

Ombudsman Tasmania

Annual Report 2005 – 2006

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To the Honourable Donald George Wing
President of the Legislative Council and the
Honourable Michael Robert Polley Speaker
of the House of Assembly.

I have the honour to submit a report on the
exercise of the Ombudsman's functions
during the year ended 30 June 2006 for
presentation to the Parliament pursuant to
the provisions of Section 30 of the
Ombudsman Act 1978.

**SIMON ALLSTON
OMBUDSMAN**

October 2006

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FROM the OMBUDSMAN

This is my first report as Ombudsman, having been appointed to the positions of Ombudsman and Health Complaints Commissioner on 20 August 2005.

The role of Ombudsman has in fact been filled by three people during the reporting year. The former Ombudsman, Jan O'Grady served until 20 August 2005, and from 29 November 2005 until 10 July 2006 Richard Bingham acted as Ombudsman and Health Complaints Commissioner whilst I was on extended sick leave. I wish to thank Richard for replacing me so ably during that period, and for easing my return to work. I also wish to thank Geoff Storr, Principal Officer (Ombudsman), for his excellent leadership of the small team which handles the complaints received under the *Ombudsman Act 1978*.

Staffing

Endeavours have been made during the reporting year to reduce staff turnover. As reported in the last Annual Report of the Ombudsman, a problem in this regard was the fact that many staff members were on fixed term contracts.

At year's end, there were 19 members of staff in the Office as a whole. Of these, three were occupying positions, which had become permanent during the year, and three more were very shortly expected to become permanent. At the time of writing this report, only one member of staff is on contract. I hope that this situation will mean that staff are retained for longer, so maintaining our skills base and staff morale.

Launceston office and conciliation

There are now two members of staff working out of the Launceston office – Pip Whyte (0.6 FTE) and Tony Byard (0.3 FTE). In practice, we are presently only conciliating cases under the *Health Complaints Act 1995*, but my intention is to also use conciliation in handling complaints under the *Ombudsman Act* and the *Energy Ombudsman Act 1998*.

Review of claims of abuse from adults in State care as children

Phase 2 of this review concluded on 30 June 2006, marking the end of a very long and difficult operation by the Office which commenced in July 2003. The final report, published in June, is included as Appendix C to this report, and I do not repeat here what can be found in those pages.

I do, however, wish to thank all of the members of the specially assembled Review Team for their dedicated work – in particular, Maureen Sheehan, who coordinated the work of the team until the end of December 2005, and Anne Foot, who assumed the difficult task of Coordinator for the last 6 months.

Amendments to the *Ombudsman Act 1978*

The *Ombudsman Amendment Bill 2005* received Royal Assent on 11 July 2005. Details of the contents of the Bill are in the Annual Report for 2004/5, a copy of which can be viewed at www.ombudsman.tas.gov.au

In so far as they dealt with procedure, the amendments made to the *Ombudsman Act* reflect previous practice, and so have had little effect on the functioning of the Office.

Procedural Manuals

The Office has greatly benefited from the work of Catherine Prideaux, formerly Crown Counsel in the Office of the Solicitor-General and now stationed with us. Apart from assisting me as legal counsel, Catherine is preparing a procedural manual for each of the jurisdictions for which I have responsibility. The manual for the Ombudsman jurisdiction was largely complete at year's end, and in due course will be accessible to all staff through the intranet. The manuals will be invaluable in guiding the work of the Office and in training new staff.

Raemoc database

All jurisdictions in the Ombudsman's office use the Raemoc case management database. Regrettably, Raemoc is becoming increasingly unstable and there is an urgent need for it to be replaced. It was reported last year that the Office was about to go to tender for a new database, but unfortunately that did not eventuate. However a process has commenced in conjunction with the Anti-Discrimination Commissioner, the Guardianship and Administration Board and the Office of Consumer Affairs and Fair Trading for the development of a new database to suit each of the offices. The Department of Justice has set aside \$20,000 for the first phase of this project. I am hopeful that we will have a new database up and running by the end of 2006/7.

Complaint numbers

Some changes have been undertaken within the office in the way in which complaints are defined and counted. Simple enquiries or telephone contacts which do not progress to the lodging of a complaint are no longer included. However, in order to provide some comparative figures, Table 1 of Appendix A includes a column for complaints and enquiries combined.

The consequence of the change in the way enquiries are recorded is an apparent drop in the number of complaints received in 2005/6, although the proportion of complaints about particular agencies remains constant. The Department of Health and Human Services, the Department of Justice and the Department of Police and Public Safety remain the agencies generating the largest number of complaints. This does not necessarily reflect problems with the administration of those agencies, but the fact that these organisations have frequent contact and interaction with members of the public.

The recording of complaints against the various divisions of a public authority requires further refinement and definition. The intention with the new database planned for the Office is to list complaints under a hierarchy of department and division to provide greater accuracy in recording the areas that generate the greater number of complaints.

Matters related to public housing comprise about half the number of complaints against the Department of Health and Human Services, which is consistent with previous years. The Children and Families Division is the next most frequently raised area of the Department. As in other recent years, some of these complaints have been made as a consequence of people discovering that they could not be included in the Child Abuse Review. Child protection and foster placements are difficult areas, as they frequently involve court decisions, which the Ombudsman is precluded from investigating, or involve the merits of the 'line ball' professional decisions.

With regard to the Department of Justice, the majority of the complaints arise from Corrective Services, and in particular Risdon Prison. (Prison inmates have the right under the *Corrections Act 1997* to communicate in confidence with the Ombudsman, in writing.) The number of complaints is down in comparison to last year's figures, which were exceptionally high because of the number of complaints generated by the change in the way meals were provided.

A report has been provided by the Operational Review Officer in the Department of Justice outlining the status of the implementation of recommendations contained in the Ombudsman Report of May 2001 into Risdon Prison. When the new prison is fully commissioned, many of those recommendations will become redundant. Those relating to rehabilitation, programs and personal development for inmates will then become the most significant. Cooperation from Prison management in attempting to resolve inmate grievances is generally good.

Complaints against the Department of Police and Public Safety are almost all against Tasmania Police. The number of complaints received in 2005/6 is not exceptional.

Subsidiary jurisdictions

Separate chapters are included in this report with respect to the Ombudsman's functions under the *Energy Ombudsman Act 1998*, the *Freedom of Information Act 1991*, the *Public Interest Disclosures Act 2002* and the *Telecommunications (Interception) Tasmania Act 1999*. There has been no activity at all during the reporting year with respect to the functions which arise under the *Witness Protection Act 2000* and the *Adoption Act 1988*.

The *Energy Ombudsman Act* does not require the publication of an annual report, but one is produced as a matter of good practice. Since the ombudsman functions created by that Act are ascribed to the Ombudsman appointed under the *Ombudsman Act*, some reporting with respect to those functions is included in this report, principally the statistics which can be found in Appendix C.

A significant number of reviews have been carried out under the *Freedom of Information Act*. As noted in previous reports, there is a trend towards reviews of greater complexity. I am very grateful for the diligent work of Terry McCully, Senior Investigation Officer (FOI), in handling these reviews.

There has been minimal activity under the *Public Interest Disclosures Act*, with only one new matter, which was not pursued by the complainant, and two older matters concluded. There has also been no occasion to carry out any inspection of police records under the *Telecommunications (Interception) Tasmania Act* during the reporting year, but such an inspection will shortly occur.

Conclusion

The past year has not been an easy one for my staff, with many changes and challenges. I hope for a more settled year to come, when we can continue to meet the requirements of each of the jurisdictions with excellence, whilst also bringing various long term projects to fruition. I thank each and every one of my staff, present and past, for their support during the year.

SIMON ALLSTON
OMBUDSMAN

ROLE of the OMBUDSMAN

The Tasmanian Ombudsman has a very wide jurisdiction to investigate the administrative actions of public authorities. The *Ombudsman Act 1978* does not prescribe by name the public authorities that fall within the jurisdiction of the Ombudsman except for the Police Service and the University of Tasmania. In terms of the other public authorities the Act relies on broad inclusive definitions which ensure that if not directly excluded, then a public authority is within jurisdiction. These definitions extend from State Service agencies and Local Council authorities to Government Business Enterprises and State owned companies. They also include a body or authority which is established under an Act for a public purpose or whose members are appointed by the Governor or a Minister. A person appointed to an office by the Governor or a Minister under an Act is also considered a public authority.

Certain Statutory Office Holders, Judges and Magistrates are not considered public authorities for the purposes of the Act.

The Ombudsman has also been appointed as the Health Complaints Commissioner, under the *Health Complaints Act 1995*, and administers the *Energy Ombudsman Act 1998*. The Ombudsman also reviews decisions related to requests for information under the *Freedom of Information Act 1991*; receives and investigates disclosures made under the *Public Interest Disclosures Act 2002*; receives and investigates complaints in relation to the alleged contravention by a personal information custodian of personal information protection principles under the *Personal Information Protection Act 2004*; reviews certain decisions under the *Adoption Act 1988*; oversees compliance by Tasmania Police with the provisions of the *Telecommunications (Interception) Tasmania Act 1999*; and oversees witness protection programs under the *Witness Protection Act 2000*.

The Ombudsman, Health Complaints and Energy jurisdictions operate largely as separate entities, with some cross jurisdiction movement of investigation staff according to demand. Most are located at 99 Bathurst Street Hobart. There is a branch office in Launceston, which is staffed by an investigation officer who deals with matters in relation to the Ombudsman and Health Complaints jurisdiction as well as undertaking some conciliation work. The part time Conciliator is also based in the Launceston office. Administrative and corporate support services are shared and the Ombudsman exercises an oversighting, corporate management role across all jurisdictions. There is a Principal Officer to head each of the Ombudsman, Health Complaints and Energy jurisdictions.

All of the jurisdictions operate on the principles of independence, impartiality, equity, fairness and accessibility with a commitment to the resolution of disputes in an expedient and efficient manner. The office is also committed, through its education and training program, to promoting awareness of its functions and to reducing the incidence of complaints, thereby improving the quality of public administration, health service provision and energy services.

Ombudsman

Under the *Ombudsman Act 1978*, the Ombudsman receives complaints related to the administrative actions of State Government Departments, Local Government bodies and specified public authorities. The Ombudsman will investigate complaints that fall within jurisdiction and if there is evidence of defective administration, will prepare a report for the agency head, which will include recommendations for rectifying action. If necessary, a report will also be prepared for the relevant Minister and/or Parliament. While the Ombudsman has no power to enforce recommendations and is dependent on persuasive arguments, it is rare for an authority not to accept the Ombudsman's recommendations.

FOI Review

Under the *Freedom of Information Act 1991*, the Ombudsman receives requests for the review of decisions made by State Government departments, local government and various public authorities not to release information sought under the Act. The Ombudsman has the power to make a fresh determination and direct an authority to release the information if he believes that an inappropriate decision has been made.

Public Interest Disclosures

The *Public Interest Disclosures Act 2002* commenced on 1 January 2004. The Ombudsman has a major role under the Act to receive and investigate disclosures and oversee the way public bodies deal with disclosures.

Personal Information Protection

The *Personal Information Protection Act 2004* commenced on 5 September 2005. The Ombudsman provides the opportunity for a person to seek redress in relation to an alleged contravention by a personal information custodian of a personal information protection principle that applies to the person.

Health Complaints Commissioner

Under the *Health Complaints Act 1995*, the Commissioner receives complaints related to the provision of any health service in both the public and the private sectors. Under the Act the Commissioner is required to:

- assess, conciliate, investigate or dismiss complaints;
- refer appropriate matters to the relevant registration board;
- promote the principles of the Charter of Health Rights within the community;
- provide information, education and advice to stakeholders;
- promote equity, access and fairness and bring about improvements in the quality and standard of health care in Tasmania;
- prepare reports and make recommendations to the Secretary and to the Minister for Health and Human Services.

Energy Ombudsman

Under the *Energy Ombudsman Act 1998*, consumers are able to refer complaints against energy entities to the Ombudsman for investigation and resolution. Under the Act the Ombudsman has the power to make determinations and awards against the energy entities.

Cross-jurisdiction services

The Ombudsman's Office plays an important role in referring members of the public to an appropriate source for the redress of grievances that fall outside the Ombudsman's jurisdictions. Alternatives would include, for example, the Financial Industry (Banking) Ombudsman, the Telecommunications Ombudsman, the Anti-Discrimination Commissioner and the Commonwealth Ombudsman.

Approaching the office

Any member of the Tasmanian community who feels they have been 'wronged by the system' in respect of a service provided by a State Government agency, and who has tried to resolve their grievance directly with the agency without satisfaction, may bring their matter to the Ombudsman. The Ombudsman will decide whether the matter might be accepted. If accepted, inquiries will commence and an investigation may ensue, the main objectives being to improve and promote the quality of public administration.

The Ombudsman offers a free service characterised by fairness, impartiality and confidentiality.

COMMONWEALTH OMBUDSMAN

Co-location arrangement

In 1999 the Commonwealth Ombudsman entered into a cost sharing agreement with the Tasmanian Ombudsman and appointed a Tasmanian delegate who is located at 99 Bathurst Street. Tasmanians who wish to complain about a Commonwealth body can make a complaint directly to the delegate.

I am pleased to report that Mr Jim Farley has continued as Commonwealth Ombudsman delegate in Tasmania, having commenced in June 2003. Jim has extensive experience in dealing with Commonwealth Government agencies, and a sound knowledge of investigative practices and the role and functions of the Commonwealth Ombudsman.

The Commonwealth Ombudsman continues, under the co-location arrangement with the State Ombudsman, to provide the Tasmanian community with a local point of service for complaints about services provided by Commonwealth government agencies, including Centrelink and the Australian Taxation Office.

The arrangement provides –

- a 'one stop shop' for advice and for handling complaints under both State and Commonwealth legislation;
- for effective and economic use of available resources;
- opportunities to promote sound public administration;
- joint community outreach opportunities.

ENERGY OMBUDSMAN

The Ombudsman administers the *Energy Ombudsman Act* 1998, supported by a Principal Officer (Energy) and an Investigation Officer.

Appendix C of this report is dedicated to the Energy Ombudsman and provides statistical information for 2005/06. This section is included because the *Energy Ombudsman Act* does not require a separate annual report, presumably expecting that reporting on the Ombudsman's functions under that Act will occur under the *Ombudsman Act*. (An annual Energy Ombudsman report is nonetheless produced as a matter of good practice, and as a resource for the energy entities, consumers and others, and the full report can be viewed at www.energyombudsman.tas.gov.au.) Notable is the decrease in both enquiries and complaints received during this year, which may reflect higher standards of service within Aurora Energy. As the sole electricity retailer in the State, Aurora is the energy entity against which most complaints are made. Complaint trends have maintained similar patterns from last year with a total of 90 complaints recorded related to billing, 19 about delays in providing a new connection for electricity supply and 37 about poles and wires.

There are only a few hundred natural gas customers in the State, which is reflected in the statistics. Three complaints only were recorded against the gas distributor Powerco Tasmania and all of these related to connection to gas. One issue is whether the definition of 'gas' in the Act should be amended to include LPG. There are some premises in the State, such as homes for the aged, where LPG is reticulated through the premises from a central LPG tank. It would seem appropriate in such cases for the users of the gas to be able to have recourse to the Energy Ombudsman to address complaints about service provision and the sale and supply of gas by the energy entity providing the LPG.

FREEDOM of INFORMATION REVIEWS

Role of the Ombudsman

The role of the Ombudsman is to independently review decisions of agencies under the *Freedom of Information Act* 1991 (the FOI Act).

The FOI Act

The FOI Act gives to every person a legally enforceable right to –

- obtain information contained in the records of government agencies and Ministers specified in the FOI Act; and
- have amended information relating to an individuals personal affairs that is incorrect, incomplete, out of date or misleading.

The entitlements conferred under the FOI Act are limited only by necessary exceptions and exemptions. For example, the FOI Act contains exemption provisions, which limit the right of access to information and embody parliament's assessment of interests that justify an exception to the general right. Several exemption provisions are subject to an overriding "public interest" test. This means that in order for an agency or a Minister to refuse access to the information, the agency (or Minister) must show, on balance, that it would be contrary to the public interest to release the information.

Powers

The Ombudsman's powers are limited to reviewing the specific categories of decision specified in s 48 (2) and (3) of the FOI Act. For example a decision that a person is not entitled to the information requested; that the information requested is exempt information or a decision not to amend personal information.

The Ombudsman can review a decision where an agency has for example decided to provide personal or business affairs information to the applicant (a "reverse" FOI application).

In carrying out a review the Ombudsman has the same power as the agency and is required to make a fresh decision. The Ombudsman can affirm, vary or set aside the decision under review.

Reasons for Decision

The FOI Act requires that an agency give adequate reasons for a decision. Significantly, "giving reasons" requires substantially more than, for example, the repetition of an exemption provision. It is necessary to explain to the access applicant why the exemption is applicable, setting out in as much detail as possible the reasons and, where relevant, the findings of fact adopted by the decision-maker to support the reasoning process.

A review under the FOI Act must usually be decided on the material provided by the parties. If an agency does not give reasons for refusing access to information, a review must be conducted by taking into account the applicant's request and an examination of the disputed information. That analysis might lead to a result that could potentially embarrass the agency by the need to disclose the information withheld without cause.

Who can lodge an FOI application

Any person, whether an individual or a corporate entity, can apply for access to information under the FOI Act. An individual can apply to amend information that relates to his or her personal affairs. All applications are, in the first instance, made direct to the agency that is possession of the relevant information.

Applicants who are dissatisfied with an agency decision may apply for an internal review within the agency, unless the agency's principal officer made the initial decision. A person can apply for an external review by the Ombudsman if –

- they have received a notice of an internal review decision by the agency; or
- the initial decision was made by the agency's principal officer; or
- the prescribed time limit for making the agency decision has expired.

Who applies for external reviews?

As mentioned in last year's annual report, external review applicants continue to come from every part of society. Applications are made by –

- politicians
- journalists
- interest groups
- businesses
- people who have made (or intend to make) complaints to an agency
- people who have been the subject of a complaint to an agency
- people seeking access to medical records
- prisoners
- people wanting access to information for use in legal proceedings;
- people seeking information about agency decision that has affected them.

Some applications require my staff to make preliminary inquiries to establish whether the Ombudsman has jurisdiction to conduct a review, and for example to ascertain whether there are any third parties who might need to be consulted during the review process. Where the information in dispute is voluminous or complex factual or legal issues exist, the review raises certain practical difficulties and the task of preparing a written determination requiring the provision of reasons for decision is time consuming.

FOI workshops

During the reporting period my office conducted 2 workshops aimed to give FOI Officers practical material to acquaint them with the responsibilities, appointment and functions of authorised officers under the FOI Act.

Website

The Ombudsman's Office maintains a website, to assist in the making of an application. The web site is linked to the Information Commissioners in Queensland and Western Australia. The current web address is www.foi.tas.gov.au

Freedom of Information Statistics

During the reporting period my office received **57** (157, 2004/5) new applications, 100 less than last year (representing a return to previous years levels ¹). Of the **57** applications, **23** (40) external reviews were finalised.

FOI Table 1. **FOI Results of Finalised Reviews**

Decision	2000/1	2001/2	2002/3	2003/4	2004/5	2005/6
Agency Decisions affirmed in full	9	7	12	11	19	13
Agency Decision Varied	12	17	5	1	7	5
Agency Decision Set Aside	5	2	6	2	9	5
Agency allowed extra time to comply				3	2	
Decision varied					3	
Total External Reviews/ Determinations	26	26	23	17	40	23
Other						
No Jurisdiction	4	4	3	3	10	8
Lapsed, withdrawn or discontinued		18	11	1		11
Advised that within jurisdiction	4		6			
No commentary available	1					1
Resolved after interim determination				8		
Alternative review process (1)					60	
Resolved (with the assistance of the office albeit without an external review completed)	7	8	8	28	47	14
TOTAL	42	56	55	57	157	57

Note: 1 In 2004/5 60 review applications related to one applicant who was provided with an alternative review process to amend their personal information.

In 2005/6 external reviews have been conducted as follows:

- **14** against State Government Departments of which 5 were upheld (at least in part)
- **3** against Local Councils (2 upheld) and
- **6** against Other Bodies (3 upheld).

Refer tables 2, 3 and 4.

FOI Table 2. **Reviews by State Government Departments**

Departments	2003/4	2004/5	2005/6 Applications Received	2005/6 Reviews Undertaken	2005/6 Agency Decision Varied
Economic Development (DED)	1	1	0	0	0
Education (DOE)	5	1	4	2	0
Health & Human Services (DHHS)	1	2	4	0	0
Infrastructure, Energy & Resources (DIER)			1	0	0
Justice (DOJ)		7	11	5	1
Police and Public Safety (DPPS)	3	8	6	2	0
Premier and Cabinet (DPAC)		1	0	0	0
Primary Industries & Water (DPIW)	2	3	6	2	2
Treasury & Finance (DT&F)		1	0	0	0
Tourism, Parks, Heritage & Arts (DTPH&A)		1	3	3	2
Sub-Total	12	25	35	14	5

FOI Table 3. **Reviews by Local Government**

Local Government	2003/4	2004/5	2005/6 Applications Received	2005/6 Reviews Undertaken	2005/6 Agency Decision Varied
Break O'Day Council		1	0	0	0
Central Coast		1	1	1	1
Circular Head Council			1	1	0
Glenorchy City Council		1	0	0	0
Hobart City Council	1	1	0	0	0
Huon Valley Council			1	1	1
Launceston City Council		1	0	0	0
Tasman Council			1	0	0
Sub-Total	1	5	4	3	2

FOI Table 4. **Reviews by Statutory Authorities and Other Bodies**

Prescribed Authorities	2003/4	2004/5	2005/6 Applications Received	2005/6 Reviews Undertaken	2005/6 Agency Decision Varied
Anti-Discrimination Commissioner	1	3	4	3	2
Clyde Water Trust	1	2	0	0	0
Director of Public Prosecutions	1	-	1	0	0
Forestry Tasmania	-	2	0	0	0
Law Society of Tasmania	-	-	0	0	0
Legal Aid Commission			1	0	0
Marine and Safety Tasmania (MAST)			1	0	0
Medical Council			2	0	0
Port of Devonport			1	1	0
Psychologists Registration Board	1	-	0	0	0
Tasmanian Ambulance Service	-	1	0	0	0
Transend			2	0	0
University of Tasmania	-	2	2	2	1
Sub-Total	4	10	14	6	3
Out of Jurisdiction			4	0	0
TOTAL (tables 13, 14 & 15)	17	40	57	23	10

FOI Case Summaries

Case Summary 0507019

The question in this review was whether a member of parliament was entitled to have charges waived for the supply of information under the FOI Act.

Background

A request by a member of parliament to a local council for information about a quarry asked for any charges to be waived under s 17 (1) (h). The council refused to waive the charge on grounds that the information was not required in connection with the applicant's official duties.

Relevant Law

Section 17 of the FOI Act sets out the principles for calculating charges, and if those principles require, for charges to be waived or reduced to allow information to be provided. Section 17 (1) (h) provides:

“(h) a charge is to be waived if the applicant is a member of either House of Parliament and the information is required by the Member in connection with the Member's official duties”

Decision

The access applicant said the information was required to assist “*resolve a matter of concern for a constituent*”. Specifically, the information concerned a

possible breach of “*environmental conditions contained in (a) license*” that fell within his portfolio responsibilities.

The term “*official duties*” is not defined in the FOI Act. The Macquarie Dictionary defines “*official*” as meaning “*of or relating to an office or position of duty*”. It defines “*connection*” as meaning “*anything that connects*”.

It was decided that the right to have charges waived under S.17 (1) (h) should not be read down. It is a beneficial provision designed in the public interest for the important object of improving public administration and increasing its accountability. The use of the word “*official*” is only to distinguish between private and public matters that might be performed by a member of parliament. The access applicant was entitled to have the charges waived for the supply of the information.

Case Summary 0502048

This review required balancing the public interest on whether secrecy should be lifted from information generated in relation to proposed development within the Freycinet National Park and Coles Bay Conservation Area.

Background

The background to the application was complex. The agency identified 1,472 pages of information as falling within the scope of the request. It initially released 184 pages in full, advised it was consulting with third parties about 465 pages and claimed 823 pages were exempt under s 27 (the internal working information exemption). On internal review the agency decided 120 pages comprised duplicate copies and affirmed the decision that the remaining 703 pages were exempt under s 27.

Issues

In practical effect, two questions arose for consideration that can be summarised as follows –

- Did the information, not being “*purely factual information*”, fall within the deliberative processes of the agency?
- If so, would disclosure of the information be contrary to the public interest?

Decision

The description of the information in the agency’s schedule, confirmed by an examination of the information, showed that it satisfied the first question. The information contained non-factual opinions, advice and recommendations about how the agency should exercise its management functions in relation to the Freycinet National Park and Coles Bay Conservation Area.

Of more difficulty was how to decide whether disclosure of the information, or parts of it, would on balance “*be contrary to the public interest*”. The potential breadth of information able to be considered under S.27 is apparent from the description in S.27 (1)(a). Central to this class is information which may influence or reflect the thinking of government decision-makers when performing a decision-making function. However, because of paragraph (1)(b), secrecy is only justified if disclosure of something in the particular information would, on balance, be contrary to the public interest.

Draft internal working documents are generally not appropriate for release particularly when the final document has been made public. No material was provided to the contrary in this matter. It was decided the information

designated by the Department as being a duplicate or draft document was exempt from release.

Many documents in a revised schedule of “*exempt documents only*” involved internal email communications. The information was drafted in a casual and informative manner. The information was drafted frankly for the purpose of sharing information in the agency’s deliberative process to assist decision-makers reach a view at an interim stage in the management process. It was decided the disclosure of the information would be contrary to the public interest as the information had wider implications for the decision-making of the Department and its deliberative process.

The case for the release of information was at its highest in relation to information described as being a report. Section 27 (1) does not include “*a final decision*”. Many of the documents described as a report did not appear to be of a sensitive or confidential nature or relate to an ongoing matter within the Department. It was decided that it would not be contrary to the public interest to release those reports.

Case Summary 0603044

The question in this review was whether the disclosure of comments and marks awarded by professional musicians about a student’s performance was contrary to the public interest.

Background

The background to the application was straightforward. The applicant, a university student, applied for information concerning exam results and assessments. The agency claimed the information was exempt under 27 (the internal working information exemption). The applicant said the information was relevant to a complaint made to the Students Complaints Tribunal.

Decision

Section 27 (1) (a) requires that the opinion, advice or recommendation be “*prepared by an officer or a Minister*” or be a record of consultations or deliberations “*between officers and Ministers*”. As a result, it does not for example include information an agency received from, or details of comments made by a person outside of the agency. In that regard the agency had not claimed to exempt information under either s 30 (the information affecting personal privacy exemption) or s 33 (the information obtained in confidence exemption) of the FOI Act.

Given the broad approach adopted in *Re Waterford and Department of Treasury (No 2)* (1985) 5 ALD 588 and followed in other cases it was decided information prepared by officers of the agency could properly be said to fall within a deliberative process. However, the same could not be said to apply to information that was prepared by a person who was not an “*officer*” of the agency. For example the exemption in s 27 did not extend to material prepared by “*professional employees*” or other persons outside the agency.

In *Re Eccleston and Department of Family Services, Aboriginal & Islander Affairs* [1993] 1 QAR 60 the Queensland Information Commissioner was critical of a formulation of general principles to indicate when disclosure of a deliberative process document was likely to be contrary to the public interest, preferring a test which required scrutinising the documents sought “*for factors that may point to tangible harm*” which would follow from their disclosure. The

reference to "*tangible harm*" being made in the context of the obligation to demonstrate, as a factual rather than theoretical proposition, that disclosure would be contrary to the public interest.

Each application must be decided on its own facts. On the material provided it was decided that the disclosure of comments and marks awarded by professional musicians about a student's performance was not contrary to the public interest. It was difficult to understand the reason for such musicians and other persons being unwilling to express frank and candid opinions or make recommendations about a student's performance in the future.

PUBLIC INTEREST DISCLOSURES (PID)

The Act

The *Public Interest Disclosures Act 2002* commenced on 1 January 2004. The Act gives the Ombudsman a major role in both receiving and investigating disclosures and also overseeing the way public bodies deal with disclosures.

The main objective of the Act is to encourage and facilitate the making of disclosures about improper conduct by public officers and public bodies. The Act provides protection for persons making a disclosure and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

The Act applies to a “public body” which is defined to include all agencies, councils, government business enterprises, State-owned companies and statutory authorities. The Act provides that an officer, employee or member of a public body (or a contractor to a public body) may make a disclosure to the public body, the Ombudsman or, in certain circumstances, other specified persons.

Under the Act, the main functions of the Ombudsman include –

- Publishing guidelines to assist public bodies in interpreting and complying with the Act;
- Reviewing written procedures established by public bodies;
- Determining whether a disclosure received by the Ombudsman warrants investigation;
- Investigating disclosures;
- Monitoring investigations initiated by public bodies or referred to public bodies;
- Collating and publishing statistics about disclosures handled by the Ombudsman.

The Guidelines and model procedures for public bodies set out in detail the operation of the Act and the suggested processes for bodies to comply with the Act. The Guidelines, model procedures and a complete training package are available on the Ombudsman website at www.ombudsman.tas.gov.au/publicinterestdisclosures. A hard copy may be viewed at the Ombudsman’s Office located on the Ground Floor at 99 Bathurst Street, Hobart, on request during business hours.

Annual Reporting requirements s84

Section 84 of the Act sets out the annual reporting requirements for the Ombudsman (refer table 1). These are as follows for the period 1 July 2005 to 30 June 2006.

Only one disclosure alleging improper conduct was received under the Act in the reporting year. This matter was not pursued or adequately substantiated by the complainant.

Two matters which came to the Office in 2004/5 were also concluded. One was referred to the Commissioner for Police for investigation, but did not result in charges being laid. The other was left in the hands of the reporting agency on the basis that the investigation being carried out appeared to be adequate. The Ombudsman also raised questions in this case as to whether the case involved a public interest disclosure.

There have been no referrals of disclosures to the Ombudsman from public bodies in accordance with s 35, nor from the State Service Commissioner in accordance with s 28, the President of the Legislative Council or the Speaker of the House of Assembly in accordance with s 78.

There have been no formal reviews of public body procedures under s 62. Most public bodies follow the model procedures prepared by the Ombudsman.

PID Table 1. **S84 (a) to (l) - Period covered: 1 July 2005 - 30 June 2006**

Sub-Section	Annual Report requirements	Response
(a)	Information as to how persons may obtain or access copies of the current guidelines published by the Ombudsman under Part 6; and	Ombudsman website or Ombudsman Office
(b)	The number and types of disclosures made to the Ombudsman during the year; and	1 received
(c)	The number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures; and (3 carried over from previous year for determination)	Nil
(d)	The number and types of disclosed matters that during the year the Ombudsman has investigated; and	Nil
(e)	The number and types of disclosed matters that during the year the Ombudsman has referred – (i) under section 41, to the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; or (ii) to a public body to investigate under Part 7; and	1 disclosure of improper conduct referred to the Commissioner of Police
(f)	The number and types of disclosed matters – (i) that the Ombudsman has declined to investigate during the year; or (ii) that were referred by a public body during the year to the Ombudsman to investigate; and	3
(g)	The number and types of disclosures referred to the Ombudsman under this Act by the President of the Legislative Council or the Speaker of the House of Assembly during the year; and	Nil
(h)	The number and types of investigations of disclosed matters taken over by the Ombudsman during the year; and	Nil
(i)	The number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year; and	Nil
(j)	The recommendations made by the Ombudsman during the year in relation to each type of disclosed matter; and	N/A
(k)	The recommendations made by the Ombudsman during the year re the procedures established by a public body under Part 7; and	Nil
(l)	The action taken during the year on each recommendation of the Ombudsman under this Act.	N/A
(m)	Notification under s34 by a public body	1

TELECOMMUNICATIONS INTERCEPTIONS

The Ombudsman has responsibility to oversee Tasmania Police in accordance with the *Telecommunications (Interception) Act 1999* (the Act). The Ombudsman may at any time inspect the records kept by Tasmania Police to ascertain the extent to which they comply with Part 2 of the Act, and at least once in a period of six months must inspect the records for that purpose.

The Ombudsman provides reports on the result of any inspections undertaken in a financial year to the Minister for Police and Public Safety, the Minister responsible for the administration of the *Telecommunications (Interception) Act 1979* (Commonwealth) and to the Commissioner of Police.

Although the Act commenced on 16 July 1999, no interceptions were undertaken until the 2005/2006 reporting year. This was because Tasmania Police did not have the necessary systems and technology in place until February 2006 and the first application for a warrant was not made until April 2006. The Ombudsman has been in regular contact with Tasmania Police throughout the developmental period in order to be satisfied that no warrants had been issued and that there were no records to inspect.

Tasmania Police have provided tours of their facilities for Ombudsman staff and useful information in order to assist in defining which records kept in connection with the one warrant issued in 2005/2006 will be inspected in the 2006/2007 year.

POLICE COMPLAINTS

As in previous years, the vast majority of complaints lodged against the Department of Police and Public Safety involve Tasmania Police.

Police complainants are generally comprised of two kinds of 'client stakeholders'. That is, those who report criminal matters and seek police assistance and those which are subject to police inquiries and investigations. However, complaints were received from other persons in respect of Tasmania Police; for example, agency staff and recruitment applicants.

Complaints against Tasmania Police cover a wide area of police operations. Grievance issues raised during 2005/2006 include, for example –

- inaction (for example, failure to investigate a reported crime);
- acting oppressively or illegally;
- bias in conducting an investigation given the complainant's criminal record;
- excessive force in effecting an arrest; and
- quality of customer service (for example, failing to update a person who has reported a matter).

Complaints involved relatively simple matters, such as officer rudeness, through to serious and complex matters.

The Tasmanian jurisdiction is unique in that the Ombudsman is the only body overseeing Police activities. The Ombudsman and Tasmania Police have a good working relationship based upon an agreement that complaints will initially be referred to Tasmania Police for investigation. Tasmania Police will then decide whether the complaint will be investigated at district level (with Internal Investigations oversight), or by Internal Investigations. The less serious complaints, which can be broadly described as customer service complaints, are usually investigated at the district level. The more serious complaints are usually investigated by Internal Investigations.

The Ombudsman then reviews the police investigation of the complaint, which can include not only reviewing police investigation reports but also interviewing the complainant and speaking to the investigating police officer(s) and their superiors, and reviewing police investigation files at Internal Investigations. The Ombudsman reserves the right to conduct a fresh investigation at any point in time – at the outset, during, or upon conclusion of the police investigation. However, it is far more common for the Ombudsman to highlight any concerns about an investigation and have Tasmania Police address those concerns themselves. This has resulted in a cooperative and productive working relationship between the Ombudsman and Tasmania Police, which complements the complaint handling aspects of the *Police Service Act 2003*.

Police Case Studies

Careful with the Cash

The complainant stated that before being arrested at the Kingston Beach Hotel he had in his possession a large sum of money (approximately \$7000). Upon his release from custody, Police returned an amount of \$950 only. He also complained of tampering with the recorded footage of the process in charging him.

Some four months after the arrest, the complainant had gone to Tasmania Police Internal Investigations Unit to report that police had stolen \$7000 from him following his arrest at a hotel. Tasmania Police conducted an investigation into the allegations, but the complainant was not satisfied with the outcome. He then raised the same issues with the Ombudsman and a review of the police investigation was conducted.

As the arresting officers did not search him prior to him being taken to the charge room, the complainant suggested the Custody Officer at the charge room might have taken his money.

As the charging procedure at the Hobart Charge Room is recorded using closed circuit television (CCTV) equipment (which includes sound), the tape of the procedure involved in charging him was reviewed. This showed the complainant removing a wallet from his clothing and then the monies (\$950.50) being counted twice by one of the arresting officers in his presence. The complainant and his property were then transferred to the Hobart Reception Prison and he was released following his appearance in court.

Police in investigating the original complaint to them found that prior to his arrest, the complainant had been playing poker machines at the hotel and had lost approximately \$4000.

In relation to an allegation of 'evidence tampering', all footage taken at the Hobart Charge Room is stored as images on a computer 'hard drive' at a location remote from the Charge Room. Selections of these images were downloaded onto a disc by Internal Investigation Unit staff. There is no opportunity for the images recorded to be interfered with by the staff in the Charge Room as they have no direct connection to the disc being used to record the images.

The operation of this process was reviewed by the Ombudsman staff and it was determined that there was no opportunity to tamper with the data, nor did the images show any untoward material. The complaint was closed on the basis it had not been substantiated.

Copper Copped

The complainant was involved in a motor vehicle accident between two motorcycles ridden by him and his friend, which collided with a four-wheel drive vehicle. The complainant, a NSW police officer, complained to Tasmania Police about the way the Police Constable who attended the scene had managed the situation. He alleged that she was incompetent and acted inappropriately in collecting evidence which was relied upon to determine whether the driver of the vehicle causing the accident ought to be charged with an offence or not. The

complainant was not satisfied with the outcome of the investigation by Tasmania Police Internal Investigation Unit, so he complained to the Ombudsman.

The Ombudsman decided to conduct a full review of both the Internal Investigation file and relevant Tasmania Police Manual provisions. Police had recognised that the Constable had not photographed the accident scene, nor had she kept a running sheet of her investigation. Remedial action by way of verbal direction from her Divisional Inspector in respect of these two deficiencies was carried out.

The complainant had also contacted the Tasmanian Constable and had been critical of her management of the investigation. This matter should have been referred to her senior officer for a response. The Constable received guidance and instruction in respect of keeping relevant parties, including the complainant informed, as if this had occurred the complainant could have been informed that his contact with witnesses prior to their being interviewed had the potential to hamper the police investigation.

The complainant had also conducted other inquiries himself which could have influenced the course of the police investigation. By his biased approach Tasmania Police considered he might have contaminated evidence which they subsequently sought from witnesses. This behaviour was considered totally inappropriate as he was involved in the accident and had a vested interest in ensuring his friend received maximum compensation. A copy of the police report into the complaint was forwarded to NSW Police Professional Standards so they could examine the appropriateness of the complainant's actions.

The Ombudsman was of the view that Tasmania Police had taken appropriate action in investigating the complaint and also undertaken appropriate remedial action. In the circumstances the deficiencies revealed in the actions of the Constable were not critical to the decision as to whether charges should be laid against the driver of the vehicle that struck the motorcycles.

PRISON COMPLAINTS

The vast majority of complaints lodged against the Department of Justice Corrective Services Division are Prison Service complaints. The Prison Service includes not only the maximum Risdon Prison complex but also the State's two Reception Prisons (in Launceston and Hobart), the Hayes Prison Farm and the Women's Prison located on the same site as Risdon Prison.

Prison 'client stakeholders' are prison and remand centre 'inmates'. Inmates are classed as either 'detainees' (on remand) or 'prisoners' (who have received a prison sentence). However, complaints were received from other persons in respect of Corrective Services, for example agency staff, recruitment applicants and the family and friends of inmates.

Complaints lodged against the Prison Service are equally diverse, and varied in both complexity and seriousness. During 2005/2006 complaints concerned an array of matters, for example –

- internal disciplinary processes;
- alleged correctional officer harassment;
- segregation and punishment imposition and regime issues;
- the cessation of prisoner programs;
- access to education and work opportunities;
- calculation of remission periods;
- placement within the prison system;
- prisoner classification;
- inmate account and property issues; and
- bans from visitor programs.

Under both the *Ombudsman Act 1978* and *Corrections Act 1997*, inmates have a right to send and receive letters unopened from the Ombudsman. Other than via internal complaints processes (which exist for inmates), and voicing grievance issues with Official Visitors, the Ombudsman is the only generalist review body available to inmates to raise grievance issues. The above legislative provisions reflect the importance of this role.

Prison Case Studies

Computer Copy

The complainant lodged a complaint with the Ombudsman alleging that a computer he had rented from Prison Education and floppy discs had been confiscated along with personal papers.

The first complaint issue arose from his rented laptop being confiscated after it was learnt that he was using it to prepare appeals for other inmates. However in

conducting preliminary enquiries, some deficiencies were discovered in the process used to manage the rental of computers.

In the complainant's application for rental of a Prison Service laptop the complainant stated that his need for personal use of the machine was "*to start to prepare appeal submission and to continue a course of study in Business 1*". Approval was given for a short-term loan only and for the "completion of education studies only".

A copy of the approval is to be forwarded to the prisoner when the computer is issued but there was nothing in the material provided by Corrective Services to indicate that this took place. The Manager of the Risdon Prison Complex, who gave permission for the complainant to prepare his own appeal work, changed the original approval given by the Education Officer.

As it appears that the complainant was never informed of the original terms of approval, and subsequent changes to that approval were not made in writing, this allowed a misunderstanding to arise about the use of the computer. The complainant thought he could use the laptop not only to work on his course and his appeal, but on other inmate's appeals as well. Given the lack of written records and notification regarding what the complainant could or could not use the computer for, combined with the change in the terms of the original agreement, the Ombudsman considered that confiscation of the computer was unreasonable.

Although the complaint was resolved in the early stages, suggestions were made that a written record should be kept of all important decisions, including the approved uses of a rented laptop. The inmate should be required to sign an acknowledgement of the purposes for which he is entitled to use the rented computer. A proper register will avoid a repetition of the uncertainty that arose in this case.

Give Him the Boot

An inmate lodged a complaint with the Ombudsman raising three grievance issues that warranted preliminary enquiries under the *Ombudsman Act 1978*. The first alleged a failure to issue fur-lined boots to address a medical ailment, despite approval being given six months previously. The second alleged a failure to provide a response regarding an enquiry as to what property had been lost or damaged during the 'hostage situation' in the prison. The third alleged failure to provide the inmate with dark glasses, which were authorised subsequent to medical eye testing approximately six months previously.

A response to the complaint from the Director of Prisons (the Director) relied on reports from two officers: the Manager State-wide Service and the Manager Accommodation. The report was supported by appropriate documentation and accepted by the Ombudsman.

1. Boots

Some delay arose from ordering boots that on arrival were deemed inappropriate for the inmate to wear to work. Therefore part of his complaint was substantiated, as it did take six or more months to provide him with Kiandra fur-lined boots and two pairs of thermal work socks. However, given that he had now received the boots and socks this part of his complaint was considered resolved.

2. Lack of response

On the inmate's return to Risdon Prison, having been captured following his escape from custody, two Correctional Officers inspected all of his property in his presence. At that time the inmate discarded all of his property apart from one change of clothes. The Director advised that this change of clothes was currently in the inmate's property locker at Risdon Reception. As this part of the complaint had been resolved, further inquiries were unnecessary.

2. Failure to provide dark glasses

The Director advised that the provision of dark prescription glasses could not be completed because of a considerable delay with the transfer of approximately \$80.00, the extra money required to be contributed by the inmate in order to receive the special glasses. This matter was also resolved during the period of preliminary inquiries, so further investigation was unnecessary.

A suggestion was made to the Director that appropriate measures are taken to ensure that inmates receive approved items in a far more timely manner, particularly when the need for such items arises from a medical condition. The delay in providing the boots to the inmate was unreasonably long.

AGENCY CASE SUMMARIES

STATE GOVERNMENT DEPARTMENTS

DEPARTMENT OF JUSTICE

Workplace Standards not up to Standard

A worker lodged a complaint with Workplace Standards alleging that his employer had not fulfilled his duty of care in providing a safe workplace and had not provided appropriate care and support following an injury. The worker further alleged that, as a consequence, he had suffered further injury.

Workplace Standards investigated the allegations and received written confirmation from the employer that the requirements had been met. Workplace Standards was satisfied by the information that had been provided that the employer had in fact done sufficient to fulfil his duty of care to the employee and that the complaint was not substantiated. The file in the matter was then closed.

Workplace Standards considered that they had done all they needed to do once they were satisfied that a safe workplace had been provided. However, in the view of the Ombudsman, Workplace Standards failed to deliver procedural fairness to the employee as they did not advise him of the response from the employer, nor did they advise him that the complaint was found to be unsubstantiated.

In fact, the employee only discovered the outcome when documents were provided to another complaints resolution body some 6 months later. It was the view of the Ombudsman that, had the decision of Workplace Standards been made available in a timely way, the need for the worker to go to other bodies to resolve the matter would have been avoided.

DEPARTMENT OF PRIMARY INDUSTRY AND WATER

No Service from Crown Land Services

In 1991 the complainant arranged, through a letter of authority from the Department of Roads, to occupy the road reserve adjacent to his property in Howrah.

In 1999 the Department conducted an Audit Inspection, and on 11 February 2000 Crown Land Services wrote to the complainant stating he would be required to either licence or purchase the Crown Land. Accordingly, on 22 February 2000 he lodged an application to purchase the land.

The process to deal with the purchase application was somewhat complicated, but in essence involved the following steps –

1. Application for Purchase;
2. Survey and Valuation;
3. Ministerial Approval;
4. Council Subdivision Permit;
5. Amend Sealed Plan, Schedule of Easements and remove “road” notation;
6. Petition to amend Sealed Plan and remove “road” notation to landholders within the Sealed Plan;
7. Lands & Titles Office to register subdivision and provide amended titles.

The most significant issue arising from the complaint is delay. Several of the agencies involved in dealing with the application contributed to the protracted process to some extent, but Crown Land Services clearly were responsible for the longest delays. Over a period of four and a half years, the management of the Purchase Application was left for a total of forty months, or just over three years, without meaningful attention. It also necessitated the involvement of three different Ministers in attempting to progress the matter.

The final year of the process involved consistent correspondence between the parties, but achieved little towards the progress of the application. A good proportion of the letters related to whether the contract was enforceable and whether the complainant would be permitted to withdraw and have his money refunded.

The local Council required a new Subdivision Application as of 19 May 2005, as the original approval was out of time. At that stage, the complainant simply wanted to withdraw from the process.

This complaint highlighted problems with the way Crown Land Services conducted business, which led to a review and recognition that there was a class of files that were not being progressed in a timely way. The Agency proposed that a special project be established to manage those files and to implement a system to ensure such delays did not occur in future.

LOCAL GOVERNMENT

Break O'Day Council

Stalled

A complaint was lodged with the Ombudsman concerning the Break O'Day Council's written advice that the complainant was to remove his roadside stall (where he sold seasonal vegetables) and the accompanying roadside signage he had erected. Council advised that the stall was operating without a permit and the signage was not allowed and was totally inappropriate. The main cause of concern for Council was about road safety as the road was narrow and the line of sight poor for vehicles pulling over and then re-entering the road. The complainant also expressed his views about the way he had perceived Council's notice to him, and offered suggestions about why he was not in the wrong. He claimed Council had 'stolen' his signs and would not return them.

The Ombudsman wrote to the complainant to advise that his preliminary view was that the complaint would not be accepted for investigation. There was no indication in his complaint of any administrative action that the Ombudsman considered to be wrong or unlawful on Council's part. If Council had advised that he was required to lodge an application for a permit to operate and advertise his business, then there was nothing to investigate. An opportunity was provided for the complainant to respond and provide reasons why the complaint should be accepted and investigated.

He provided a written response, again outlining his personal views of Council and its operations. The Ombudsman replied advising that Council's Manager Development Services had been contacted by telephone and had advised that Council had a statutory authority under the Planning Scheme to remove offending signs within the Municipality. Also, that the complainant's signs had been removed only after Council had requested that he do so in writing. The signs had been

stored at Council's depot and it was suggested that he contact Council should he wish to collect them.

The Ombudsman advised the complainant that there was nothing in his last correspondence that would alter the preliminary view previously held and the complaint would not be accepted for investigation. The file was closed.

Central Highlands Council

Moving On

A telephone complaint was received advising that the Central Highlands Council had refused to renew the complainant's tenancy at the Bothwell Caravan Park. He stated he was living there while working in the local district as a shearer. He had had some contact with the local police about a complaint lodged by another Caravan Park resident, but stated that no charges had been laid.

Following preliminary inquiries it was revealed that there had been a complaint about the complainant's behaviour, but police had not laid charges. The information had somehow found its way to Council who initially sought to refuse to renew the complainant's tenancy as he was considered to be an undesirable character. However, this decision was rescinded and Council was able to advise some time later that the complainant continued to live at the caravan park without further problems. The file was closed.

Derwent Valley Council

Water, Water Everywhere

A number of complaints were received about inconsistency in reading of water meters within the municipality.

Some properties in the municipality have no water meters, some have meters that are never read and Council focuses on reading meters where it suspects excessive water usage. The complainant complained about this being an inequitable situation.

The policy adopted by Council had been to read meters at those properties with an apparent high domestic usage, or that used water for other than domestic purposes. Meters had been read quarterly to allow users to adjust usage to minimise costs. Council employs a person for this purpose, part of whose work involves reading water meters.

Council was unable to justify introducing meters on all properties in the municipality on the basis of cost. Council does not have the resources to read all the meters on a quarterly basis, but was prepared to accept the recommendation made by the Ombudsman of reading all meters on a less frequent basis. This may mean that excessive water users might only be made aware of the fact say twice per year.

If it happens that a substantial number of meters are being read at properties with no excessive water usage, Council may consider reverting to the previous practice of selected reading on a quarterly basis.

The Ombudsman was satisfied that Council had responded reasonably to the concerns raised and was prepared to implement a system for all properties with meters to have those meters read. Therefore, there was no necessity for further investigation of the complaints and the file was closed.

DEPARTMENT OF TREASURY AND FINANCE

State Revenue Office

You can't have your cake and eat it too

The complaint arose from a refusal of an application for a first homebuyers grant. The complainant lodged an application for the grant in December 2003, and that application was refused. She lodged an objection to that decision, but not until well outside the 60-day period provided for such objections, in June 2005. Notwithstanding the delay, the Revenue Office response provided a full and complete explanation as to why the application was refused.

When the Ombudsman considered the information provided by the public authority, it was clear that it had acted reasonably in refusing the grant and in providing clear reasons for that decision. The complainant had jointly owned a property previously for a period of ten years, and had stayed there in some rough accommodation at times. However, the final issue for the Ombudsman was that she had, for the purposes of Land Tax, claimed that this property was her permanent residence.

The complaint was dismissed on the basis that there was no defective administration.

THE PUBLIC TRUSTEE

Where there's a Will, there's a way

A complaint was lodged with the Ombudsman against The Public Trustee, claiming that the settlement of the complainant's partner's estate remained unresolved after 12 years. Three children were the beneficiaries of the estate.

The Ombudsman wrote to The Public Trustee, enclosing a copy of the complaint and requesting a report into the complainant's claim. A report was duly received, and from the information contained in the report and information provided by the complainant, the Ombudsman concluded that the complaint was substantiated.

The youngest child attained the age of 18 years in November 2004. The complainant was fully aware that the estate was in maintenance mode, insofar as the land was concerned, until this child came of age.

The Public Trustee had listed two main matters that remained unresolved. The first related to legal costs incurred by the complainant as advisory trustee for the estate. The Public Trustee claimed to have written to her solicitors at the time *'...on numerous occasions seeking an itemised account of her costs. Unfortunately this has never been forwarded. Regrettably, that particular matter has been left unresolved.'* It was also noted that The Public Trustee had advised that they wrote to the complainant in April 2006 advising her of her entitlement to costs. It would appear that this was the first time The Public Trustee sought to obtain this information from her and only after they had received advice that a complaint had been lodged with the Ombudsman.

The second matter related to the vacant land. The Public Trustee had advised that they needed *'...instruction from the beneficiaries as to the manner in which they wish to proceed in relation to the land.'* A copy of a letter sent to a beneficiary was included as an attachment to the report provided to the Ombudsman. It indicated that this was the first contact made by The Public Trustee to the beneficiaries since the youngest child attained 18 years of age, some 18 months after the event. Again, this was after The Public Trustee received advice that a complaint had been

lodged with the Ombudsman. The Public Trustee also advised; *'...nevertheless the finalisation of this estate has taken longer than was necessary.'*

The Public Trustee received no response from the complainant's solicitors concerning her legal costs and made no further effort to contact the complainant or her solicitor. The Public Trustee also failed to contact the youngest beneficiary upon attaining the age of 18 years to expedite the finalisation of the estate. On each occasion, contact was made only after The Public Trustee received advice that a complaint had been lodged with the Ombudsman. The Public Trustee indicated that the process was underway to finalise the estate.

The Public Trustee was advised in writing of the Ombudsman's view that the complaint was substantiated and afforded the opportunity to respond. No response was received within the allotted time. The file was closed on the basis that the complaint was substantiated.

OFFICIAL PRISON VISITOR PROGRAM

HEALTHY PRISON TEST

The Official Visitors use the Healthy Prison Test as the guiding principle in visiting and reporting on Tasmanian prisons. This requires that –

- Prisoners are held in safety;
- Prisoners are treated with respect as fellow human beings;
- Prisoners are expected to improve themselves, and are given the opportunity to engage in purposeful activities;
- Prisoners are helped to resettle in society and reduce the likelihood of their re-offending.

Official Visitors conduct a regular program of visits to all Tasmanian prison locations; each visitor is allocated to a prison or several prisons in particular. Official Visitors are not advocates for individuals in custody. On their visits, Official Visitors inquire into the treatment, behaviour and conditions of prisoners and detainees as well as receiving and investigating individual complaints.

The complaints presented to Official Visitors are discussed with the Manager of the prison at the end of each visit and many are resolved at that time. More complex matters may not be dealt with immediately, but a system is in place to ensure that all issues raised are properly resolved.

Following the Ombudsman's report on the inquiry into the Risdon Prison Complex in 2001, closer working relationships were developed between the Ombudsman and the Official Visitors, including locating the Coordinator of the program in the Ombudsman's Office and appointing a Senior Official Visitor.

Oversight of the operations of the prison service have changed since that time. The Senior Official Visitor position has not been filled since 2003, and the Department of Justice has created a position of Operational Review Officer to undertake inspections of custodial facilities, review custodial services and undertake investigations.

The Ombudsman and the Department of Justice have entered into a Memorandum of Understanding for the operation of this process, which includes the Ombudsman approving draft reports, or initiating further inquiries if necessary.

Official Visitors, as a consequence, have reverted to a more traditional role without the focus on research and investigation of systemic issues. Official Visitors are volunteers, who spend limited time working within the prison system as a valuable external monitoring mechanism.

The operation of Divisions 7 and 8 in the Risdon Maximum Security Prison remained of on-going concern to Official Visitors, but because changes are to be implemented

related to the management of inmates in punishment or other separation within the new prison they chose not to take any action to seek system changes in the regime.

All Official Visitors will welcome the de-commissioning of Divisions 7 and 8 later in 2006.

One of our Official Visitors managed to include visits to both Victorian and New South Wales prisons while he was on the mainland on private business. On his return from the most recent visit he made the following comments –

“Before I went to the prisons I had the impression that Risdon was a wretched place. I am now of the opinion that all prisons are wretched places. I left both prisons with a conviction that there must be some better way somewhere. The dehumanising atmosphere of the parts I saw was dreadful – probably worse than Risdon, given the numbers.

Div 7 at Risdon is less wretched than either of the units I saw inasmuch as there is more opportunity for person-to-person contact, both visually, aurally and in some cases physically. Neither unit had a Div 8 – those who misbehaved were in the segregation yards.”

Hayes Prison Farm changed to the same cook-chill system for meals as that operating at Risdon. Initially there were some concerns expressed to Official Visitors about both the quality and quantity of the food. An unannounced inspection in June revealed that the earlier concerns had been redressed, and the meals being provided were quite satisfactory.

Official Visitors recognise the strains under which the Prison Service is operating. However, Official Visitors also remain concerned that static security and control issues predominate at the expense of rehabilitation, personal development and programs which confront offending behaviour. Almost all inmates are ultimately released into the community, and it is part of community expectations that the prison experience should reduce the likelihood of future offences.

APPENDIX A – STATISTICS

Note: Figures and percentages shown in (brackets) reflect the previous reporting period 2004/2005.

Reasons for Closure of Files

The important figures in the statistics related to all public authorities are the separation into different categories depending on the different reasons for the closure of a file. These are divided into declined, discontinued, no defective administration and substantiated.

Declined

Upon receipt a complaint is assessed to ensure that it meets the threshold required for acceptance by the Ombudsman, and the following matters may be considered –

- Is the person bringing the complaint personally aggrieved?
- Is the complaint made within the required time limits?
- Are there alternative remedies available?
- Has the complaint issue been raised with the public authority?
- Is the complaint trivial?
- Is the complaint made in good faith?

In situations where the complaint does not meet those requirements, the Ombudsman may decline to commence preliminary inquiries. In declining, the Ombudsman may refer the complainant to another avenue to deal with the issues, including to the public authority against which the complaint is made.

Discontinued

This category may relate to a file which does not progress because the complainant does not provide additional information to identify the issues of complaint adequately.

It may also include the situation where after preliminary inquiries have been undertaken, the Ombudsman may then decide that the investigation of the matter is unnecessary or unjustified.

No defective administration

This category may relate to a matter that is resolved at either the preliminary inquiry stage or proceeds through to an investigation. What it means is that the Ombudsman is satisfied on the material which has been available that the administrative actions of the public authority are appropriate and reasonable in the circumstances.

Substantiated

This category describes those complaints where the Ombudsman considers that the administrative actions of the public authority are not appropriate or reasonable. Action to redress the position may already have been taken, in which case this will be recognised by the Ombudsman in final correspondence. Alternatively, he may make recommendations to ensure that similar situations do not arise in the future.

Some changes have been undertaken within the office in the way in which complaints are defined and counted. Simple enquiries or telephone contacts that do not progress to the lodging of a complaint are no longer included. However, in order to provide some comparative figures, Table 1 of Appendix A includes a column for complaints and enquiries combined.

The consequence of the change in the way enquiries are recorded is an apparent drop in the number of complaints received in 2005/6, although the proportion of complaints about particular agencies remains constant. The Department of Health and Human Services, the Department of Justice and the Department of Police and Public Safety remain the agencies generating the largest number of complaints. This does not necessarily reflect problems with the administration of those agencies, but rather the fact that these organisations have frequent contact and interaction with members of the public.

These figures include applications for FOI Reviews, as well as complaints under the *Public Interest Disclosures Act 2002*.

Appendix A Table 1. **Complaint activity for the period 2002/3 to 2005/6**

Complaints & Enquiries	2002/3	2003/4	2004/5	2005/6	Complaints only 2005/6
Open at beginning of period	138	85	151	184	184
Opened in period	706	825	995	936	511
Closed in period	770	755	1003	1000	575
Opened & closed in period	628	690	834	885	460
Open at end of period	85	151	184	113	113

Appendix A Table 2.

Breakdown of complaints received for the period 2003 to 2006

Complaint Type	Opened			Closed			Opened & Closed		
	03/04	04/05	05/06	03/04	04/05	05/06	03/04	04/05	05/06
Ombudsman	738	848	461	694	835	517	632	701	413
PID	4	10	1	1	12	1	1	8	1
Sub-Total	742	858	462	695	847	518	633	709	414
FOI our Records	4	3	2	4	4	2	4	3	2
FOI Reviews	79	134	47	57	152	55	53	122	44
TOTAL	825	995	511	756	1003	575	690	834	460

SUMMARY 2005/2006

• Government Departments

There has been a significant decrease in the number of complaints received against State Government Departments, compared with the reporting period 2004/5, primarily because of the change in the counting and categorisation of public contacts.

The Departments of Health and Human Services, Justice and Police and Public Safety again are the main departments complained about. This trend is consistent with previous years –

- The number of complaints received against the Department of Health and Human Services has decreased by nearly 50% from the previous reporting period (**64** 2005/6; 125 2004/5). Of these **39%** of the complaints made against the Department are against Housing Services.
- There has been a similar decrease in the number of complaints received against the Department of Justice (**46** 2005/6; 92 2004/5).
- There has been a 26% decrease in the number of complaints against Tasmania Police (**61** 2005/6; 82 2004/5).

• Local Government

The number of complaints received against local government is down by 30%. However, as outlined in the body of the report, this is to a large extent due to changes in the way the activities are categorised.

Figure 1.
Who is being complained about?

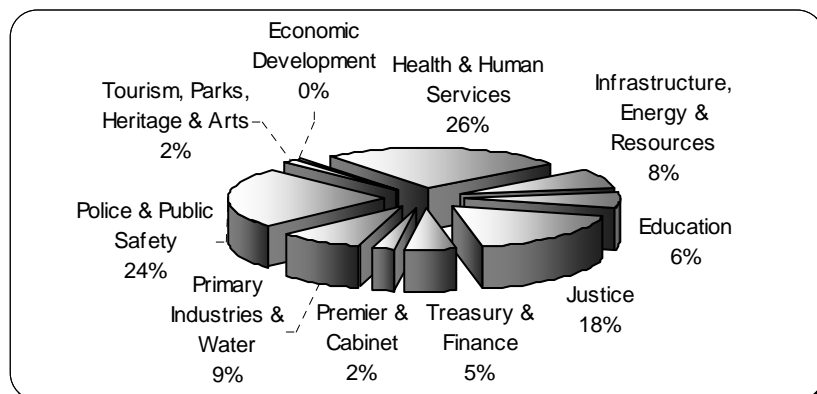
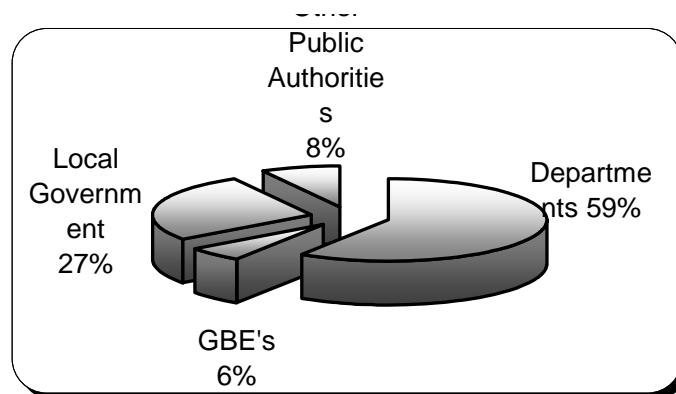


Figure 2.
Further Analysis of Departments

Appendix A Table 3. **Complaints against State Government Departments**

	RECEIVED			CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2003/4	2004/5	2005/6	2005/6				
Department of Economic Development (DED) Total	19	1	1	1	0	1	0	0
Department of Health & Human Services (DHHS) Total	83	125	64	75	20	29	17	9
Departmental / Not specified			19	19	7	6	3	3
Adoption and Information Services			1	2	0	1	1	0
Alcohol and Drugs Service			3	0	0	0	0	0
Children & Families Division			10	21	3	10	7	1
Disability Services			1	1	1	0	0	0
Housing Tasmania			25	27	7	10	6	4
Pharmaceutical Services			1	1	0	1	0	0
Royal Hobart Hospital			4	4	2	1	0	1
Department of Infrastructure, Energy & Resources (DIER) Total	21	21	20	17	10	1	6	0
Departmental / Not specified			7	5	4	0	1	0
Registration & Licensing			0	1	0	0	1	0
Roads & Public Transport			13	11	6	1	4	0
Department of Education (DOE) Total	27	23	16	20	6	10	1	3
Departmental / Not specified			7	11	2	5	1	3
Schools & Colleges			3	4	2	2	0	0
University of Tasmania			5	4	1	3	0	0
State Archivist			1	1	1	0	0	0
Department of Justice (DOJ) Total	74	92	46	58	19	19	9	11
Departmental / Not specified			5	6	2	1	1	2
Attorney General			1	1	1	0	0	0
Births, Deaths and Marriages			1	1	0	1	0	0
Corrective Services			29	36	11	12	6	7
Consumer Affairs and Fair Trading			2	1	0	0	1	0
Workplace Standards Tasmania			4	7	2	4	0	1
Magistrates Court			4	6	3	1	1	1
Department of Treasury & Finance	12	7	13	11	4	4	2	1
Department of Premier & Cabinet	7	4	6	6	4	1	1	0
Department of Primary Industries, Water & Environment	28	30	22	27	10	3	9	5
Department of Police and Public Safety	54	82	61	66	31	16	17	2
Department of Tourism, Parks, Heritage & Arts	2	0	4	4	4	0	0	0

Appendix A Table 4. **Complaints against Local Government**

	RECEIVED				CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2003/4	2004/5	2005/6	2005/6					
	Break O'Day Council	10	9	5	10				
Brighton Council	6	6	2	2	1	0	1	0	
Burnie City Council	5	1	0	1	0	0	1	0	
Central Coast Council	3	3	5	3	1	0	2	0	
Central Highlands Council	2	1	3	2	1	0	0	1	
Circular Head Council	3	3	2	2	0	1	1	0	
Clarence City Council	14	16	8	10	3	1	3	3	
Derwent Valley Council	8	2	4	4	1	0	0	3	
Devonport City Council	3	1	4	3	3	0	0	0	
Dorset Council	3	4	2	2	0	1	1	0	
Flinders Island Council	Nil	3	1	3	1	1	1	0	
George Town Council	4	6	5	6	1	1	3	1	
Glamorgan Spring Bay Council	15	10	3	3	1	1	0	1	
Glenorchy City Council	10	8	2	5	0	3	1	1	
Hobart City Council	10	14	14	14	2	5	7	0	
Huon Valley Council	6	7	9	10	3	2	3	2	
Kentish Council	4	5	5	6	3	0	2	1	
King Island Council	1	Nil	1	1	1	0	0	0	
Kingborough Council	12	9	6	6	1	2	2	1	
Latrobe Council	2	2	2	1	1	0	0	0	
Launceston City Council	11	9	8	9	3	3	2	1	
Meander Valley Council	3	5	8	9	2	2	5	0	
Northern Midlands Council	7	2	2	2	0	0	1	1	
Sorell Council	6	13	6	7	0	2	1	4	
Southern Midlands Council	2	3	0	1	0	1	0	0	
Tasman Council	9	9	3	4	1	2	1	0	
Waratah/Wynyard Council	2	2	0	0	0	0	0	0	
West Coast Council	Nil	7	3	5	1	3	1	0	
West Tamar Council	5	8	3	5	2	2	1	0	
TOTAL (Councils)	166	168	116	136	38	37	40	21	

Appendix A Table 5. **Complaints against Public Authorities**

	RECEIVED 2005/6	CLOSED 2005/6	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
Anti-Discrimination Commissioner	3	5	1	3	0	1
Guardianship and Administration Board	2	2	1	0	0	1
Health Complaints Commissioner	4	4	0	0	4	0
Legal Aid Commission	4	5	3	2	0	0
Marine and Safety Tasmania	1	2	0	0	1	1
Medical Council of Tasmania	2	1	1	0	0	0
Ombudsman	1	1	1	0	0	0
Retirement Benefits Fund Board	3	3	0	2	1	0
Southern Regional Cemetery Trust	0	1	1	0	0	0
TAFE Tasmania	1	2	2	0	0	0
Tasmanian Fire Service	3	2	0	1	1	0
Other	10	6	4	0	2	0
Total	34	34	14	8	9	3

Appendix A Table 6. **Complaints against Government Business Enterprises & Other Authorities**

	RECEIVED 2005/6	CLOSED 2005/6	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
Forestry Tasmania	2	2	1	1	0	0
Forest Practices Authority	4	3	3	0	0	0
MAIB	4	3	2	1	0	0
Aurora	2	1	1	0	0	0
Hydro	0	0	0	0	0	0
Transend	0	0	0	0	0	0
Metro	2	2	1	0	0	1
Tasmanian Ports Corporation	0	0	0	0	0	0
The Public Trustee	11	18	5	5	4	4
Total	25	29	13	7	4	5

Appendix A Table 7. **Total cases opened, closed and substantiated**
(excluding FOI and PID)

	RECEIVED			CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2003/4	2004/5	2005/6	2005/6				
Out of Jurisdiction			33	33	33			
Grand Total	493	553	461	517	206	136	115	60

Overall, the percentage of complaints sustained in full or in part has remained consistent.

Appendix A Table 8. **Reasons for closure (excluding FOI)**

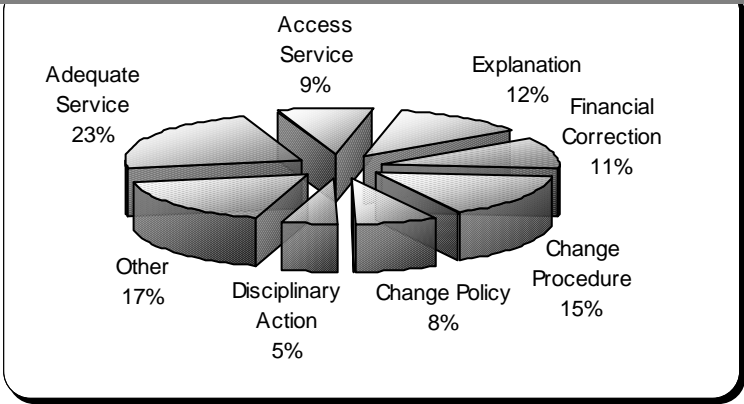
Reasons for Closure (%)	2002/3	2003/4	2004/5	2005/6
Declined to investigate (1)	28	25	25	40
Discontinued (matters resolved through negotiation with agency) (2)	27.5	40	35	26
No defective administration found	30	25	28	22
Complaint sustained in whole or in part	14.5	10	10	12
Public Interest Disclosure	N/A	N/A	2	0
Total	100	100	100	100
Total Number of Complaints	535	542	662	517

Note: 1. The 'declined' category includes matters out of jurisdiction; matters for which alternative means of redress are available; and matters which have not been taken up with the agency in the first instance.
2. 'Discontinued' includes matters largely resolved through negotiations with agencies as well as matters where the complainant does not wish to continue.

Appendix A Table 9. **Top 5 most common objectives requested as percentage of all objectives - all agencies**

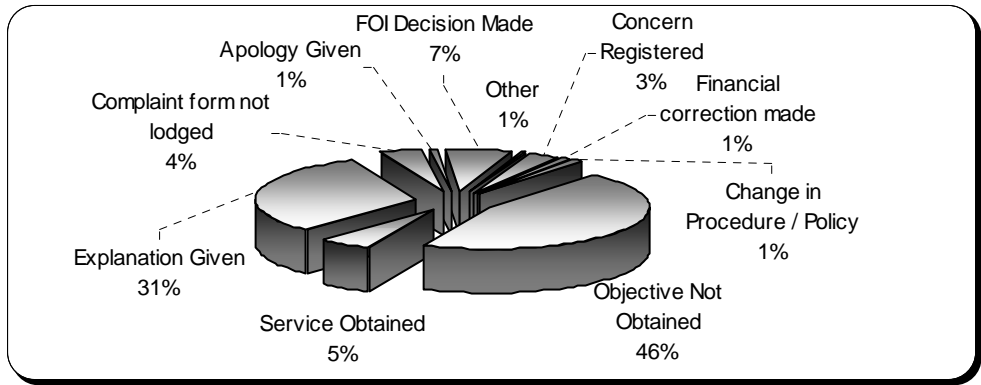
Objectives %	2003/4	2004/5	2005/6
To gain adequate service	28	20	23
To gain access to services	12	19	9
To gain an explanation	14	11	12
To change procedures	13	13	15
To gain a financial correction	10	7	11

Complainant Objectives and Outcomes – All Agencies

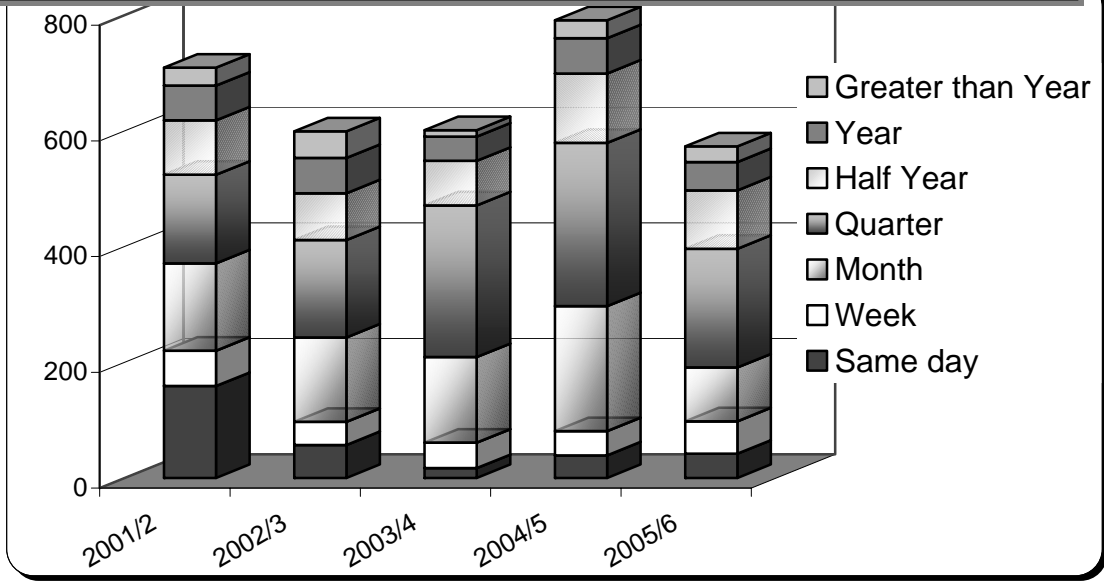


Appendix A
Figure 3.
**Complainant
Objectives
sought**

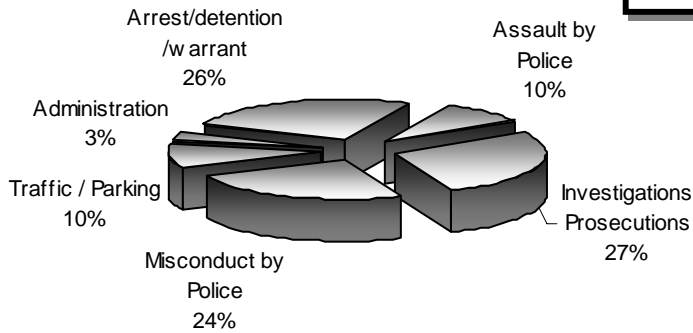
Appendix A
Figure 4.
**Complaint
Outcomes
finalised**



Appendix A Figure 5. Time taken to finalise complaints



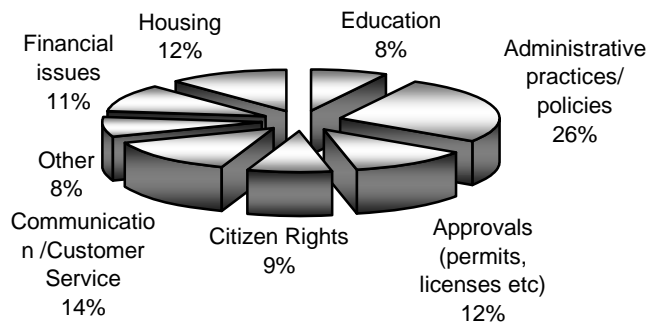
Complaint Issues



Tasmania Police (DPPS)
Appendix A Figure 6.
Main Issues complained about Tasmania Police

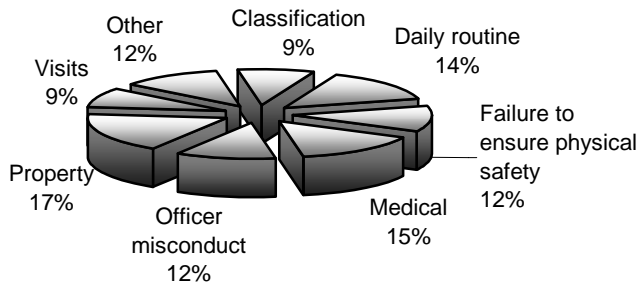
State Government Departments & Prescribed Authorities

Appendix A Figure 7.
Main Issues complained about Departments and Prescribed Authorities



State Government Departments & Prescribed Authorities

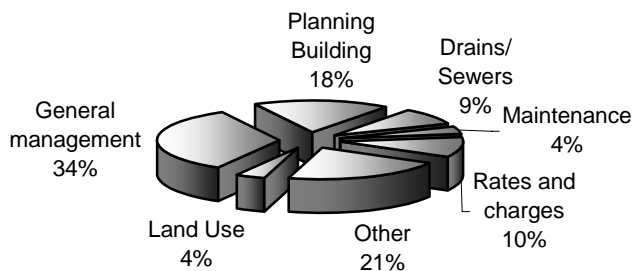
Appendix A Figure 7.
Main Issues complained about Departments and Prescribed Authorities



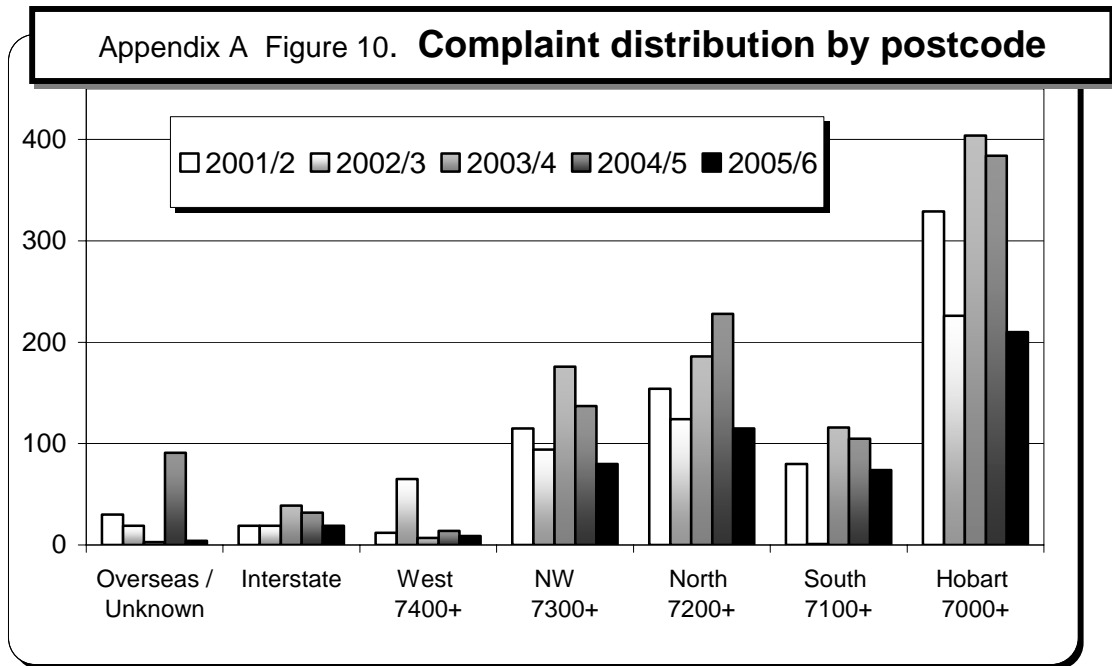
Corrective Services (DOJ)
Appendix A Figure 8.
Main issues complained about corrective services

Local Government

Appendix A. Figure 9.
Main Issues complained about Local Government



GEOGRAPHIC DISTRIBUTION OF COMPLAINTS



APPENDIX B – FINANCIAL STATEMENTS

CONSOLIDATED FUNDS

OMBUDSMAN

REVENUE	2003/4	2004/5	2005/6
	\$	\$	\$
Consolidated Revenue	¹ 668,297	¹ 724,317	443,196
OPERATING EXPENDITURE			
Salary expenditure	361,168	450,973	349,483
Employee related	13,106	17,845	9,008
Total Salary expenditure	374,274	468,818	358,490
General administration	2,200	³ 37,574	11,616
Information technology	19,353	34,753	⁴ 14,587
Personnel expenses	2,016	220	
Travel and transport	11,954	9,557	10,893
Property expenses	79,883	66,050	⁴ 35,305
Operating expenses	² 145,044	² 86,084	10,600
Consultants		7,265	1,417
Total Non-salary expenditure	260,450	241,503	84,418
Total Expenditure	634,724	710,321	442,908

Notes:

1. Includes an amount of \$65,000 allocated for the set-up of the Energy Ombudsman jurisdiction 2003/04 and 2004/05.
2. Ombudsman – 2003/04 and 2004/05 includes additional cost for Energy Ombudsman set-up Project Officer and a fixed term Principal Investigation Officer (Special Projects) to finalise a review of the Ombudsman Act 1979.
3. Ombudsman – 2004/05 increase in General Administration due to advertising for Ombudsman position, office furniture and Energy Ombudsman set-up.
4. Property and IT costs in 2005/6 have been apportioned to the Health Complaints Commissioner and The Office of the Ombudsman based on staff salaries. This reflects the actual costs incurred.

FREEDOM of INFORMATION REVIEW

REVENUE	2003/4	2004/5	2005/6
	\$	\$	\$
Consolidated Revenue	47,010	76,474	85,295
<hr/>			
OPERATING EXPENDITURE			
Salary expenditure	44,300	58,758	67,260
Employee related	287	1,087	1,734
Total Salary expenditure	44,587	59,845	68,993
<hr/>			
General administration		784	2,236
Information technology			¹ 2,807
Personnel expenses		310	
Travel and transport	11		2,096
Property expenses			¹ 6,795
Operating expenses	4,477	4,836	2,040
Consultants			273
Total Non-salary expenditure	4,488	5,930	16,247
Total Expenditure	49,075	65,775	85,240

Notes:

1. Property and IT costs in 2005/6 have been apportioned based on staff salaries. This reflects the actual costs incurred.

TRUST ACCOUNTS

OMBUDSMAN

General Recoveries, Professional Development & Commonwealth ¹

	2003/4	2004/5	2005/6
	\$	\$	\$
REVENUE	77,486	114,741	34,662
OPERATING EXPENDITURE			
Salary expenditure	15,609	14,459	² 63,997
Employee related	429	82	
Total Salary expenditure	16,038	14,541	63,997
General administration	14	2,093	
Travel and transport	1,125	350	
Property expenses	14,308	14,719	15,200
Operating expenses	12,179	1,759	2,915
Total Non-salary expenditure	27,626	18,921	18,115
Total Expenditure	43,664	33,462	82,112

Notes:

1. Ombudsman General Recoveries relates to the maintenance and management of the case management database (Raemoc). Commonwealth relates to the co-location expenses for a Commonwealth delegate.
2. Salary Expenditure increase mainly due to the retirement of the Ombudsman.

APPENDIX C – ENERGY OMBUDSMAN ACTIVITY 2005/06

COMPLAINT ACTIVITY FOR THE REPORTING YEAR

Energy Table 1. **Activity 2002 – 2006**

Number of Complaints	2002/3	2003/4	2004/4	2005/6
B/Forward from Previous	27	19	22	35
Opened in Period	433	394	379	283
Closed in Period	431	411	366	255
Opened & Closed in Period	415	379	347	226
Carried Forward (still Open)	19	22	35	58

Energy Table 2. **Enquiries and Complaints Received**

	2003/4			2004/5			2005/6		
	Enquiries	Complaints	Both	Enquiries	Complaints	Both	Enquiries	Complaints	Both
Aurora Energy	57	335	392	95	277	372	61	216	277
Hydro Tasmania	0	1	1	0	2	2			0
Transend Networks	0	1	1	0	2	2	1	2	3
Powerco			0			0	0	3	3
Total	57	337	394	95	281	376	62	221	283

Energy Table 3. **Closure Reasons by Entity**

Provider Name	Dismissed	Case Withdrawn	Complaint Resolved	Enquiry Only	Explanation Given	Out of Jurisdiction	Referred to Entity	Grand Total
Aurora Energy Pty Ltd	46	13	67	61	43	8	11	249
Hydro Tasmania								0
Transend Networks	2		1			1		4
Powerco	1						1	2
Origin Energy								0
Grand Total	49	13	68	61	43	9	12	255

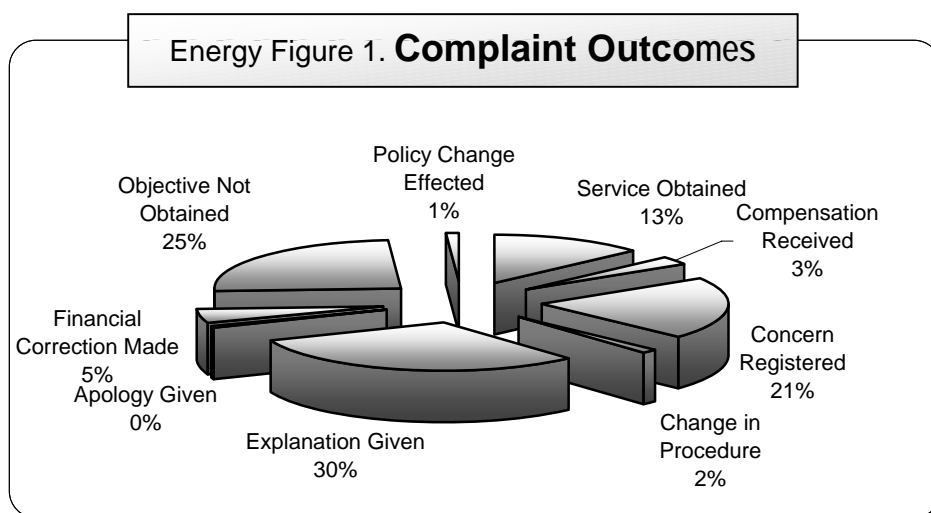
Energy Table 4. **Closure Reasons**

Closure Reasons	2002/3	2003/4	2004/5	2005/6
Dismissed 10.1 (b) - referred to Energy Regulator	3	2	1	0
Dismissed 10.1 (c) - lacks substance	33	16	21	26
Dismissed – complaint not received in writing	63	82	53	21
Dismissed - dealt with by others	16	6	14	1
Dismissed Other	4	2	1	1
Case Withdrawn	32	12	10	13
Complaint Resolved	87	89	75	65
Resolved – Fair Offer	Nil	2	5	3
Enquiry Only	82	57	84	61
Explanation Given; No further action	88	89	66	43
Referred to Aurora	18	31	11	11
Referred to Transend	Nil	1	Nil	0
Referred to Powerco				1
Award Made	4	4	5	0
Referred to Court	1	Nil	Nil	0
Out of Jurisdiction	2	18	19	9
Total	433	411	366	255

Explanation of Closure Reasons –

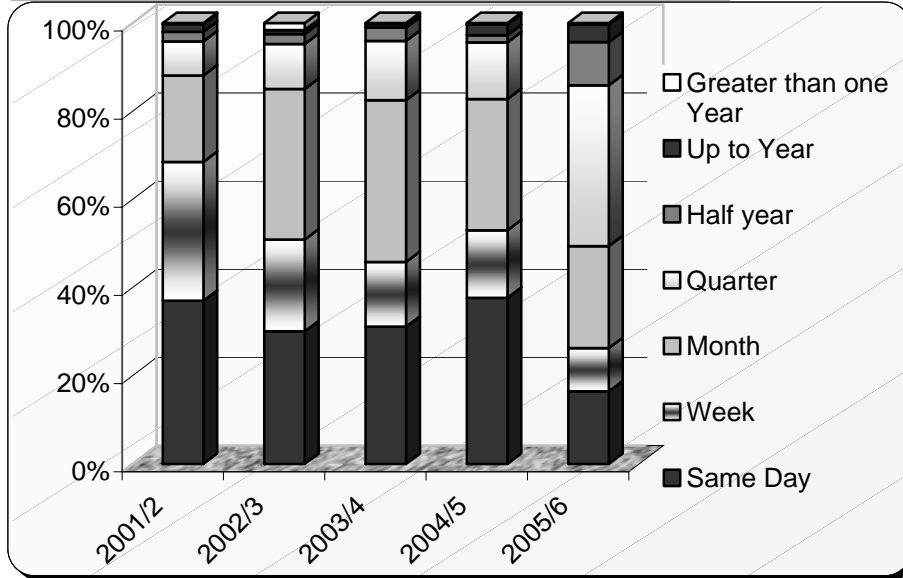
1. **Dismissed – lacks substance:** The Ombudsman dismissed 26 complaints under this category. The major reason for dismissal is where the complainant is unable to support the argument presented in the complaint, or refute the explanation provided by the energy entity.
2. **Dismissed – complaint not received in writing:** There were 21 complaints recorded under this category, a significant reduction from previous years. The *Energy Ombudsman Act 1998* requires a complaint to be made in writing and signed. However, the Act also provides the Ombudsman with discretion to receive a complaint that does not comply with this requirement. As a general rule, the Energy Ombudsman deals orally with any complaint that is considered urgent, or one which is considered to be easily resolvable or a relatively simple matter. In all other circumstances, the complaint is requested in writing. If a written complaint is not received within 14 days, the complainant is given a courtesy call. In many cases, the complaint has been resolved. Where a complainant indicates that providing a complaint in writing might be a problem, the Ombudsman sends out a letter detailing the issues of the complaint, for the complainant to sign and return.

3. **Dismissed – dealt with by others:** This category recorded one complaint for the reporting period. A complaint will be recorded in this category where it is resolved prior to the Ombudsman making enquiries.
4. **Dismissed – other:** There was only one complaint in this category.
5. **Case Withdrawn:** There were 13 cases withdrawn during the reporting period. A complainant may withdraw a case for a number of reasons; the problem may have resolved itself, the information provided along the way to the complainant has resulted in a change of mind about a perceived problem or the complainant just no longer wants to proceed with the complaint.
6. **Complaint Resolved:** There were 65 complaints closed as resolved for the reporting period. Some of these were negotiated outcomes with Aurora Energy and others were resolved through the investigation process.
7. **Explanation Given, no further action:** There were 43 complaints recorded in this category. Complaints are recorded in this category where there has been an explanation provided by the entity or the Ombudsman that satisfies the concerns raised by the complainant. Discussions with complainants that provide a satisfactory explanation may be about a perceived billing issue, current legislation and the requirements of the Tasmanian Electricity Code or the role and function of the Ombudsman.
8. **Resolved – Fair Offer:** There were 3 complaints recorded in this category. A complaint is closed under this category when the entity suggests or offers a resolution that is accepted by the complainant.
9. **Out of Jurisdiction:** There were 9 complaints in this category. A complaint is closed under this category when it is identified that the complaint is not strictly about any service of, or relating to the sale and supply of electricity or natural gas by an energy entity.



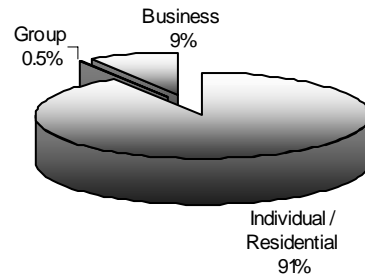
Closure Activity

Energy Figure 2. **Time Taken to Finalise**

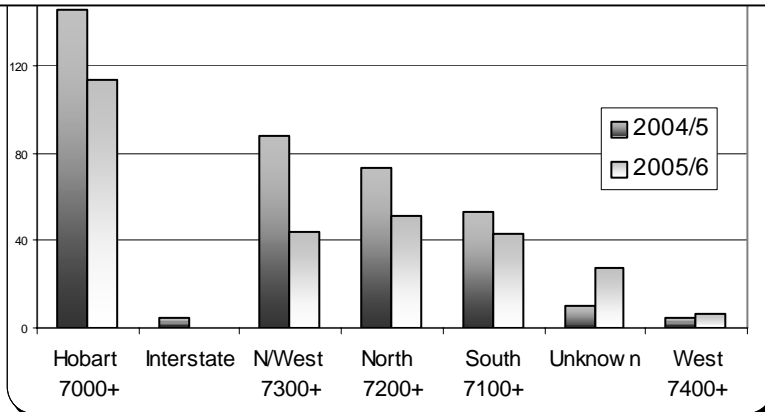


Complainant Demographics

Energy Figure 3. **Consumer type**



Energy Figure 4. **Distribution of Complaints by Postcode**



Energy Table 4. **Closure Reasons July 2005 to June 2006**

Category	Issue	Sub issue	Primary	Secondary	Tertiary	
Billing	Arrears		8	0	0	
		Difficulty in payment	11	5	0	
		Disconnection	4	4	1	
		Error	3	0	0	
	Error			1	1	2
		Debt transfer		2	1	0
		Disconnection		1	0	0
		Fees		1	0	0
		No bill		3	2	1
		Other		5	1	0
		Statements		2	0	0
	Fees			2	1	0
		Connection		0	1	0
		Late fees / Interest fees		1	0	0
		Meter checking		0	2	0
		Service & Meter Charges		2	0	0
	High			5	2	1
		Difficulty in payment		0	2	0
		Disputed		7	4	2
	Hydro Heat		1	0	0	
	Meter			4	0	0
		Accuracy		3	2	0
		Not read		3	0	0
Pay As You Go			5	0	0	
Separation			0	1	0	
Payment			4	1	1	
	Agents		0	1	0	
	Lost Payment		1	0	0	
	Payment Plan		4	4	1	
Security deposit			1	1	1	
	Amount		3	0	0	
	Exemption		1	0	1	
	Interest		0	1	0	
	Refund		0	1	0	
Tariff			1	0	0	
	Incorrect		1	0	0	
	Rate		0	1	0	
Health Care Card Concession		1	0	0		
Billing Total			90	39	11	
Customer Service	Contractor	Pricing	1	0	0	
	Failure to respond		6	1	0	
		Information		2	3	0
		Incorrect		0	1	0
	Information / Consultation		2	5	0	
	Poor attitude		5	8	2	
Reduced service		2	0	0		
Customer Service Total			18	18	2	

Category	Issue	Sub issue	Primary	Secondary	Tertiary	
Land	Damage	Property	3	0	0	
	Existing easement	Access	1	0	0	
		Use	2	0	0	
	Meter	Access	Cost	3	0	0
			PAYG	7	0	0
				1	1	0
				2	0	0
	New easement	Placement	0	1	0	
	Other		2	0	1	
Towers	Placement	1	0	0		
Tree trimming / clearing		5	2	0		
Nuisance		2	0	0		
Land total			29	4	1	
Provision	Connection	Authorisation	9	1	1	
		Capital contribution	2	0	0	
		Delay	1	2	0	
		Information	19	5	0	
		Other costs	4	1	1	
			0	0	1	
	Disconnection	Error	Other (non bill)	3	0	0
			Supply / defect	3	0	0
				3	2	0
				1	0	0
	Poles and wires	Cost	Placement	7	0	0
			Private Lines	7	2	0
			Safety	11	3	0
			12	2	0	
			0	2	1	
Street Lighting	Repair		2	0	0	
			2	0	0	
Provision Total			86	20	4	
Supply	Damage	Customer Equip failure	1	0	0	
		Dist Sys Failure	3	4	0	
		Gen/Trans Sys Fail	1	0	0	
			1	0	0	
	Outage (planned)	Duration	Notice	1	0	0
				0	2	0
				1	0	0
	Outage (unplanned)	Duration		3	0	0
			1	1	0	
Quality	Variations (voltage)		2	1	0	
			5	0	0	
Supply Total			19	8	0	
Customer Service (Gas)		Information Incorrect	2	0	0	
Provision (Gas)	Connection	Delay	0	1	0	
	Disconnection		1	0	0	
None			7			
Totals			246	90	18	

Defining 'Primary', 'Secondary' and 'Tertiary' issues

A 'Primary' issue is the major issue raised by a complaint. Generally a complaint will only generate a primary issue, as the substance of a complaint usually raises only one major issue for investigation.

'Secondary' and 'Tertiary' issues arise where a number of issues flow from a complaint. For example, the primary issue may be that an electricity customer has been asked to remove sensitive vegetation that is impacting on power lines on his/her property. As a result of the complainant's dealing with the entity over this issue, other associated complaints may arise about the adequacy of consultation by the entity prior to work being undertaken and the level of customer service provided. These associated issues would be put on the complaint database as secondary and tertiary issues.

It is important to note that the complaint issues raised are taken directly from the complaint made and are not inferred, embellished or watered down by the investigating officer. The issues may be consolidated following the initial response to the complaint by the entity that the complaint is against.

Complaint Trends

Overall complaint numbers were significantly down on last years' figures but some trends have maintained similar patterns from last year. There is no obvious reason for such a reduction and I will watch developments through this year with interest.

Billing was again the highest issue of concern to customers throughout the reporting year, with 90 of recorded contacts relating to billing issues. As was the case in the last reporting year, complaints about provision (86) were the second highest recorded area of concern, almost as high as billing issues.

BILLING

Arrears: A total of 26 complaints were recorded in this category. Complaints regarding disconnection for debt continue to remain fairly low and difficulty in meeting the payment of arrears remains a significant area of concern for some customers.

PROVISION

Connection: Complaints in this category were once again significant, with the highest number (19) concerning a delay in providing a new connection of electricity supply. The ability to provide these connections within the legislated timeframe continues to be a significant problem for Aurora Energy.

Poles and Wires: Thirty-seven complaints relating to poles and wires were recorded. Complaints in this category might relate to the placement of poles or infrastructure, the cost to the customer of installing or replacing private poles, the customer's contribution to the Development Mains, and other issues surrounding private lines, for example, ownership and responsibility issues.

SUPPLY

Complaints in this category might relate to alleged damage to customer equipment as the result of an outage, the quality of the complainant's supply or the frequency or length of outages.

LAND

Complaints recorded in this category might relate to alleged damage to customer property as a result of provisioning work, or the use of easements. Complaints might also be about access to meters or the actual placement of meters or transmission towers.

APPENDIX D – CHILD ABUSE REVIEW: FINAL REPORT PHASE 2

FOREWORD

In July 2003, the Minister for Health and Human Services, the Hon David Llewellyn MHA, asked the Ombudsman to conduct an independent review of claims from adults (ie people aged 18 and over on 11 July 2003), regarding abuse suffered as children in the care of the State. Under what became known as Phase 1 of the Review:

- Claimants were given the opportunity to tell their story, and offered immediate counselling;
- Each claim was assessed to determine whether, on the balance of probabilities, the abuse occurred; and
- The Ombudsman made recommendations to the Department of Health and Human Services (DHHS) on each claim, including assisting claimants to gain access to their Departmental files.

Some 6 weeks after the Review commenced the Premier, the late Mr Jim Bacon, announced that *ex gratia* payments of up to \$60,000 would be available to further assist claimants with their healing, and appointed Mr Peter Cranswick QC as the Independent Assessor.

The original concept of the Review was a healing process and an opportunity for adults who claimed abuse in State Care as children to tell their story and be believed. The Ombudsman's Review Team determined whether, on the balance of probabilities, there was substance to the claim.

The Ombudsman, Mrs Jan O'Grady, reported to Parliament on Phase 1 of the Review in November 2004. Her report included a recommendation that the Government continue to receive claims, and this was accepted. As a consequence, Phase 2 of the Review commenced in December 2004.

The original concept of the Review was maintained during Phase 2, but additions to the process in Phase 2, at the request of the Government, were the signing of a Statutory Declaration that the information provided was true and correct to the best of the claimant's belief and knowledge, permission for a police check of prior convictions and the sealing of an audio tape of the interview in the presence of the claimant. Interviewers also asked the claimants why they had delayed lodgement of their claim until Phase 2.

Access to free counselling continued to be offered at the time of making a claim, and again at interview.

The opportunity for claimants to lodge claims was closed on 30 June 2005, and the Ombudsman's review of eligible claims concluded on 30 June 2006.

Phase 1 of the Review received 364 claims, of which 247 were accepted as eligible. Phase 2 received 514 claims, and of these 423 were accepted.

In total 878 claims were received, with 670 accepted as eligible.

The conduct of such a review was a long and exhausting process, and many people deserve commendation. In particular I'd like to acknowledge –

- Firstly and most importantly, those who displayed the courage to come forward with their stories – both those leading to the establishment of the review, and those making their claims;
- The State Government for its response, and ongoing support;
- The DHHS Review Team for their research and advisory support, and for following through on the Ombudsman's recommendations;
- The Independent Assessor and his team;
- Tasmania Police for their cooperation and advice on matters referred to them;
- State Archives for their valuable assistance in records management and all the others who have contributed administratively, including the Hobart Corporate Centre; and
- Last but not least, the hard work and dedication of the Ombudsman Review Team – there were many highs and lows during the Review process, but ultimately they have found it a gratifying experience, and I congratulate them on a job well done.

My substantive involvement has been very much at the end of this process, but I have been saddened by the claimants' accounts of the abuse suffered, and the effect it has had on their lives. For the Ombudsman's office this Review chapter is now closed, and I hope that the majority of claimants will feel this too, and that this process has assisted them in moving on with their lives.

RICHARD BINGHAM
ACTING OMBUDSMAN

30 June 2006

1. STATISTICAL PROFILE OF CLAIMANTS

In Phase 2 of the Review the Ombudsman received 514 claims. Of those claims, 91 or 18% were ineligible.¹

Of the 423 eligible claimants:

- 287 (68%) were males and 136 (32%) were females;
- A total of 30 claimants identified as indigenous Tasmanians;
- 13 claimants were British Child Migrants;
- 8 Risdon Prison inmates were interviewed; and
- 2 claims were incapable of determination, and were referred back to the DHHS for further investigation.

The oldest claimant was 82 and the youngest 22.

¹ Age (3), withdrawn (10), private placement (54), deceased (3), adopted (3), uncontactable (4), not in State care (6), no records (1), enquiry only (2), did not attend (3) scheduled interviews (1), no case to answer (4).

- 67% of claimants were born before 1959 (aged between 47 and 82);
- 23% were born between 1960 and 1969 (aged between 37 and 46);
- 9% were born between 1970 and 1979 (aged between 27 and 36); and
- 1% were born between 1980 and 1985 (20 to 26).

Table 1: Age distribution of claimants

YEAR OF BIRTH	No. OF CLAIMANTS	MALE	FEMALE
1920 - 1929	2	1	1
1930 - 1939	28	21	7
1940 - 1949	89	66	23
1950 - 1959	164	113	51
1960 - 1969	96	64	32
1970 - 1979	36	19	17
1980 – 1985	8	3	5
TOTAL	423	287	136

2. PLACEMENT OF CLAIMANTS

2.1 INSTITUTIONS, RECEIVING HOMES AND APPROVED CHILDREN'S HOMES

Receiving Homes (Rec homes) were intended primarily for the accommodation of children pending more permanent placement and for children in transit.

Institutions serving the whole State (Dep Inst) were specialist facilities designed to meet the needs of a specialised group of children for whom the resources of foster homes and Approved Children's Homes were inadequate. These institutions were regarded as training institutions with the task of rehabilitating the child/young person back into the family home.

Approved Children's Homes (ACH) were homes certified under Section 15 of the *Infant's Welfare Act 1935* or approved under Section 10 of the *Child welfare Act 1960*. They were operated by churches or voluntary organisations and accepted Wards of the State from the Department. The children remained under the guardianship of the Director of the day, but some of the functions were delegated to the controlling body of the Home.

Table 2 shows the Departmental Institutions, Receiving Homes and Approved Children's Homes that were specifically named in Phase 2 of the Review, and the number of claimants who reported incidents of abuse in them. It should be noted that approximately 40% of claimants had 2 or more placements².

² See below at table 4.

Table 2: Institutions, Receiving Homes & Approved Children's Homes named by claimants

MANAGER	PLACEMENT	NO. OF CLAIMANTS	PLACEMENT TYPE
DHHS	Abermere	10	Rec home
	Argyle St	2	Rec home
	Binnowiee	1	Rec home
	Casablanca	7	Rec home
	Cornwell	3	Rec home
	Eastville	4	Rec home
	Gilburn	1	Rec home
	Glynhyfryd	1	Rec home
	Kanangra	2	Rec home
	Kiah	2	Rec home
	Lismore	1	Rec home
	Malmesbury	5	Rec home
	Mardon	1	Rec home
	Miroma	3	Rec home
	Monomeeth	1	Rec home
	Mosley	2	Rec home
	Omaru	2	Rec home
	Reeve House	2	Rec home
	Rochebank	8	Rec home
	Summerhill	2	Rec home
	Ashley Home for Boys	117	Dep Inst
	Wybra Hall	126	Dep Inst
	West Winds Boys' Home	8	Dep Inst
	Weeroona Girls' Training Centre	28	Dep Inst
Salvation Army	Barrington Boys' Home	34	ACH
	Maylands Girls' Home	16	ACH
Catholic Church	Mt St Canice (Magdalen Home)	24	ACH
As above	Boys' Town (Savio College)	10	ACH
As above	St Joseph's Orphanage/Aikenhead House (later St Joseph's Child Care Centre)	14	ACH
Churches of Christ	Bethany Children's Home	4	ACH
Church of England	Clarendon Children's Home	9	ACH
As above	Roland Boys' Home	5	ACH
Community Board of Management	Kennerley Boys' Home (later Kennerley Children's Home)	44	ACH
Church of England	Clarendon Children's Home	9	ACH
As above	Northern Tasmanian Home for Boys (also known as Glenara Children's Home)	15	ACH
As above	Glendel Children's Home	2	ACH
As above	Launceston Girls' Home	9	ACH
As above	Hillcrest Children's Home	2	ACH
As above	Tresca (Fairbridge Society)	6	ACH

2.2 OTHER INSTITUTIONAL PLACEMENTS NAMED BY CLAIMANTS

Some claimants had placements in other institutions that did not come under the jurisdiction of the then Department of Social Welfare.

Table 3: Other institutional placements named by claimants

MANAGER	PLACEMENT	NO. OF CLAIMANTS	PLACEMENT TYPE
Community Board	Sunshine Home	3	Holiday Home
Salvation Army	Elim	2	Institution
Mental Health Services	St John's Park Hospital	1	Institution
Mental Health Services	Lachlan Park (Royal Derwent Hospital)	10	Institution
Prison Services	HM Risdon	5	Institution

2.3 FOSTER CARE PLACEMENTS

104 or 25% of the total eligible claimants had spent some time in foster care.

3. REPORTING OF ABUSE BY CLAIMANTS

3.1 TYPE OF ABUSE

This table reflects the percentage of eligible claimants alleging physical and/or sexual and/or emotional abuse. (The incidences of alleged abuse are not reflected).

Table 4: Distribution of type of abuse reported by claimants

TYPE OF ALLEGATIONS	NO. OF CLAIMANTS	PERCENTAGE
Physical	379	89%
Sexual	189	45%
Emotional	410	97%

3.2 NUMBER OF CLAIMANTS ALLEGING ABUSE IN MORE THAN ONE PLACEMENT

Many claimants had more than one placement, often two or three separate placements.

- 59 or 43% of female claimants alleged abuse in 2 or more placements; and
- 116 or 40% of male claimants alleged abuse in 2 or more placements.

Table 5: **Number of claimants alleging abuse in more than one placement**

	MALE	FEMALE
2 placements	72	30
3 placements	31	25
4 placements	10	3
4 plus placements	3	1
TOTAL	116	59

4. CURRENT PLACE OF RESIDENCE

341 or 81% of claimants reside in Tasmania. 82 or 19% are now living interstate.

Table 6: **Current place of residence**

CURRENT RESIDENCE	NO.	PERCENTAGE
Tasmania	341	81%
Victoria	32	7%
NSW	5	1%
SA	15	3.5%
QLD	20	5%
ACT	2	.5%
WA	8	2%
Total	423	100%

5. REFERRALS TO TASMANIA POLICE

36 cases have been referred to Tasmania Police for further investigation.

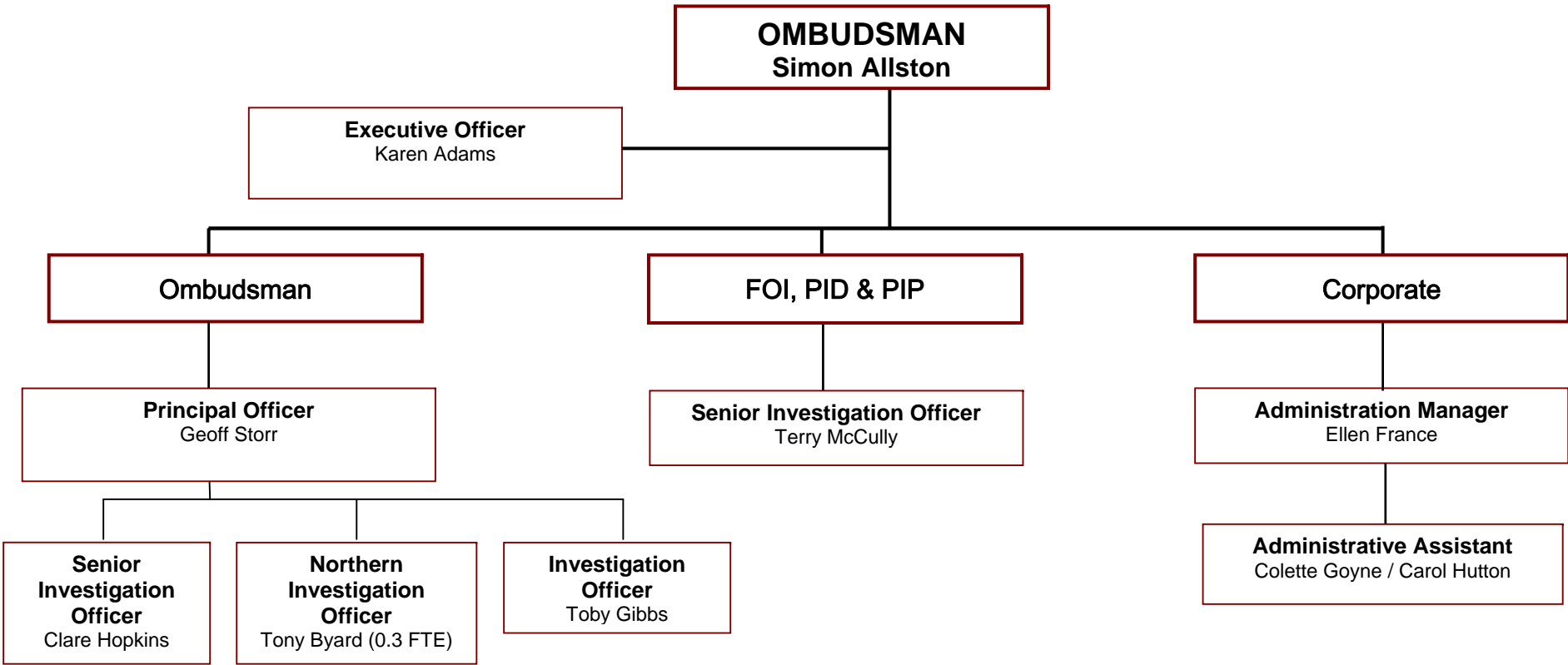
6. SUMMARY OF THE OUTCOMES SOUGHT BY CLAIMANTS

The following are the most common outcomes requested by claimants from their participation in the Review:

- Transcript of the interview;
- Apology;
- Acknowledgement that the abuse occurred;
- Access to Departmental files;
- Counselling;
- Assurance that today's system prevents the type of abuse that the claimant suffered; and
- To tell their story and be believed.

The Independent Assessor assesses all eligible claims for the *ex gratia* payment offered by the Government and capped at \$60,000.

APPENDIX E – OMBUDSMAN ORGANISATION CHART



FOI - Freedom of Information
 PID - Public Interest Disclosures
 PIP – Personal Information Protection

Note: The Ombudsman, corporate and administrative staff, are allocated on 0.33 Full-Time Equivalent (FTE). Total FTE for Ombudsman (Investigations) = 5.67