>
Interest Receivables		
GST Receivables		
Other Receivables	<hr/> 2 <hr/>	<hr/> 2 <hr/>
<b>Non-Current</b>		
Other Receivables	<hr/>	<hr/>
<b>Total Receivables</b>	<hr/> <b>9</b> <hr/>	<hr/> <b>4</b> <hr/>

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

	2007 \$'000	2006 \$'000
<b>8. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Capitla works in progress</b>		
At Capitalised Cost	( 7 )	0
	( 7 )	0
<b>Plant and Equipment</b>		
At Cost	90	77
Less: Accumulated Depreciation	( 31 )	( 22 )
	59	54
<b>Computer Software</b>		
At Capitalised Cost	70	70
Less: Accumulated Depreciation	( 70 )	( 70 )
	0	0
<b>Lease Computer Software</b>		
At Capitalised Cost	9	9
Less: Accumulated Amortisation	( 9 )	( 9 )
	0	0
	0	0
<b>Total Property, Plant and Equipment</b>	52	54

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

**8. PROPERTY, PLANT AND EQUIPMENT (Continued)**

**Property, Plant and Equipment Reconciliations**

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

	Land	Buildings	Infrastructure	Construction (Work in Progress)	Plant & Equipment	Leased Plant & Equipment	Heritage & Cultural Assets	Biological Assets	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Carrying Amount as at 1 July 2006</b>				0	54					54
Additions										
Disposals										
Depreciation and Amortisation					(9)					(9)
Additions/(Disposals) from Administrative Restructuring										
Additions/(Disposals) from Asset Transfers				(7)	14					7
<b>Carrying Amount as at 30 June 2007</b>				<b>(7)</b>	<b>59</b>					<b>47</b>

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2005-06 is set out below:

	Land	Buildings	Infrastructure	Construction (Work in Progress)	Plant & Equipment	Leased Plant & Equipment	Heritage & Cultural Assets	Biological Assets	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Carrying Amount as at 1 July 2005</b>					63					
Additions										
Disposals										
Depreciation and Amortisation					(9)					
Additions/(Disposals) from Administrative Restructuring										
Additions/(Disposals) from Asset Transfers										
<b>Carrying Amount as at 30 June 2006</b>					<b>54</b>					

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

	2007 \$'000	2006 \$'000
<b>9. PAYABLES</b>		
Accounts Payable	(24)	(17)
Accrued Expenses	(30)	(10)
	<u>(54)</u>	<u>(27)</u>
<b>10. PROVISIONS</b>		
<b>Current</b>		
<i>Employee Benefits</i>		
Recreation Leave	(149)	(132)
Leave Loading	(19)	(20)
• Other Employee Benefits	(2)	0
•		
• <i>Other Current Provisions</i>	(22)	(22)
<b>Other Provisions</b>		
	<u>(192)</u>	<u>(174)</u>
<b>Non-Current</b>		
<i>Employee Benefits</i>		
Recreation Leave		
• Other Employee Benefits		
•		
• <i>Other Non-Current Provisions</i>		
<b>Other Provisions</b>		
	<u>          </u>	<u>          </u>
<b>Total Provisions</b>	<u>(192)</u>	<u>(174)</u>
<p>The Agency employed 19 employees as at 30 June 2007 (20 employees as at 30 June 2006).</p>		
<b>11. EQUITY</b>		
<p>Equity represents the net deficiency in the Ombudsman for the NT liabilities over net assets. This deficiency in liabilities over assets is recorded in the Central Holding Authority as described in note 2(b).</p>		
<b>Capital</b>		
<b>Balance as at 1 July</b>	<b>(98)</b>	<b>(107)</b>
• <i>Equity Injections</i>		
Capital Appropriation	0	9
Equity Transfers In	7	0
• <i>Equity Withdrawals</i>		
Capital Withdrawal	0	0
Equity Transfers Out		
<b>Balance as at 30 June</b>	<u>(92)</u>	<u>(98)</u>
<b>Accumulated Funds</b>		
<b>Balance as at 1 July</b>	<b>(12)</b>	<b>(30)</b>
Surplus /(Deficit) for the Period	104	18
Changes in Accounting Policies		
Correction of Prior Period Errors		
Gains/(losses) recognised Directly to Equity		
<b>Balance as at 30 June</b>	<u>91</u>	<u>(12)</u>

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

**12. NOTES TO THE CASH FLOW STATEMENT**

**Reconciliation of Cash**

The total of Agency Cash and Deposits of \$184,000 recorded in the Balance Sheet is consistent with that recorded as 'cash' in the Cash Flow Statement.

**Reconciliation of Net Surplus/(Deficit) to Net Cash From Operating Activities**

<b>Net Surplus/(Deficit)</b>	104	18
<i>Non-Cash Items:</i>		
Depreciation and Amortisation	9	9
<i>Changes in Assets and Liabilities:</i>		
Decrease/(Increase) in Receivables	(5)	(1)
Decrease/(Increase) in Prepayments	0	1
Decrease/(Increase) in Other Assets	0	0
(Decrease)/Increase in Payables	27	8
(Decrease)/Increase in Provision for Employee Benefits	18	(1)
(Decrease)/Increase in Other Provisions	0	(2)
<b>Net Cash From Operating Activities</b>	<b>152</b>	<b>32</b>

**Non-Cash Financing and Investing Activities**

*Finance Lease Transactions*

**13. FINANCIAL INSTRUMENTS**

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

**(a) Credit Risk**

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

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

**(b) Net Fair Value**

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

**(c) Interest Rate Risk**

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

**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

	Weighted Average interest rate %	Variable Interest \$'000	Fixed Interest Maturity			Non- Interest Bearing \$'000	Total \$'000
			Under 1 year \$'000	1 to 5 <sup>(a)</sup> years \$'000	Over 5 years \$'000		
<b>2007 Financial Assets</b>							
Cash and Deposits		N/A	N/A	N/A	N/A	184	184
Receivables		N/A	N/A	N/A	N/A	9	9
<b>Total Financial Assets:</b>						193	193
<b>Financial Liabilities</b>							
Deposits Held		N/A	N/A	N/A	N/A	N/A	0
Payables		N/A	N/A	N/A	N/A	(54)	(54)
Borrowings and Advances		N/A	N/A	N/A	N/A	N/A	0
Finance Lease Liabilities		N/A	N/A	N/A	N/A	N/A	0
<b>Total Financial Liabilities:</b>						(54)	(54)
<b>Net Financial Assets/(Liabilities):</b>		Nil	Nil	Nil	Nil	139	139

	Weighted Average interest rate %	Variable Interest \$'000	Fixed Interest Maturity			Non- Interest Bearing \$'000	Total \$'000
			Under 1 year \$'000	1 to 5 years \$'000	Over 5 years \$'000		
<b>2006 Financial Assets</b>							
Cash and Deposits		N/A	N/A	N/A	N/A	32	32
Receivables		N/A	N/A	N/A	N/A	4	4
<b>Total Financial Assets:</b>						36	36
<b>Financial Liabilities</b>							
Deposits Held		N/A	N/A	N/A	N/A	N/A	0
Payables		N/A	N/A	N/A	N/A	(27)	(27)
Borrowings and Advances		N/A	N/A	N/A	N/A	N/A	0
Finance Lease Liabilities		N/A	N/A	N/A	N/A	N/A	0
<b>Total Financial Liabilities:</b>						(27)	(27)
<b>Net Financial Assets/(Liabilities):</b>						9	9

2007  
\$'000                      2006  
\$'000

**14. COMMITMENTS**

**(i) Operating Lease Commitments**

The Agency leases property under non-cancellable operating leases expiring from 1 to 5 years. Leases generally provide the Agency with a right of renewal at which time all lease terms are renegotiated. The Agency also leases items of plant and equipment under non-cancellable operating leases. Future operating lease commitments not recognised as liabilities are payable as follows:

Later than one year and not later than five years

13	3
<u>13</u>	<u>3</u>

**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2007**

**15. CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

a) **Contingent liabilities**

The Ombudsman for the Northern Territory has no contingent liabilities as at 30 June 2007.

The Ombudsman for the Northern Territory had one contingent liability as at 30 June 2006:

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

b) **Contingent assets**

The Ombudsman for the Northern Territory has no contingent assets as at 30 June 2007.

**16. EVENTS SUBSEQUENT TO BALANCE DATE**

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

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

The Ombudsman for the Northern Territory had no write offs, postponements or waivers in 2005-06 and 2006-07.



## HOW TO CONTACT THE OMBUDSMAN

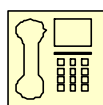
**In Person:**



Darwin  
12th Floor  
NT House  
22 Mitchell Street  
Darwin

Alice Springs  
Ground Floor  
Centrepont Building  
Hartley Street  
Alice Springs

**By Telephone:**



(08) 8999 1818

or

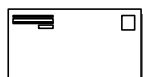
1800 806 380 (Toll Free)

**By Email:**

[nt.ombudsman@nt.gov.au](mailto:nt.ombudsman@nt.gov.au)



**In Writing:**



GPO Box 1344  
DARWIN NT 0801

**Via the Internet:**

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



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

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