



ANNUAL REPORT

2009–2010



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ISSNo814-7124

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Produced by the Commonwealth Ombudsman, Canberra

Design: Lovedesign

Printing: Paragon Printing, Canberra

Stock: Impress Satin is made from elemental chlorine free bleached pulp sourced from FSC certified well-managed forests. It is manufactured by an ISO 14001 certified mill.



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Our ref: 2010-900434

15 October 2010

The Hon Gary Gray AO MP
 Special Minister of State for the Public Service and Integrity
 and Special Minister of State
 Parliament House
 CANBERRA ACT 2600

Dear Minister

I have pleasure in submitting the thirty-third Commonwealth Ombudsman Annual Report for the year ended 30 June 2010, as required by s 19(1) of the *Ombudsman Act 1976*.

The report also contains the annual reports of the Defence Force Ombudsman and the Postal Industry Ombudsman, in accordance with s 19F(3) and s 19X of the Act respectively.

Section 38 of the *Complaints (Australian Federal Police) Act 1981*, now repealed, requires a report on operations of the Ombudsman under that Act during the year ended 30 June 2010. This report covers the final matters dealt with under that Act.

I certify that this report has been prepared in accordance with the Requirements for Annual Reports for 2009–10 as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "V. Thom".

Dr Vivienne Thom
 Acting Commonwealth Ombudsman

Guide to the report

In developing our annual report, we set out to meet the parliamentary reporting requirements and to provide information to the community about the diverse nature of the complaints handled by our office.

There are a number of target audiences for our report, including members of parliament, Australian Government departments and agencies, other ombudsman offices, the media, potential employees and consultants, and the general public.

As some parts of the report will be of more interest to you than others, you can read this page to help work out which parts will be more useful. Each part is divided into sub-parts.

Ombudsman's review and organisation review

Includes the Commonwealth Ombudsman's review and organisation overview. The review is an executive summary of the principal developments affecting the office's work during the year and its more significant achievements. The overview outlines the office's role, responsibilities, outcome and output structure and organisational structure.

Performance review and management and accountability

Details performance against the office's one outcome and planned performance, comments on the office's management and accountability arrangements, and summarises our engagement with various stakeholders.

Agencies review and engagement

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

administrative problems across government agencies. We provide an overview of the office's engagement with agencies and the community, with particular examples profiled on feature pages throughout the report. Heads of departments and agencies are provided with an opportunity to comment on draft sections that relate to their organisation. The final content is a decision for the Ombudsman.

Appendixes and references

The appendixes include freedom of information reporting; a list of papers and presentations by staff; tables setting out the numbers of approaches and complaints received about individual Australian Government agencies; a list of consultants engaged during the year; and financial statements. We also include a list of tables and figures contained in the body of the report, a list of acronyms and abbreviations, and the addresses for our offices in each state and territory capital city.

Contacting the Commonwealth Ombudsman

Enquiries about this report, or the information in it, should be directed to the Director of Public Affairs, Commonwealth Ombudsman. If you would like to make a complaint, or obtain further information about the Ombudsman:

Visit: 5th Floor, 14 Childers Street
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Fax: 02 6276 0123

Email: ombudsman@ombudsman.gov.au

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman Annual Report 2009–10 is available on our website.

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Introduction

Foreword and A last word...

Foreword

This past financial year has been one of change for the office. The office prepared for another new jurisdiction, the Canberra office moved to new premises, and we lost both the Ombudsman and one of the Deputy Ombudsmen.

Change is a fact of life in the modern bureaucracy, and that is a good thing. Over the past seven years that I have worked here we have seen a constant renewal of the office, new structures, new reporting, a new case management system, new procedures, new jurisdictions, significant staff turnover, and new IT and work systems. This change has allowed the office to remain highly relevant in a changing world, to adapt to a changing bureaucratic environment, changing government priorities, and changing expectations.

At the same time every change encompasses some loss. This is most starkly evident in the loss of Prof John McMillan AO from the role of Commonwealth Ombudsman, as he moves to a new challenge to become Australia's first Information Commissioner. During John's tenure the office has gone from strength to strength. Staffing has increased along with a substantial increase in roles and functions. I believe that this growth reflects the confidence that the government has in the office as a key element of Australia's accountability framework. It also reflects the success of the office in managing complaints and making a productive contribution to improving the quality, equity and efficacy of government administration.

The large increase in the number of 'own motion' investigations that the office undertakes reflects a broader move across the work of the office, towards finding solutions and fixing problems, rather than laying blame or simply identifying error.

John McMillan has led this change for the last seven years and his term as Ombudsman is sure to be assessed as one of outstanding achievement. At the same time John has, himself, always emphasised the need for renewal and fresh approaches, even in the leadership of the office. I strongly support the idea that an office needs regular changes of leadership if it is to



Photo credit: Norman Plant

continue to be at the leading edge of reform and improvement. New ideas, attitudes and directions are to be welcomed, not feared.

Unfortunately, John's departure was not as smooth a transition to new leadership as it might have been with the almost simultaneous departure of Dr Vivienne Thom in April 2010 (tenure March 2006–August 2010), the other Deputy Ombudsman. Vivienne's deep and extensive public service experience balanced John's administrative law expertise and strategic vision. While Vivienne is sure to make an outstanding contribution as the Inspector-General of Intelligence and Security, she will be sorely missed from the team at the Ombudsman's office.

Despite these changes the future of the office is sound. The staff and senior leadership team represent the highest levels of capacity, integrity and commitment. This report attests to the strong contribution that the office makes while providing a platform for the new Ombudsman to bring change. This will enhance the office's capacity to continue to adapt and reform itself as the context in which it works changes.

The office remains a key part of the accountability framework for the Australian Government. It has been an immensely rewarding privilege to have been Deputy Ombudsman for seven years and to finish my career filling the role of Commonwealth Ombudsman.

Ron Brent
Acting Commonwealth Ombudsman

March 2010–June 2010

A last word

In March 2010, after seven years as Commonwealth Ombudsman, I left to take up a new position as Australian Information Commissioner. Much of the activity described in this Annual Report for 2009–10 occurred during my final year as Ombudsman. I welcome the opportunity to add a few words to the report.

It was a special honour to head an office that enters a fourth decade of helping people and improving government. Four groups that I would like to acknowledge have contributed in different ways to maintaining that tradition.

The first are members of the public—tens of thousands each year—who approach the office for assistance. Public faith in the Ombudsman’s office is essential to its credibility and effectiveness in persuading government agencies to provide remedies and to improve administrative processes. Government is strengthened when people are prepared to question decisions that concern them. The right to complain has more substance when it is regularly exercised.

Next are the government agencies that with few exceptions worked cooperatively and respectfully with the Ombudsman’s office to resolve complaints and facilitate investigations. It can be uncomfortable and distracting for agencies to give priority to resolving individual complaints when there are strong and competing pressures to complete other work set by government. It is reassuring that agencies generally accept that effective complaint resolution is an element of their obligation of public service. A key achievement of the ombudsman institution is that it can work with agencies while holding them publicly to account. Agencies play an equal role in crafting that subtle relationship.

A third group that has lent strong support are other ombudsman offices in Australia and the Pacific region. A vibrant network now exists of parliamentary and industry ombudsman



Photo credit: Arthur Mostead

offices that regularly share ideas and work together on joint projects. This mutual assistance has enhanced the effectiveness of individual offices and raised the profile of the ombudsman institution. Far more attention is now paid within government to the vital role of ombudsman and similar oversight agencies in the accountability and integrity framework of government.

Lastly, I make special mention of the wonderful professional support and commitment I received from Commonwealth Ombudsman staff during my term. I was particularly struck by the growing interest among officials across government to work in an independent complaint agency during their career in public service. Dealing first hand with enquiries and grievances from members of the public gives a different perspective on government. My belief is that all public servants should engage in that role at some time in their career. I commend the Commonwealth Ombudsman staff who shared that belief over the last seven years.

Prof John McMillan AO
Commonwealth Ombudsman

March 2003–June 2010

Feature

Working with others

From road shows and fair days, to conferences and roundtable discussions, our staff were involved in 109 outreach activities across all states and territories in 2009–10.

We spoke to more than 34,000 people directly, which represents a 22% increase on the previous year. This growth in our connectedness was made possible by working collaboratively with other ombudsman and community organisations.

In NSW, our office is an active member of JOIN (Joint Outreach Initiative Network), the Good Service Forum and WISH (Woolloomooloo Integrated Services Hub).

In Western Australia we work with the WA Ombudsman, Freedom of Information Commission and the Office of Health Review to deliver the Regional Awareness and Access Program, taking a road show of our services to regional and remote centres of this vast state.

Our Adelaide, Perth, and Hobart offices are co-located with the state Ombudsman. Our Brisbane office is physically co-located with

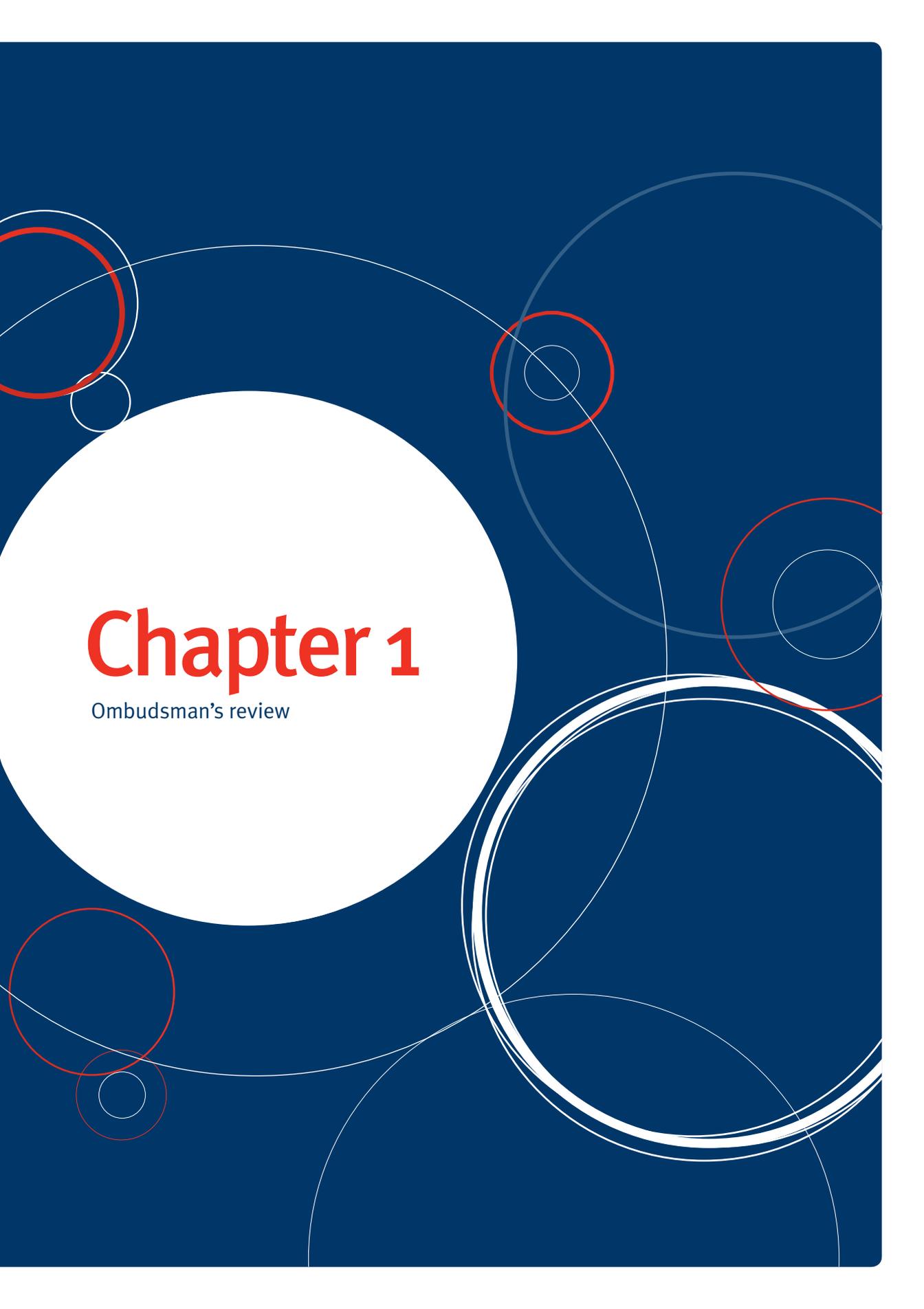
the Queensland Ombudsman and various state government agencies concerned with anti-discrimination, community health and the welfare of young people. In 2009–10 we shared in the development of an inter-agency complaint portal (www.complaints.qld.gov.au) and an information brochure translated into 15 languages. These are called *It's OK to complain*, and aim to improve community awareness and understanding of our services.

The Commonwealth Ombudsman is a member of the Australian and New Zealand Ombudsman Association (ANZOA). Teaming with other ANZOA member agencies, our office presented outreach stalls at 17 universities and technical colleges in the first semester of the 2010 academic year.

For many reasons collaboration makes good sense—book marks profiling both our office and state ombudsmen is a positive example. It addresses scarce resourcing and helps to build a strong community of practice within the broad network of complaint-handling and accountability agencies.



Commonwealth Ombudsman staff at the Lunar New Year Festival



Chapter 1

Ombudsman's review

Ombudsman's review

One of the primary functions of the Ombudsman's office is to handle complaints and enquiries from members of the public about government administrative action. The aim is to promote fairness and accountability by fostering integrity and legislative compliance in agency administration.

For a history of the office of the Ombudsman and a summary of its role and structure in Australia, see Chapter 2.

Complaints

In 2009–10 we received 37,468 approaches and complaints, 18% less than last year. With 18,313 (49%) of all approaches within the Ombudsman's jurisdiction, there continues to be pressure on organisation resources from the substantial number of out-of-jurisdiction approaches and complaints received—51% or 19,155 for 2009–10.

The top five agencies for numbers of complaints were Centrelink (28%), Australia Post (14%), Child Support Agency (12%), Australian Taxation Office (10%), and the Department of Immigration and Citizenship (9%).

During the year we dealt with approaches and complaints about more than 150 Australian Government agencies, up 30 agencies on the previous year. We investigated 4,489 separate complaints, compared to 5,233 the previous year.

As in 2008–09, we again identified some agency error or deficiency in 10% of the complaints investigated. We also identified one or more remedies in 71% of the complaints investigated, marginally lower than the previous year.

Seventy-seven per cent of all approaches and complaints were dealt with within the first month, a 3% improvement over that achieved in 2008–09, arresting a five-year decline in timeliness. This should be noted in the context of a decrease in complaints received. There was an increase in the number of open complaints at the end of 2009–10, compared with a decrease in the previous financial year.

Compliance auditing

The Ombudsman is responsible for inspecting the records of law enforcement and other agencies concerning their use of statutory powers that enable telecommunications interception, access to stored communications, use of surveillance devices and controlled operations. The agencies include the Australian Federal Police (AFP), the Australian Crime Commission (ACC), some state and territory law enforcement and integrity agencies, and some other enforcement agencies. The purpose of the inspections is to ensure statutory compliance and the adequacy and comprehensiveness of records. This contributes to the integrity of those enforcement activities.

During 2009–10 we carried out 31 inspections, one more than in 2008–09. We inspected the records of 16 different agencies, compared to 15 in 2008–09. This included eight inspections of the AFP, seven of the ACC, three of the Australian Customs and Border Protection Service, two of the Crime and Corruption Commission, and one inspection each of 10 other agencies.

Promoting good administration

Apart from dealing with individual complaints and inspecting records for statutory compliance, the Ombudsman's office promotes good administration through a variety of other methods.

In 2009–10 we released 19 reports on own motion and major investigations. These covered areas as diverse as visa applications, quarantine measures, police investigations, child support, accessing government information, tax office powers, asbestos surveys and lost passports.

During the year we released three e-bulletins. These described recent case studies of finalised complaints from which lessons could be drawn for a wider audience. We also expanded on work in the previous year, producing additional fact sheets and publishing the *Better practice guide to managing unreasonable complainant conduct*.

In addition, we made 11 submissions to Parliamentary inquiries, 10 other submissions to major reviews and released one issues paper.

Engagement

Our engagement with regional ombudsmen and partners continued to strengthen this year. Our work in the region is funded by AusAID, and we were pleased that the success of our engagement was recognised by AusAID committing to future funding in two main areas:

- a four-year funding agreement for activities to support the consolidation of the Pacific Ombudsman Alliance, which was launched in 2008
- a two-year agreement for our twinning program with the Ombudsman Commission of Papua New Guinea (OCPNG), guaranteeing our activities with the OCPNG until the end of 2011.

We were also pleased to host the 25th annual meeting of the Australasia and Pacific Ombudsman Region. We held this meeting concurrently with the first annual general members' meeting of the Pacific Ombudsman Alliance. (See *Regional engagement with the Pacific* feature on page 138).

Internal management

During 2009–10 we further refined our work practices, continuing to draw in part on the results of a client satisfaction survey conducted late in 2007–08 and on detailed analyses conducted by our business improvement team. Some of the main changes were:

- revision of our five category complaint-handling structure and administrative deficiency workflow
- introduction of a quality assurance audit panel to complement other quality assurance processes
- development of a new approach to handling requests for reviews of our decisions

- mapping of office work flows to assist in learning and development opportunities for staff and the evaluation of business practices.

A collective agreement between the office and the Community and Public Sector Union came into effect for the period December 2008–30 September 2010. Discussions on a new enterprise agreement were commenced before the end of the financial year.

One objective of our human resource management is to extend the average time of tenure with the office. This will lead to the efficiencies that arise from lower staff turnover, increased corporate knowledge, and improved consistency and effectiveness of our core business activities.

In 2009–10 the office's operating revenue was \$20.338 million and operating expenses were \$21.458 million, resulting in a deficit of \$1.120 million. This was funded from accumulated surpluses. The office received an unqualified audit opinion on its 2009–10 financial statements.

Year ahead

The office faces an exciting time in the coming year with the appointment of a completely new Executive—in particular a new Ombudsman. Each occupant of this position has brought their own talents, expectations and plans to the office which has, in turn, taken new directions.

New functions for the office will also bring challenges and opportunities. In April 2010, the Council of Australian Governments (COAG) agreed that as part of the National International Student Strategy, from 1 January 2011, international students would have access to an independent statutory complaints body. In the instance of a complaint or education provider not being covered by a state's statutorily independent complaint mechanism (for example a private education provider), the Commonwealth Ombudsman would act as the external complaint mechanism.

In June 2010, the Education Services for Overseas Students Legislation Amendment Bill 2010 was introduced to the previous Parliament, and was designed to give effect to the COAG agreement. The Bill is expected to be reintroduced to the Parliament in late 2010.

The Territories Law Reform Bill 2010 introduced into the previous Parliament proposed a range of reforms to strengthen the governance arrangements for Norfolk Island, including applying Commonwealth administrative law accountability and oversight mechanisms. As part of these, the Bill would have enabled the Commonwealth Ombudsman to assume the function of the Norfolk Island Ombudsman under Norfolk Island legislation. No date has been provided for the reintroduction of this Bill.

The Government's response to the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs

on a whistle blower protection scheme for the Australian Public Sector agreed to a role for the Commonwealth Ombudsman to undertake integrity and oversight functions for the scheme. Legislation to give effect to the Government's response has not yet been introduced into the Parliament.

Finally, the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill in the previous Parliament is expected to be reintroduced into the Parliament in late 2010. That Bill proposed a function for the Commonwealth Ombudsman in monitoring examinations by the Fair Work Building Inspectorate.

Feature

Engaging diversity

Australia has more than 3.1 million people who speak a language other than English at home. Languages include the many spoken by Indigenous Australians and those introduced by migrants and refugees.

Language diversity enriches our democracy and communities, but it also requires agencies including the Commonwealth Ombudsman's office to facilitate communication in the many languages spoken. Our work in the Northern Territory (NT) led us to pay particular attention in 2009–10 to two aspects of engaging with Indigenous Australians – the use of interpreters by government workers and the accessibility of government to people who live in remote communities.

The quality of government communication was a contributing factor to many complaints taken during outreach visits to remote NT communities. There is also a clear need for agencies to be available when Indigenous people wish to talk to them – to ask questions or to seek review. Limited technology in vast areas of the NT compounds this for both residents and agencies.

In 2009–10 we promoted our services to culturally and linguistically diverse communities by presenting at events including:

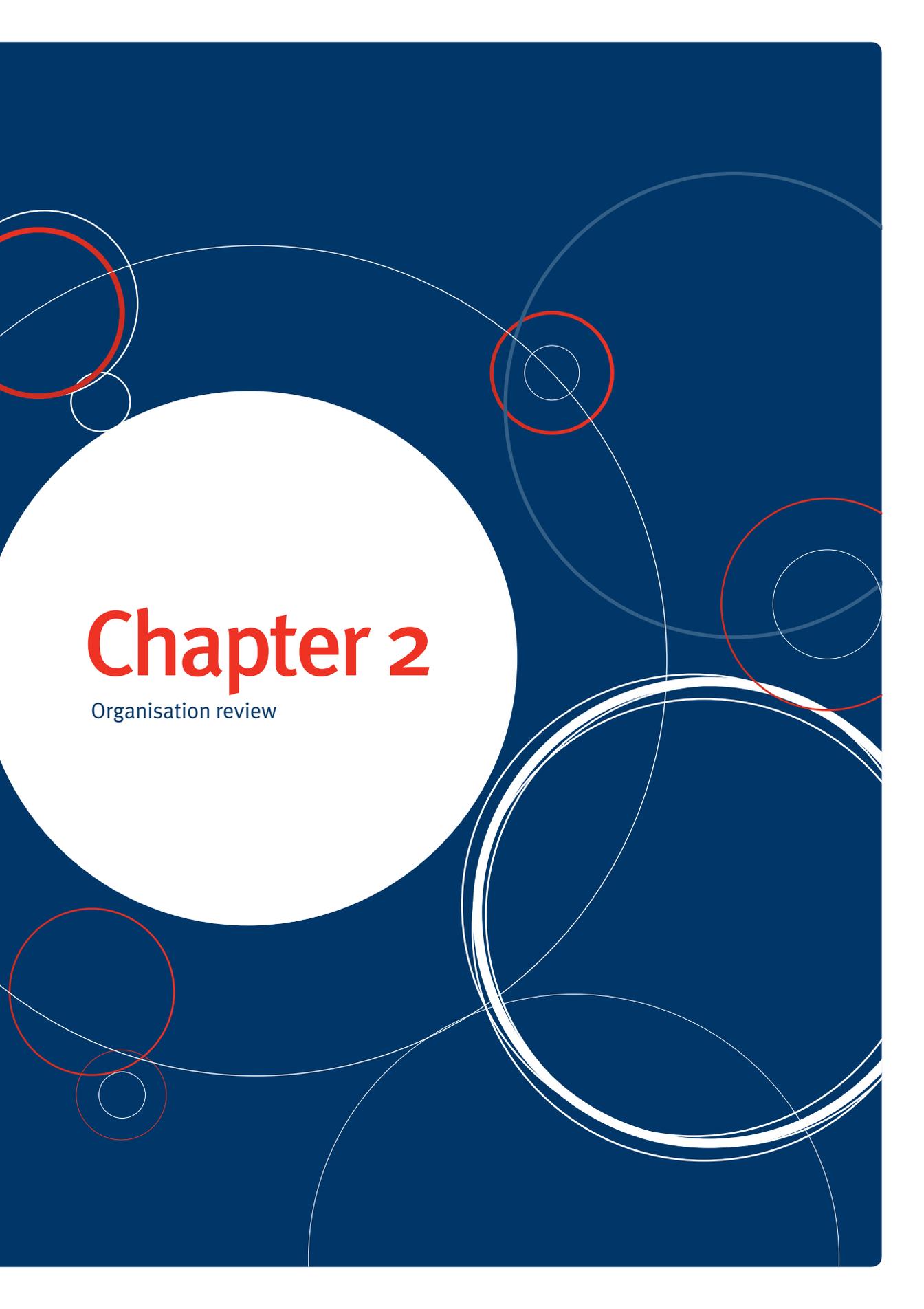
- Brisbane Lord Mayor's 2010 Refugee Welcoming Ceremony
- Federation of Ethnic Communities Council's 2009 national conference
- ACT Multicultural Festival
- Bankstown Lunar Festival
- International Students Orientation Market Days at the Canberra Institute of Technology
- Werrington Festival in Werrington County
- Batchelor Institute of Tertiary Education Certificate III in written and spoken English for Indigenous students
- City of Ryde Harmony Day.

These activities and our Indigenous outreach reinforce the need for each level of government to recognise and accommodate the information needs and cultural protocols of Australia's diverse population.



Brisbane Lord Mayor's 2010 Refugee Welcoming Ceremony





Chapter 2

Organisation review

Organisation review

History

The idea of an ombudsman-like office, to protect citizens against government mistreatment, is not new. Such institutions have been around since the Roman Empire, and in ancient Chinese, Indian and Islamic societies.

However, the concept of an Ombudsman as an independent arbiter of disputes between the citizen and government, enshrined in law and in the context of the nation-state, is a more recent development.

The modern form of an Ombudsman office began in Sweden in June 1809, but more than a century passed before the next Ombudsman was created in Finland.

Events surrounding World War II provided the impetus for the much wider adoption of ombudsman functions in countries around the world. Internationally there was a greater focus on the protection of human rights and freedoms following the depredations of World War II. At the same time, the growth of welfare state models in many countries meant government activities expanded in the social and economic fields, and reached into citizens' daily lives in new ways.

This led to an increased desire to protect citizens from failings and maladministration of the bureaucracy, beyond that offered through court processes. Finally, the move towards independence and democracy in many countries provided the opportunity to consider alternative forms of government that included systems of protection for citizens.

Denmark and Norway implemented ombudsman systems in the mid 1950s.

New Zealand became the first English-speaking country to set up an Ombudsman in 1962. Other regions establishing ombudsman offices in the mid to late 1960s included African nations and the Americas, Pacific islands, United Kingdom, Canada and the USA.

A host of other countries followed suit in the 1970s: Papua New Guinea, Fiji, India, France, Spain, Portugal, Austria, Switzerland and many Asian countries.

Ireland and the Netherlands established ombudsmen in the early 1980s. The European Ombudsman (for the EU) began in 1995, and many smaller Pacific nations have been exploring options for an ombudsman function in the Pacific Ombudsman Alliance.

The modern concept of an ombudsman office has become a worldwide phenomenon. It has been adopted by countries that are newly independent, moving to democracy, or that have had a long tradition of stable government.

The focus and role of various ombudsman offices will vary, in line with the form of government and the specific characteristics of the country. Nevertheless, the growth in ombudsman offices, and the adoption of the concept in many other areas of human endeavour show that it has stood the test of time.

In some countries the ombudsman office plays a strong role in the protection of human rights, while in other countries, such as Australia, a separate body (the Australian Human Rights Commission) performs that role.

The Ombudsman in Australia

Various state government ombudsman offices (as well as the Northern Territory) were established throughout the 1970s in Australia.

The Australian Capital Territory (ACT) Ombudsman commenced in 1989 when the ACT became self-governing.

The office of the Commonwealth Ombudsman commenced operation on 1 July 1977 under the *Ombudsman Act 1976* (Ombudsman Act) and is presently in the portfolio administered by the Prime Minister.

The statutory responsibilities of the Ombudsman have expanded as follows:

- 1981—handling complaints about the Australian Federal Police (AFP)
- 1982—handling complaints about freedom of information
- 1983—Defence Force Ombudsman
- 1988—compliance auditing of AFP and National Crime Authority (now Australian Crime Commission (ACC)) telecommunications interception records, with added responsibilities of monitoring controlled operations in 2001 and auditing of surveillance device records in 2004
- 1989—ACT Ombudsman
- 1993—Telecommunications Industry Ombudsman (since transferred to a private sector Industry Ombudsman)
- 1995—Taxation Ombudsman
- 2005—assessing and reporting on the detention of long-term (two years or more) immigration detainees
- 2005—Immigration Ombudsman
- 2005—handling complaints about Commonwealth service providers
- 2006—Postal Industry Ombudsman

- 2006—compliance auditing of access to stored communications by the AFP, ACC, Australian Commission for Law Enforcement Integrity and other enforcement agencies (such as the Australian Customs and Border Protection Service), and the use of surveillance devices by state law enforcement agencies under Commonwealth legislation
- 2006—Law Enforcement Ombudsman, with a specific responsibility to review the adequacy and comprehensiveness of the AFP complaint-handling system.

Role and functions

The office of Commonwealth Ombudsman exists to safeguard the community in its dealings with government agencies, and to ensure that administrative action by Australian Government agencies is fair and accountable. The Ombudsman has three major statutory roles:

- *complaint investigation*: investigating and reviewing the administrative actions of Australian Government officials and agencies, upon receipt of complaints from members of the public, groups and organisations
- *own motion investigation*: investigating, on the initiative or ‘own motion’ of the Ombudsman, the administrative actions of Australian Government agencies—often arising from insights gained from handling individual complaints
- *compliance auditing*: inspecting the records of agencies such as the AFP and ACC, to ensure compliance with legislative requirements applying to selected law enforcement and regulatory agencies.

The complaint and own motion investigation roles of the ombudsman are the more traditional ombudsman roles and make up most of the work of the office. The guiding principle in an ombudsman investigation is to examine whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient,

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

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

The Ombudsman is impartial and independent and is not an advocate for complainants or for agencies.

The Commonwealth Ombudsman can consider complaints about almost all Australian Government departments and agencies, and most contractors delivering services to the community for, or on behalf of, the Australian Government.

In addition, the Ombudsman Act confers five specialist roles on the Ombudsman:

- **Immigration Ombudsman**—dealing with matters relating to immigration
- **Law Enforcement Ombudsman**—handling complaints about the conduct and practices of the AFP and its members
- **Postal Industry Ombudsman**—handling complaints about Australia Post and private postal operators registered with the Postal Industry Ombudsman scheme
- **Taxation Ombudsman**—dealing with matters relating to the Australian Taxation Office.

The Commonwealth Ombudsman is also the ACT Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). The role of ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT), and is funded under a services agreement between the Commonwealth Ombudsman and the ACT Government. The ACT Ombudsman submits an annual report to the ACT Legislative Assembly on the performance of the ACT Ombudsman function.

- **Defence Force Ombudsman**—handling complaints by serving and former members of the Australian Defence Force relating to their service

Organisation and structure

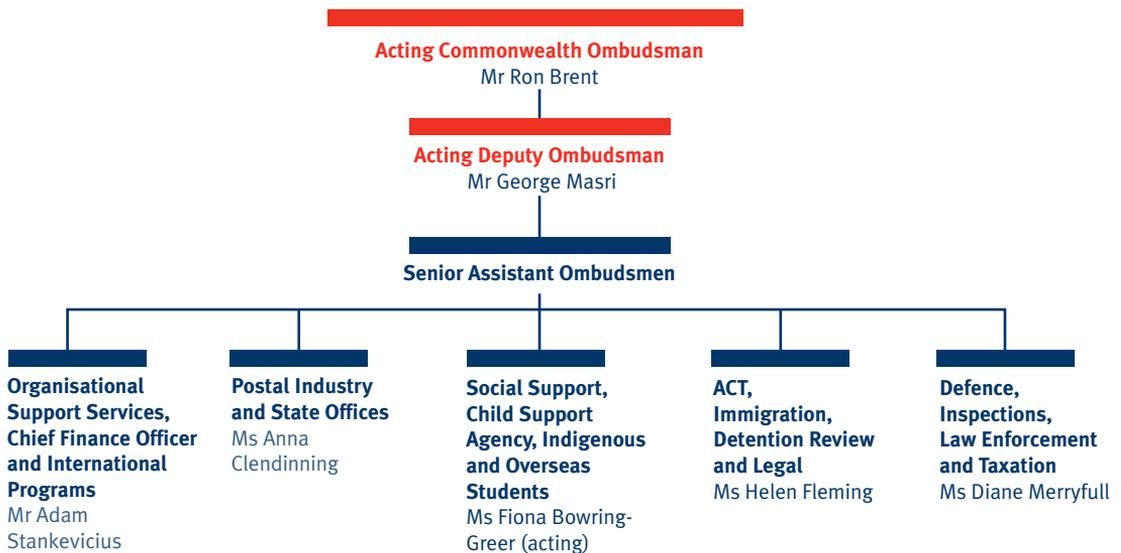
The national office of the Commonwealth Ombudsman and the office of the ACT Ombudsman are co-located in Canberra. The Commonwealth Ombudsman also has offices in Adelaide, Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney.

The Ombudsman and two Deputy Ombudsmen are statutory officers appointed under the Ombudsman Act, with one Deputy Ombudsman position left vacant from March 2010. Ombudsman office staff are employed under the *Public Service Act 1999 (Public Service Act)*. Senior Assistant Ombudsmen are Senior Executive Service Band 1 staff.

Details of the office's senior executive and their responsibilities are set out in the *Management and accountability—Corporate Governance* section in Chapter 4 of this report.

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

Figure 2.1: Commonwealth Ombudsman organisational structure and senior executive at 30 June 2010



Feature

Connecting with Indigenous communities

In our engagement with Indigenous Australians in the Northern Territory we see each community as unique and, therefore, need to be aware of factors like the views, needs and history of the people.

Indigenous Australians rarely lodge complaints through the usual means. This can be for a variety of reasons (some of which are currently being researched), such as complaining is difficult for them for cultural and/or language reasons or due to communication technology limitations. Visits by the Ombudsman's office are the only reliable way to provide access to our complaint services, which is both resource-intensive and costly.

Through consultation with Tangentyere Council, we heard of a successful internet computer room in the Papunya community, north-west of Alice Springs, which offered an alternative.

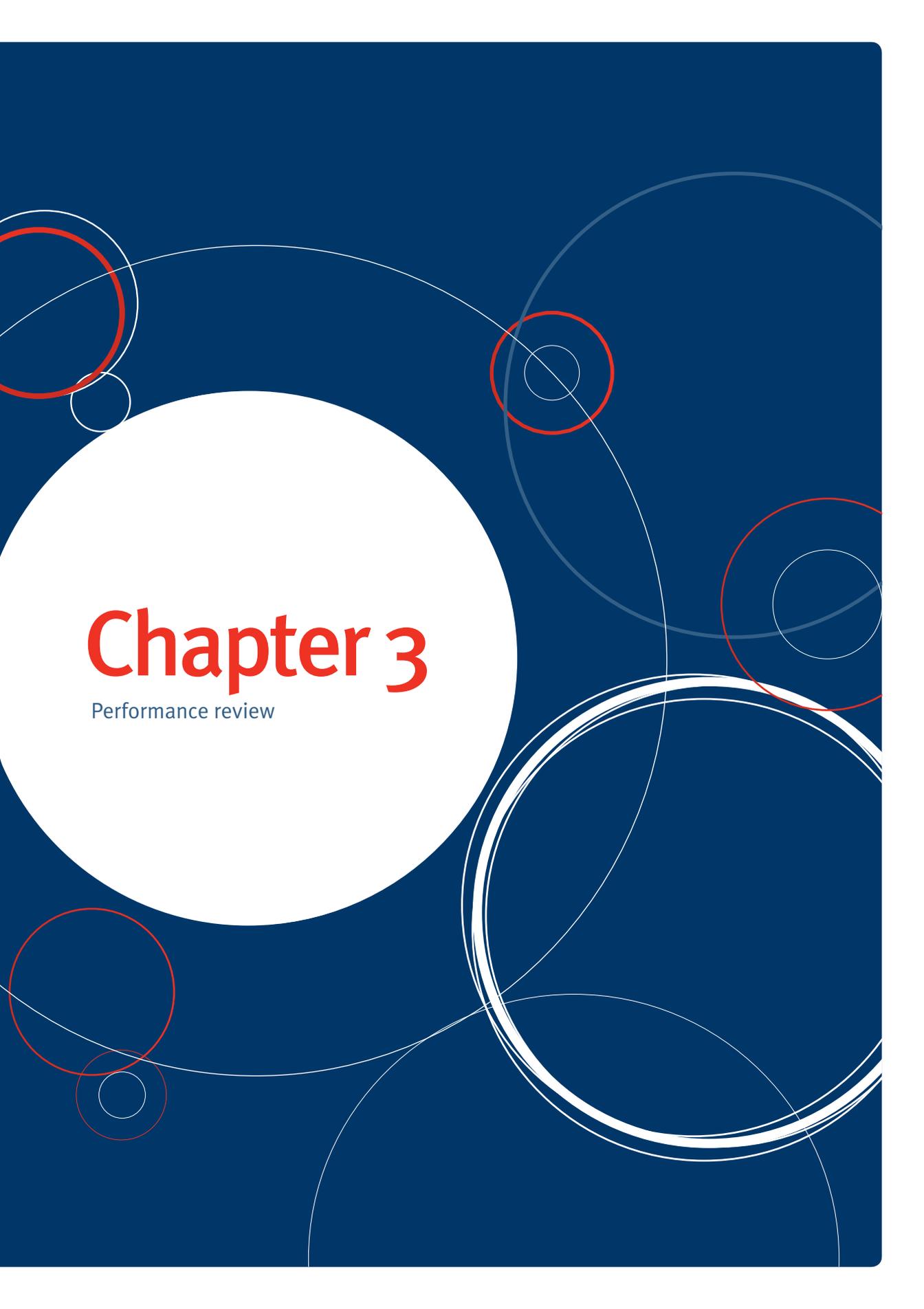
Residents had set up the computer room to develop computer skills and increase their communication networks and access to services. With help from Tangentyere Council, the computer room support worker and a local Indigenous interpreter, we looked into this as an opportunity for contact with the community between visits.

This strategy proved effective. We have been able to discuss issues with complainants via skype and obtain the help of the computer room support worker to provide information to complainants via email.

It helps these people connect with us, and allows us to provide information to them. We hope to identify similar opportunities in 2010–11, but note the limited number of communities that have internet access and system support.



Mrs Mildred Mamarika of the Umbakumba Community Board and now the Indigenous Engagement Officer for Umbakumba, assisted the Indigenous Unit during their May visit to the NT Groote Eylandt community. This photo was taken outside the Community Store, a good place to meet the people.



Chapter 3

Performance review

Performance review

This chapter summarises the office's performance based on the outcomes and outputs structure set out in the Portfolio Budget Statements and Portfolio Additional Estimates Statements 2009–10. It is complemented by the following chapters to give a more comprehensive view of the range of outcomes of our work:

- chapter 5—*Agencies overview* provides detailed assessments of our work with a number of agencies in handling complaints and carrying out inspections and other activities
- chapter 6—*Helping people, improving government* provides examples of the types of remedies we achieved for individuals and common themes emerging from our work where we have helped agencies improve their administrative practices
- chapter 7—*Engagement* outlines the way in which we engage with stakeholders such as the community, members of the public agencies, and national and international partners in promoting good administration. Feature pages appearing throughout the report shine a spotlight on the diversity of engagement activities undertaken throughout the year.

The Portfolio Budget Statements for 2009–10 defined the outcome for the office, which was:

- Fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies.

A financial overview for the office is provided in Chapter 4—*Management and accountability*. Further financial information is in Appendix 6—*Agency resource statement and resources* for outcomes and Appendix 7—*Financial statements*.

Funding from other sources

The office receives funding from other sources for two functions.

The office has an agreement with the ACT Government for services provided by the Ombudsman as the ACT Ombudsman, and for complaint handling in relation to ACT Policing, performed by the Australian Federal Police (AFP). Detailed information on the outcome of this work is provided in the ACT Ombudsman Annual Report, which is submitted to the ACT Legislative Assembly.

The office also receives funds from the Australian Agency for International Development (AusAID) to support the work of ombudsmen and similar services in Indonesia, Papua New Guinea and the Pacific Islands more generally. The services provided by the Ombudsman contribute to the outcomes that are the responsibility of AusAID. Performance measures are contained in the AusAID Portfolio Budget Statements in the Foreign Affairs and Trade portfolio. A qualitative description of our work is provided in Chapter 7—*Engagement*.

Performance at a glance

Table 3.1: Summary of program objective and deliverable performance, 2009–10

Outcome 1: Fair and accountable administrative action by Australian Government agencies	
Objective: To continue the current high standards of timeliness and quality in complaint handling. The office will ensure that its response to new areas of complaints and the increase in approaches to the office, without allowing current turnaround times for responses to increase.	
<i>Deliverable</i>	<i>Outcome</i>
The number of complaints requiring long periods for resolution will decrease.	The office maintained its high standards of complaint handling and through its quality assurance program has enhanced service delivery. There has been a some reduction in the time taken to deal with the most complex and difficult complaints.
Objective: To continue to deliver reports on the inspections functions (reporting on intrusive law enforcement powers such as telephone interception) within required time frames and at high quality, despite increasing use of these powers.	
<i>Deliverable</i>	<i>Outcome</i>
Compliance with legal requirements by agencies in the use of intrusive law enforcement powers. Inspection reports will identify areas for improvement.	Despite the increase in the use of intrusive powers by law enforcement agencies the office has maintained its high standards in delivering constructive and timely reports on its inspections of the records relating to the use of these powers.
Objective: To reduce the staff turnover rate and enhance staff training to ensure quality standards for complaint handling and records are maintained. The office will also ensure the continued timely and effective resolution of complaints through sound working relationships with Australian Government agencies.	
<i>Deliverable</i>	<i>Outcome</i>
There will be improved public satisfaction with the quality of services provided by the office. The quality and timeliness of services of the office will improve through better front line service, clearer policies, more consistent processes, improved recording and better utilisation of staff skills.	Staff turnover has declined, resulting in better returns on investments in recruitment, training and corporate knowledge of staff. The office has engaged in regular liaison, meetings and training of agencies. Support has been enhanced through the provision of additional fact sheets and guides, consultation and issues papers.

Objective: Access for the public to services of the Office of the Commonwealth Ombudsman to be maintained through targeted outreach and use of all media (such as the internet) to maintain current high levels of awareness of the office.

Deliverable

The office will identify and report on significant problems in public administration.

Outcome

The office continued an active program of outreach and engagement, both with agencies and broadly in the community. We produced reports, submissions, presentations and held our bi-annual national conference bringing together a broad representation of agencies and stakeholders.

Ongoing challenges to sustaining access to our services include maintaining a service to remote indigenous communities despite the high cost of doing so, and likewise the challenge in meeting the demands of the immigration sector as the number of detainees, and both the number and geographic spread of detention centres, grows.

Objective: Targeted submissions to parliamentary and government enquiries, to contribute to debates on key administrative law, accountability and integrity issues in government.

Deliverable

Parliament and government agencies will better understand the Commonwealth Ombudsman's role and importance.

Outcome

The delivery of own motion reports, and submissions to parliamentary inquiries and other major reviews has continued the contribution to improved public administration.

In particular, the following reports examined systemic administrative problems occurring across government:

- Report 11/2009—*Putting things right: compensating for defective administration—Administration of decision-making under the scheme for compensation for detriment caused by defective administration (CDDA)* highlighted problems in CDDA administration that included unhelpful legalism by agencies; a compensation minimisation approach; unsupportive conduct by agencies; delay in deciding claims and poorly reasoned decisions.
- Report 12/2009—*Executive Schemes* highlighted problems arising in financial benefit and grant schemes that do not have a legislative basis.
- An Ombudsman Issues Paper—*Mistakes and unintended consequences: a safety net approach*—proposed the need for safety net discretion powers to be written into legislation.

Program key performance indicators

The work of the Commonwealth Ombudsman in pursuit its objectives and deliverables is guided by the following key performance indicators.

Administration of government programs will be attuned to accountability obligations and principles of good administration. While complaint numbers to the Ombudsman are unlikely to decline, administration of the areas of government exposed to this office will be improved.

The Office continues to undertake and produce investigation and own motion reports across a range of portfolios. Departments and agencies adopted the majority of Ombudsman report recommendations, leading to improvements in policy and program development, as well as administrative and complaint-handling practices.

Internal complaint handling within agencies will resolve an increasing proportion of complaints. Through assistance provided by the Ombudsman, agencies' responsiveness and capability to deal with complaints will improve. Such improvements will take a number of years to be achieved.

The office has developed complaint-handling training for agencies, with trials conducted during 2009–10 with the Department of Veterans' Affairs and Medicare Australia. At the time of reporting, preparations were underway for a new round of internal training of Ombudsman staff to enable roll-out of this training program to other departments and agencies.

There will be strict compliance with legal requirements by agencies in the use of intrusive law enforcement powers. Inspection reports will identify areas for improvement.

In accordance with relevant Acts, the Ombudsman continues to oversight agencies that use intrusive law enforcement powers. The office produced inspection reports in 2009–10, that made recommendations to improve compliance in a number of areas, including accurate record keeping and securing appropriate authorisations. The office has complied with its reporting obligations to the Parliament.

The following detailed analysis of results against each of the key objectives and deliverables illustrates further ongoing progress against the key performance indicators.

Outcome 1

Objective—Continue current high standards of timeliness and quality in complaint handling.

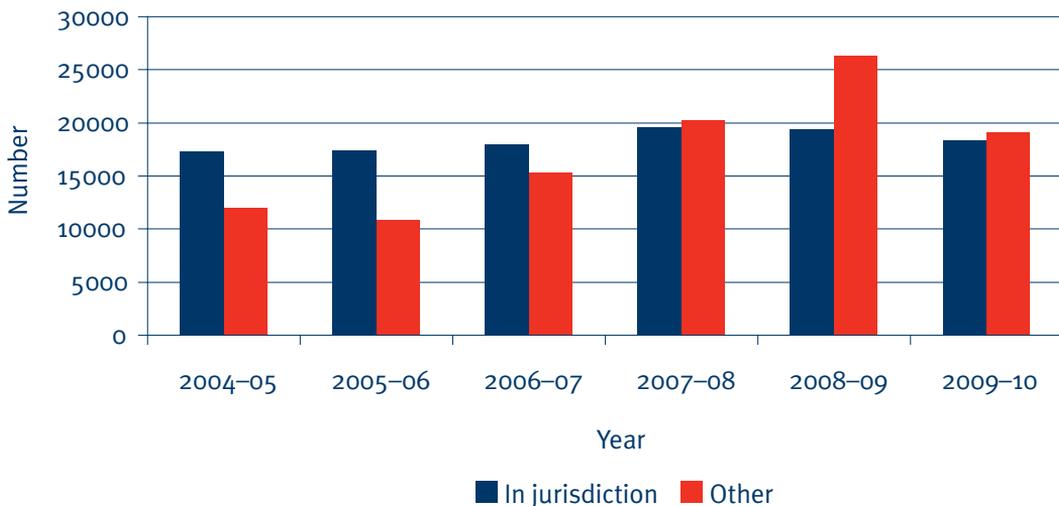
Our 2009–10 targets for this key performance indicator were:

- efficiently close all approaches and complaints
- improvement in the achievement of our client service standards for all incoming approaches to the office and management of all complaints.

Approaches and complaints received

In 2009–10 we received 37,468 approaches and complaints, 18% less than in 2008–09. Of these, 18,313 were about agencies within the Ombudsman’s jurisdiction, compared to 19,412 the previous year (a 7% increase as a proportion of those received). There was a 27% decrease in the number of complaints about matters outside jurisdiction and requests for information, almost a comparative opposite to the 30% increase the previous year. Figure 3.1 shows the trend in approaches and complaints over the past six years.

Figure 3.1: Approach and complaint trends, 2004–05 to 2009–10



Approaches to the office range from simple contacts that can be resolved quickly, through to more complex complaints that require the formal use of the Ombudsman's statutory powers. The decision to investigate a matter more formally can be made for a number of reasons:

- a need to gain access to agency records by a formal statutory notice
- the complexity or seriousness of the issue under investigation

- the nature of the allegations made by a complainant
- the time taken by an agency to respond to our requests for information
- the likely effect on other people of the issues raised by the complainant.

The number of complaints and approaches received electronically increased slightly again in 2009–10. Over the past seven years, the percentage of approaches received electronically has increased from 5% to 15% of the total, as Table 3.2 shows.

Table 3.2: Approaches and complaints, by method received, 2003–04 to 2009–10

Year	Telephone	Written	In Person	Electronic	AFP	Total
2009–10	28,450	2,210	1,005	5,803	-	37,468
	76%	6%	3%	15%	0%	
2008-09	35,738	2,654	875	6,452	-	45,719
	76%	6%	3%	15%	0%	
2007-08	30,568	2,861	1,194	5,306	5	39,934
	77%	7%	3%	13%	0%	
2006-07	26,081	2,626	812	3,539	264	33,322
	78%	8%	2%	11%	1%	
2005-06	22,897	2,383	528	2,046	373	28,227
	81.1%	8.4%	1.9%	7.2%	1.3%	
2004-05	24,561	2,323	623	1,429	387	29,323
	84%	8%	2%	5%	1%	
2003-04	21,681	2,638	460	1,343	410	26,532
	81.7%	9.9%	1.7%	5.1%	1.5%	

* Under previous legislation for dealing with complaints about the AFP, repealed at the end of 2006, the AFP notified the Ombudsman about complaints it received for Ombudsman staff to oversee the AFP's complaint-handling process.

Of the 18,313 approaches and complaints received within the Ombudsman's jurisdiction, 14,355 (78%) were about seven agencies—Australia Post; Australian Taxation Office (ATO); Centrelink; Child Support Agency (CSA); Department of Education, Employment and Workplace Relations (DEEWR); Department of the Environment, Water, Heritage and the Arts (DEWHA); and Department of Immigration and Citizenship (DIAC).

Approaches and complaints finalised and investigated

We finalised 37,434 approaches and complaints. Of these, 18,284 were about agencies within the Ombudsman's jurisdiction (compared to 19,719 in 2008–09). We investigated 4,489 separate complaints compared to 5,233 in 2008–09 (25% of complaints finalised compared to 27% in 2008–09). Of the complaints investigated, 21% required more substantial investigation, sometimes involving a high level of involvement by senior management and the use of formal powers (categories 4 and 5 in our five category classification system). This figure is not directly comparable to previous years as we modified the definition of these categories during the previous year.

Some agency error or deficiency was identified in 10% of complaints investigated, the same as last year. This followed an increase over 2007–08, generally reflecting revised internal procedures and training aimed at ensuring that we record all cases of administrative deficiency that we identify. In the past some agency errors have not been recorded to avoid delays in finalising a case, but this in turn denies agencies valuable feedback.

The most common type of deficiency noted was procedural deficiency (26% of the cases), followed by unreasonable delay (20%), flawed administrative process (14%), inadequate advice, explanation or reasons (11%), human error (9%) and government policy (8%).

Causes of complaint

The majority (77%) of the complaint issues finalised were about the correctness, propriety or timeliness of agencies' decisions or actions, down marginally from 79% in 2008–09. The remainder of the complaint issues involved other matters, such as the accuracy or completeness of advice given by agencies (13%), the application of policy or legislation to the complainant's circumstances (3%), the conduct of officers in agencies (3%) or unfair legislation (2%).

Complaints carried forward

The number of complaints carried forward (past 30 June 2010) was 1,553 compared to 1,484 at 30 June 2009. A backlog will always exist as some complaints are received late in the reporting period, and some complaints are complex and take longer to investigate.

Analysis of achievement

Overall we received 18% less approaches and complaints in 2009–10 than in the previous year. There was an increase in percentage terms of the number of approaches and complaints about agencies received within jurisdiction. There was only a marginal decrease in the number of complaints investigated, offset by an increase in the number of open cases carried forward. This increase is potentially reflective of the increase from 12% to 26% of cases that required more substantive investigation. Overall we met this objective.

Objective—Continue to deliver reports on the inspection functions within required time frames.

Our 2009–10 targets for this objective were:

- all inspections and reports completed according to the statutory inspection schedule
- Government and agencies accept the quality and relevance of findings and recommendations.

Detailed reporting on our inspections activity is contained in Chapter 5—*Agencies overview*.

The Ombudsman is required to inspect the records of the Australian Federal Police (AFP), Australian Crime Commission (ACC), Australian Commission for Law Enforcement Integrity (ACLEI) and other agencies in certain circumstances, in accordance with three Acts. It is our practice to make a report to each agency on the outcome of each inspection in addition to the statutory reporting requirements to the Minister or to the Parliament.

Although there was a substantial increase in the inspections workload during 2009–10, all inspections and reports were completed according to statutory requirements. During 2009–10 we carried out 31 inspections, compared to 30 in 2008–09. We inspected the records of 16 different agencies, one more than in 2008–09.

Telecommunications records

Under the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure telecommunications interception activities are in accordance with the provisions of the TIA Act. In 2009–10 we carried out two inspections each of the AFP and the ACC, the same as for 2008–09.

The Ombudsman is also required under the TIA Act to inspect the records of these and other agencies that access stored communications (for example SMS messages), to ensure their

activities are in accordance with the Act. In 2009–10 we carried out three inspections of the Australian Customs and Border Protection Service (within different regional offices), two inspections of the AFP and one inspection each of the ACC, ASIC, New South Wales Crime Commission, NSW Police, Queensland Police, Crime and Misconduct Commission, South Australia Police, Tasmania Police, Victoria Police, Office of Police Integrity, Western Australia Police, and the Corruption and Crime Commission (CCC).

The TIA Act requires the Ombudsman to report to the Attorney-General in writing before 30 September each year on the results of the inspection of each agency under telecommunication interception provisions and the stored communication access provisions during the preceding financial year. In accordance with this obligation, reports to the Minister were provided for the AFP and the ACC in respect of telecommunication interceptions and reports were provided to the Minister in respect of the AFP, ACC, Australian Customs and Border Protection Service, ASIC and the 10 state and territory law enforcement and anti-corruption agencies in respect of stored communications access.

Surveillance devices

Under the *Surveillance Devices Act 2004* (SD Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI, and those state law enforcement agencies that have utilised powers under the SD Act, to ensure that the use of surveillance devices is in accordance with the Act. We carried out two inspections each of the records of the AFP and the ACC and one inspection of the CCC.

The SD Act requires the Ombudsman to report to the Attorney-General bi-annually on the results of the inspection of each agency. No inspections were finalised in the period 1 January to 30 June 2009, hence no report was provided to the Minister in the second half of 2009. A report was provided to the Attorney-General in March 2010 in respect of inspections finalised in the period 1 July to 31 December 2009, which was tabled in the Parliament in June 2010 in accordance with our statutory obligation.

Controlled operations

Under the *Crimes Act 1914* (Crimes Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI to ensure compliance with Part 1AB of the Crimes Act. In 2008–09 we inspected the controlled operations records of the AFP and the ACC twice each. (A controlled operation is a covert operation carried out by law enforcement officers under the Crimes Act for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence.)

Part 1AB of the Crimes Act also requires the Ombudsman to report to the President of the Senate and the Speaker of the House of Representatives on the inspections carried out in the previous financial year. An annual report for 2008–09 was presented to the Parliament in November 2009.

Biosecurity

During 2009–10, we undertook an own motion investigation into the activities of the Compliance Branch, Biosecurity Services Group, Department of Agriculture, Fisheries and Forestry (DAFF). The own motion investigation was conducted at the Sydney office of the Compliance Branch. The Compliance Branch undertakes investigations of possible breaches of legislation administered by DAFF (for example, the *Quarantine Act 1908*), and provide briefs of evidence to the Commonwealth Director of Public Prosecutions to consider criminal prosecution in certain cases. There are no statutory obligations attached to this function.

Analysis of achievement

Despite a significant workload and limited resources all inspections and reports were completed according to the statutory requirements.

Not all recommendations were accepted by all agencies in respect of our inspections of stored communications records, in particular that:

- agencies should hold sufficient records to demonstrate when stored communications were accessed by telecommunications carriers pursuant to a warrant
- a warrant should only be applied for in respect to a person who is suspected of committing a relevant offence (and not, for example in relation to a victim or witness).

Objective – Reduce staff turnover and enhance training to ensure quality standards for complaint handling and records are maintained. Maintain sound working relationships with Australian Government agencies.

Reduce staff turnover and enhance training to ensure quality standards for complaint handling and records are maintained.

Our office continues to focus efforts on improving staff satisfaction, reducing turnover and enhancing options for internal training in support of sustaining quality standards in our complaint-handling and records practices. Our most recent staff survey, conducted in March 2009, provided a positive measure of employee satisfaction at an organisation-wide level, with 93% of staff participating. A majority of Ombudsman office staff were satisfied with the office, with almost 90% indicating they were proud to tell others where they worked.

With an actual number of employees of 159 as at 30 June 2010, our staff turnover rate showed an improvement over that achieved in 2008–09 (26%), down to 20.5% for 2009–10. We continue to focus on training options, with a current suite of 11 training modules in place, designed specifically to develop core competency and skills in investigations, inspections, writing, administrative law, office practices and record keeping. A new electronic scheduling system was implemented which identifies learning and development opportunities, provides online booking facilities and records the training history for each employee.

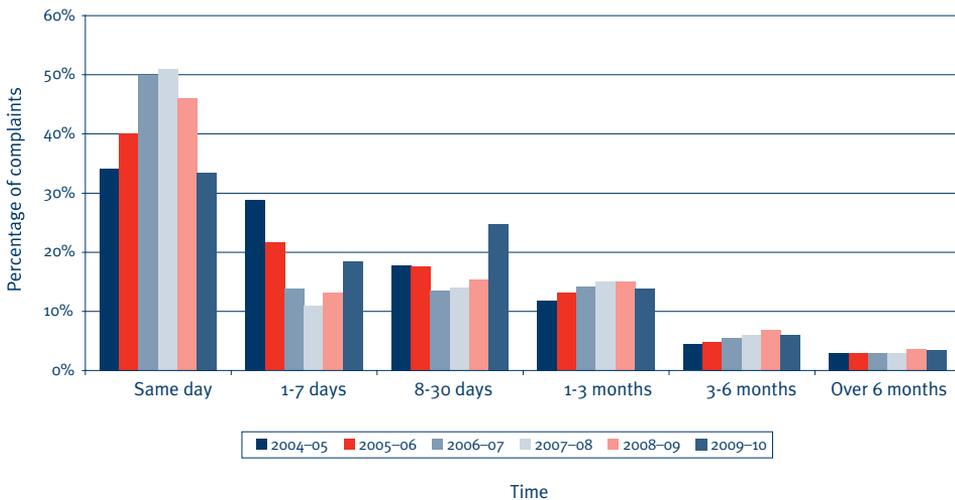
Our service charter outlines the service that complainants can expect from the office, ways to provide feedback and steps that can be taken if standards are not met. As discussed in more detail later in this chapter, we periodically undertake major surveys of clients to help gauge our effectiveness and identify areas for improvement. The most recent survey of complainants was undertaken at the end of 2007–08. At the time of reporting, planning had commenced for two key bi-annual surveys to be commissioned before the end of 2010; these will research public awareness of the Ombudsman and the views of Commonwealth and ACT Government agencies. Results of these surveys

will contribute to ongoing efforts to improve our services and engagement with complainants and agencies.

Timeliness—our service charter indicates that we aim to investigate complaints as quickly as possible, acting fairly, independently and objectively.

In 2009–10, we finalised 77% of all approaches and complaints within one month of receipt, an improvement from 74% in 2008–09. Figure 3.2 shows the time taken to finalise all approaches and complaints for the periods 2004–05 to 2009–10.

Figure 3.2: Time taken to finalise all approaches and complaints, 2004–05 to 2009–10



Note: Data from 2004–05 is not directly comparable because of changes in work practices.

In 2009–10, 24% of investigated complaints were finalised in one month and almost 64% were finalised in three months. This compares with 23% and almost 63% respectively in 2008–09.

Table 3.3 shows some of the variation in the time it takes to finalise investigated complaints about different agencies.

Table 3.3: Time to finalise investigated complaints for selected agencies, 2009–10 (2008–09)

Agency	Number investigated	% finalised within one month	% finalised within three months
Australia Post	730 (821)	37 (28)	90 (78)
ATO	365 (321)	17 (21)	59 (52)
Centrelink	1,351 (1,459)	39 (34)	74 (70)
CSA	920 (712)	29 (26)	70 (69)
Defence agencies	213 (194)	5 (12)	53 (59)
DEEWR	186 (187)	7 (5)	51 (51)
DIAC	649 (669)	12 (12)	61 (52)

Note: changes were made to the way we count investigated complaints for the ATO, so the ATO figures are not directly comparable with years prior to 2008–09.

Overall, reflecting the previous reporting, there has been an improvement in timeliness for closing all approaches and complaints, and for all investigated complaints. We continue to review the way we deal with incoming approaches, in part to identify ways to improve our timeliness.

Remedies—our service charter advises that we will recommend changes to fix any problems where appropriate.

We recommended one or more remedies in 71% of the complaints investigated (compared to 74% in 2008–09, 75% in 2007–08, 67% in 2006–07, 54% in 2005–06 and around 68% in the previous two years). A breakdown of remedies is provided in Appendix 3—*Statistics*.

The most common remedy for complainants was an explanation of the circumstances by the Ombudsman's office (29%). Other remedies included the provision of a better explanation by an agency of its decision or action (18%), an agency action being expedited (13%), a financial

remedy (10%), an agency decision being changed or reconsidered (8%), and an apology being offered by an agency (8%).

Chapter 6—*Helping people, improving government* provides some examples of the types of remedies achieved for individuals, and systemic remedies, during the year.

Decisions not to investigate—our service charter indicates that if we do not investigate a complaint, we will explain why and, where appropriate, advise the complainant of any other avenues to pursue their complaint.

The Ombudsman Act gives the office a range of discretionary powers to not investigate matters in particular circumstances. The most common reason for not investigating a complaint is that the person has not first raised the complaint with the agency involved. There are advantages for both the complainant and the agency if an issue is first raised at the source of the problem and an attempt made to resolve it before external intervention. In 2009–10 we

advised the complainant to take the matter up with the relevant agency in the first instance in 51% of the matters within the Ombudsman's jurisdiction (58% in 2008–09).

While a large number of approaches and complaints are outside the Ombudsman's jurisdiction, or are not investigated, we endeavour to provide a high level of service to these people and refer them to more appropriate avenues to resolve their concerns wherever possible.

Analysis of achievement

With strong staff satisfaction and improvement in staff turnover rates, there was overall an improvement in the achievement of our client service standards for all incoming approaches to the office and management of all complaints.

Maintain sound working relationships with Australian Government agencies.

Our experience in preparing own motion investigation reports, and finalising individual complaint investigations, is that agencies generally accept the recommendations made. Of the 77 recommendations made in published reports during 2009–10, 75% were accepted in full and 8% in part. The remainder were not accepted or there was no formal response from the agency, often because of other work occurring in the agency, or because the recommendation required either joint action with another agency or a response from government. We now request updates from agencies on the implementation of recommendations on a regular basis, and are looking at how we might present this information publicly. The individual agency sections in Chapter 5—*Agencies overview* show many areas of public administration where our feedback and recommendations have resulted in improvements.

Analysis of achievement

We met this objective.

Objective—Maintaining access for the public to services of the Office of the Commonwealth Ombudsman.

The main method by which we gauge the level of public satisfaction with the quality of our services is through periodic surveys of people who have made a complaint to the office. The most recent bi-annual survey occurred in 2007–08, and was conducted by an independent market research company. We analysed the results in detail in early 2008–09. The survey aimed to obtain information on three key aspects—access, demographics and quality of service.

As mentioned previously in this chapter, at the time of reporting, planning had commenced to commission two significant surveys in the 2010–11 year; these will explore public awareness of the roles and work of the Commonwealth Ombudsman and the results of our dealings with Commonwealth and ACT Government agencies.

In brief, the results from the previous survey, as reported last year, showed the overall level of satisfaction of complainants with the Ombudsman's office increased from 58% in our last survey (conducted in 2004) to 60%. For people whose complaint we investigated, overall satisfaction fell from 64% to 57%. There was a high correlation between overall satisfaction with the office and satisfaction with the result of the office's investigation. The level of satisfaction for people whose complaint we did not investigate increased from 54% to 62%.

The majority of the people surveyed considered we kept them well informed about our handling of their complaint, and rated the courtesy of our staff highly. The majority considered we dealt with their complaint in about the right time, or less time than they expected.

They also considered we understood the critical issues in their complaint. While our staff were perceived as being clear in communication, and professional and ethical, around one-fifth of respondents considered our staff were not independent or impartial.

Partly as a result of the survey, we continued to implement a range of strategies to further improve our services. They include:

- incorporating more communication training in to our core training modules
- creating scripts to be used by our public contact officers
- reviewing our template letters
- redesigning our internet sites
- reviewing how we manage approaches to the office.

We have also introduced a comprehensive quality assurance program to complement the oversight line managers give to the handling of complaints. A panel of experienced senior investigation officers from across the office, led by a Deputy Ombudsman or Senior Assistant Ombudsman, audit a sample of complaints closed each month. This panel provides feedback to the staff who handled the complaints and, where necessary, their manager. The panel also produces a report identifying areas for improvement in complaint handling, as well as best practice examples they have seen. This is part of our overall quality assurance process that includes normal supervision, a capacity to require more senior sign-off as part of our complaint management system, peer or supervisor checking of all correspondence, our system of case reviews

and our complaint and feedback processes (including complainant surveys).

We also have a formal review process for complainants who may be dissatisfied with our conclusions and decision about a complaint. We expect the complainant to provide reasons for seeking a review, as this assists the office to fully understand the issues being raised by the complainant.

In 2009–10 we received 236 requests for internal review, 6% less than in 2008–09 (251). We declined to conduct a review in 161 cases for reasons such as the matter was out of jurisdiction, the matter had been reviewed already, the complainant did not provide any information that gave grounds for a review, or the complainant had not taken up our previous advice to raise the matter with the relevant agency in the first instance.

We finalised 104 reviews during the year, with some carried over from 2008–09 (Table 3.4). Of the finalised reviews, the original outcome was affirmed in 80 reviews (77%). This was more than in 2008–09 (70%). The office decided to investigate or investigate further 22 reviews (65 in 2008–09) and to change its decision on the original complaint in one review (five in 2008–09). One review was withdrawn by the complainant.

Of the 104 reviews finalised, 88% related to decisions or actions of the investigation officer, comparable to 2008–09. The main reasons expressed by complainants for seeking a review were that they believed the decision we made was wrong or that we failed to address or misunderstood the complaint issue.

Table 3.4: Internal review of Ombudsman office decisions, 2009–10

Complainant's reason for seeking review		Outcome affirmed	Outcome varied	Further investigation	Review withdrawn	Total
Decision/ action	Bias	2		1		3
	Failed to address issue	41		14	1	56
	Misunderstood issue	1		1		2
	Wrong	26		4		30
	Other	4	1	1		6
Advice	Fail to provide			1		1
	Inadequate/ unclear	4				4
	Misleading	1				1
Behaviour	Incompetence	1				1
Total		80	1	22	1	104

A centralised team considers first whether a review should be undertaken, and then conducts the review if required. In some cases, discussion with the person seeking a review may indicate that the person needs a clearer explanation of information we have already provided, or has misunderstood our role, and further investigation is not necessary.

One important factor we take into account in deciding whether we should investigate further is whether there is any reasonable prospect of getting a better outcome for a person. This helps ensure that the office's resources are directed to the areas of highest priority.

If, as a result of a review, investigation or further investigation is required, the review team allocates the complaint to a senior staff member who decides who should undertake the investigation or further investigation.

Analysis of achievement

The survey results and the continuing high number of approaches to the office indicate there is a good degree of public satisfaction with the office. We continue to review our processes and measures to further improve our services.

Objective—Maintaining access for the public to services of the Office of the Commonwealth Ombudsman.

The Commonwealth Ombudsman continued to actively contribute to debates on key administrative law, accountability and integrity issues in government, making submissions to 11 parliamentary inquiries:

- Inquiry into Review of Government Compensation Payments
- Inquiry into National Security Legislation Amendment Bill 2010 and Parliamentary Joint Committee on Law Enforcement Bill 2010
- Inquiry into Freedom of Information Amendment (Reform) Bill 2009 and Information Commissioner Bill 2009
- Inquiry into the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009
- Inquiry into the Independent Arbitration of Public Interest Claims
- Inquiry into the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009
- Inquiry into the Welfare of International Students
- Inquiry into Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009
- Inquiry into Migration Amendment (Immigration Detention Reform) Bill 2009

- Inquiry into the Operation of the *Law Enforcement Integrity Commissioner Act 2006*
- Inquiry into the provisions of the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009.

In addition the Ombudsman made submissions on the following:

- Review into the Australian Taxation Office's 'Change Program'
- Consultation on a strategic framework for access to justice
- Delivering quality outcomes review—Child Support program
- Review of the *Education Services for Overseas Students Act 2000*
- Review of the Aged Care Complaints Investigation Scheme
- Review of secrecy laws
- Review of military compensation arrangements.

The Ombudsman released an issues paper on *Mistakes and unintended consequences: a safety net approach*, and commented on the following papers:

- discussion paper on future purchasing of employment services
- proposals paper: Action against fraudulent phoenix activity
- discussion paper on innovation in payments and information services.

The Ombudsman released public reports on 19 own motion and major investigations in 2009–10. The reports related to a number of agencies, including the AFP, ACC, Australia Post, ATO, Centrelink, DAFF, CSA and DIAC. Further details on individual reports are contained in the relevant sections of Chapter 5—*Agencies overview*. Chapter 6—*Helping people, improving government* provides a list of the reports and outlines some of the different types of recommendations made in the reports.

In 2009–10 we produced one better practice guide—the *Better practice guide to managing unreasonable complainant conduct*. This guide has been prepared to assist staff in government agencies when dealing with the small proportion of complainants whose conduct is especially challenging.

We produced two new fact sheets, supplementing seven produced in the previous year to assist agencies:

- *Unreasonable complainant conduct* (Fact Sheet 8)
- *Compensation for detriment caused by defective administration* (Fact Sheet 9).

We released Fact Sheet 8 to accompany/complement the *Better practice guide to managing unreasonable complainant conduct*.

Analysis of achievement

The breadth of our submissions and publications indicates that we met this objective.

Feature

Rural outreach—Agfest 2010

In May 2010, a member of our Melbourne office attended Agfest in Launceston, Tasmania to host an ‘Ombudsman Services’ marquee with the Financial Ombudsman Service, the Telecommunications Industry Ombudsman and the Ombudsman of Tasmania.

Agfest is one of the largest agricultural field shows in Australia. It provides a great opportunity for the office to promote the role and services of the Commonwealth Ombudsman, especially to rural and regional Australia.

More than 67,000 people from around Australia attended Agfest over the course of the three-day event. While the weather was cold, spirits were high and many people were keen to talk

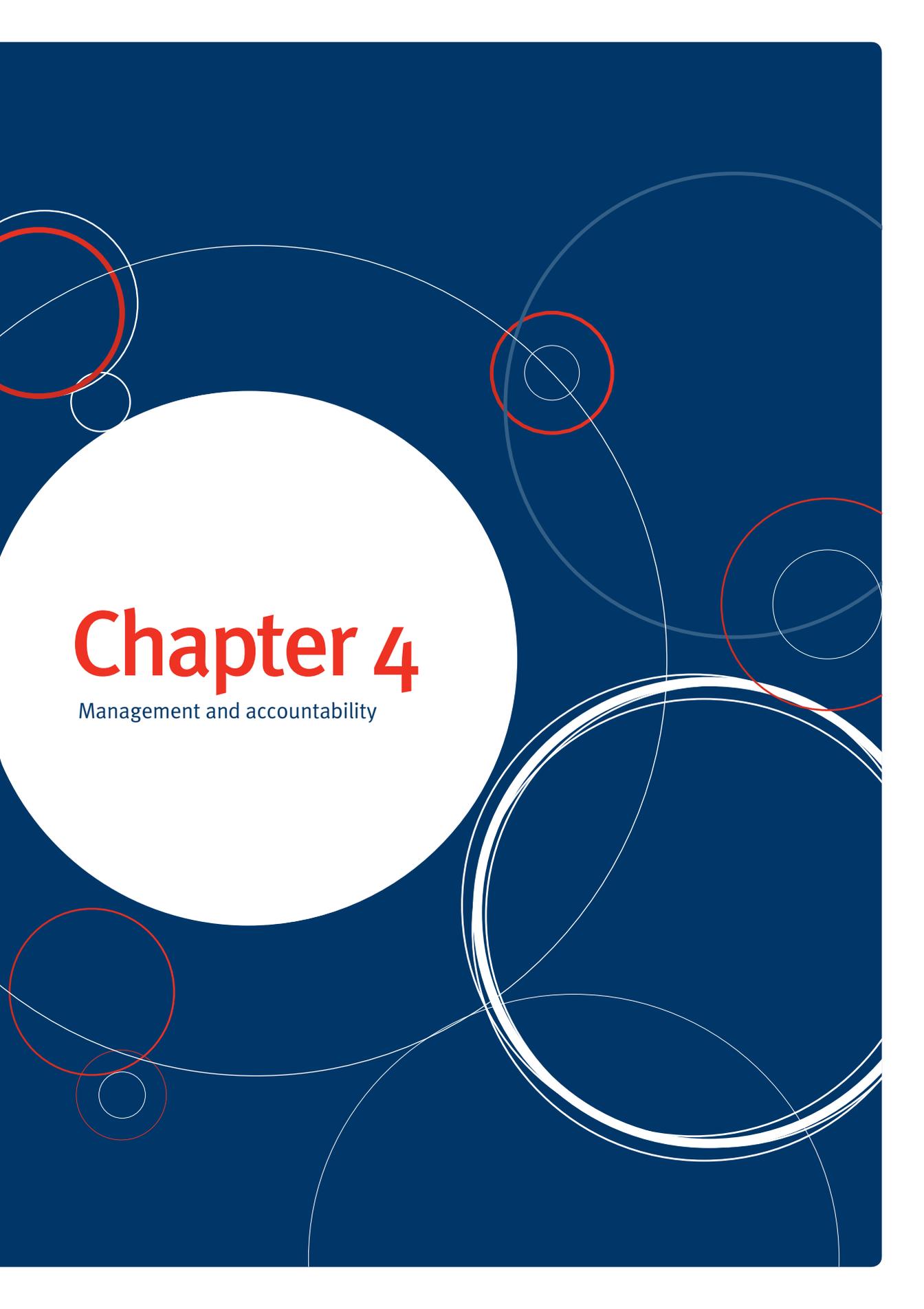
to us about Ombudsman services. Of particular interest was information on making a complaint about Centrelink or the ATO.

Visitors were given show bags containing brochures and other information about what we do, pens and fridge magnets. As always, the Postal Industry Ombudsman trucks were a huge success with children and the anti-stress balls a hit with the mums and dads.

This was the second consecutive year we have participated in Agfest and we are keen to reaffirm our ongoing commitment to working with other ombudsman offices to ensure our services are familiar and accessible to rural Australians.



Agfest 2010 in Launceston, Tasmania



Chapter 4

Management and accountability

Management and accountability

Corporate governance

Senior executive and responsibilities

Prof. John McMillan AO performed the role of Commonwealth Ombudsman until March 2010 (tenure March 2003–June 2010), when he vacated the position to take up the post of Information Commissioner Designate. Mr Ron Brent acted as Commonwealth Ombudsman from March.

Dr Vivienne Thom vacated the position of Deputy Ombudsman in April 2010 (tenure March 2006–August 2010) to take up the role of Acting Inspector-General of Intelligence and Security. Ms Helen Fleming acted as Deputy Ombudsman for part of the year, as well as Mr George Masri.

The remuneration for the Ombudsman and Deputy Ombudsman is set by a Determination made by the Remuneration Tribunal. See Note 11 in the Financial Statements for further details on executive remuneration.

The Ombudsman and the Deputy Ombudsmen make up the Executive, and together with five Senior Assistant Ombudsmen comprise the



senior management team.

Photo credit: Mark Koehler
Senior management team (from left) George Masri, Diane Merryfull, Ron Brent, Anna Clendinning, Adam Stankevicius, (inset from left) Helen Fleming, Fiona Bowring-Greer

At 30 June 2010, the Senior Assistant Ombudsmen, and their areas of responsibility were:

- **Adam Stankevicius** – Organisational Support Services: Finance, Public Contact, Public Affairs, Human Resources, IT and International Programs
 - › office support and corporate services comprising security, property, human resources, records management and governance
 - › financial operations, risk management and business planning
 - › work practices and procedures
 - › Public Contact Team, which provides a national point of contact for all approaches to the office made by telephone, email or online
 - › information technology and communications infrastructure
 - › public affairs and outreach, including management of the office's intranet and internet sites
 - › management of the office's International Program and related AusAID projects.
- **Anna Clendinning** – Postal Industry and State Offices
 - › specialised advice and complaint handling relating to Australia Post and registered postal operators of the Postal Industry Ombudsman scheme
 - › specialised advice and complaint handling relating to more than 40 Australian Government agencies with low complaint numbers
 - › management and oversight of our state offices in Adelaide, Brisbane, Melbourne, Perth and Sydney - which handle complaints and undertake specialist work.

- **Fiona Bowring-Greer (Acting)** – Social Support, Child Support, Indigenous and Overseas Students
 - › specialised advice and complaint handling relating to the Department of Human Services and relevant policy departments (which include Centrelink, Child Support Agency and Medicare)
 - › the office's Indigenous Unit, with staff located in Canberra and Darwin, specialising in issues involving Indigenous people
 - › development of a new Ombudsman function to provide a complaints avenue for overseas students of private education and training providers.
- **Helen Fleming** – ACT, Immigration, Detention Review and Legal
 - › complaint handling relating to the ACT Ombudsman function
 - › specialised advice and complaint handling relating to the Department of Immigration and Citizenship
 - › review cases of detainees who have been held in immigration detention for six months or more
 - › in-house legal advice and policy service to support staff in performing their functions.
- **Diane Merryfull** – Defence, Inspections, Law Enforcement and Taxation
 - › specialised advice and complaint handling relating to the Australian Defence Force, Department of Defence, Defence Housing Australia and Department of Veterans' Affairs
 - › complaint handling and investigating law enforcement activities relating to Australian Government law enforcement agencies

- › inspect the records of enforcement agencies for statutory compliance, adequacy and comprehensiveness
- › specialised advice and complaint handling relating to the Australian Taxation Office.

Corporate planning and review

The 2010–13 Strategic Plan for the Office of the Commonwealth Ombudsman sets out strategic objectives for that period.

In 2010–11, the office will continue our endeavours to improve our structures and processes to deliver efficient, practical, higher quality and more consistent responses to complaints. We will also continue to focus on significant systemic issues arising from complaints, inspections and monitoring. The strategic priorities of the office are to:

- improve quality assurance and review of complaint handling
- build on the work practices and system changes to deliver improved quality, efficiency and consistency in managing complaints
- develop an enhanced approach to social inclusion and effective interaction through social media
- target outreach, relevant publications and communication activities to key stakeholders, particularly through intermediaries
- be responsive to areas of need in allocating resources.

The office's strategic plan informs its internal business plans, which are prepared on an annual basis. There are clear links between the objectives and the key measures of success of the strategic plan and the key result areas set in the business plans for all teams and in individual performance agreements for all staff members.

This year a more formal reporting framework has been developed to ensure there is rigour

in the quality and quantity of data provided to Senior Management. The senior management team considers reports on finance, human resources, operations and information technology on a monthly basis. Business plan reporting and ongoing risk assessment was conducted on a quarterly basis throughout the year.

Management committees

Management committees are set up to assist the Executive with decision making in key areas. The committees make recommendations to the Executive, which meet weekly.

Senior Management

The Senior Assistant Ombudsmen, or their representatives, meet fortnightly to discuss a broad range of issues relating to the work of the office.

Information Management Committee

The Information Management Committee ensures that the development of information technology, work practices and governance strategies align with a whole-of-office approach to information management. The Committee meets bi-monthly and is chaired by the Senior Assistant Ombudsman (Organisational Support Services) and has representatives from relevant areas in the office, including the state offices and specialist investigation areas.

Internal Audit Committee

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

At 30 June 2010 the Audit Committee is chaired by the Deputy Ombudsman. In addition to the chair, membership comprises three Senior Executive Service officers and one external independent member. Observers include representatives from the Australian National

Audit Office (ANAO), Walter Turnbull (the office's internal auditors) and the Chief Financial Officer.

During 2009–10 Walter Turnbull conducted one internal audit and commenced another to be finalised in 2010–11. The office is implementing the recommendations from the audit and the Audit Committee monitors progress against each action item at its meetings.

Occupational Health and Safety Committee

The office's Occupational Health and Safety Committee is made up of elected representatives from each state office and is chaired by the Manager, Human Resources who represents management. The committee met twice during the year.

Workplace Relations Committee

A Deputy Ombudsman chairs the Workplace Relations Committee. It comprises employee, management and union representatives, and is the main consultative body on workplace conditions within the office. The committee met four times during the year and considered matters such as staff survey action items, recruitment and selection guidelines, learning and development, accommodation and environmental management.

Corporate governance practices

The office's risk management activities are overseen by the Internal Audit Committee. The office's risk management framework comprises an overarching risk management policy and a strategic risk management plan. The Senior Management review the strategic risks quarterly as part of the business planning process.

During 2009–10 the office conducted risk management information sessions for staff in Melbourne, Sydney and Canberra to discuss the office's strategic risks.

The office continues to participate in the annual Comcover Risk Management Benchmarking Survey, which independently assesses our risk management arrangements.

Business continuity planning

The purpose of our Business Continuity Plan is to ensure that the most critical work of the office can continue with minimal disruption, or be quickly resumed, in the event of a disaster. We revised the plan during the year to ensure that it remained a current and useful document. The plan utilises the strengths of a national office structure to respond to a potential problem with one or more of the office's eight sites. This was

tested during the year when our public contact activities were twice transferred temporarily to other sites.

Fraud prevention and control

During the previous year, the office reviewed and updated its fraud control plan and fraud risk assessment. The risk of fraud remains low for the office. The Internal Audit Committee oversees the implementation of the fraud control plan.

I certify that the Commonwealth Ombudsman's office has prepared fraud risk assessments and fraud control plans and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the office and comply with the Commonwealth Fraud Control Guidelines.



Ron Brent
Acting Commonwealth Ombudsman

Ethical standards

The office upholds the Australian Public Service values, as specified in s 10 of the Public Service Act. The key values of the Commonwealth Ombudsman's office are independence, impartiality, integrity, accessibility, professionalism and teamwork.

The importance of the values is outlined in induction documentation and training for staff, and in internal documents such as the Harassment Prevention Policy and the Work Practice Manual. It is reinforced on a continuous basis through mechanisms such as our internal quality assurance processes, staff training and dealing with complaints about service delivery. We gauge internal perceptions of our ethical standards through surveys, the most recent being a staff survey conducted in March 2009. We also engage with the Australian Public Service Ethics Contact Officer Network, which commenced in May 2009.

Complaint management

The office has an established internal complaint and review process, which allows complaints

about the office's decisions and service quality to be resolved quickly, fairly and informally. We evaluated our practices against our *Better Practice Guide to Complaint Handling* and this led to improvements in the way we accept and monitor complaints in our service delivery. The office's complaints and grievances mechanism is set out in our service charter and detailed reporting is provided in Chapter 3.

Commonwealth Disability Strategy

The office is committed to the Commonwealth Disability Strategy to ensure equality of access to the services of the Commonwealth Ombudsman for people with disabilities and to eliminate discriminatory practices by staff. We are committed to meeting our obligations under the *Disability Discrimination Act 1992* through implementation of the Commonwealth Disability Strategy, the Commonwealth Ombudsman's Disability Action Plan and the Workplace Diversity Framework and Plan. While our Disability Action Plan formally covered the period to 2008, we continue to use this plan and the principles it contains. We will revise the

plan when the review of the Commonwealth Disability Strategy by the Department of Families, Housing, Community Services and Indigenous Affairs is completed.

The office's operations encompass the activities of regulator, service provider and employer. Employer activities are reported by the Australian Public Service Commission.

Regulator

The Commonwealth Ombudsman does not directly enforce the disability discrimination legislation, but provides a complaint resolution service about Australian Government administrative actions. This assists in meeting the objectives of the Commonwealth Disability Strategy. This can include recommendations on enforcement of legislative obligations that apply to Australian Government agencies. Recommendations and remedies arising from some complaint investigations may also be particularly relevant to people with a disability.

Service provider

In developing and maintaining our website, we have used the priority 1 and 2 checkpoints of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 1.0 as our benchmark. Activities to ensure compliance include testing colour contrast for the vision impaired, limiting the use of graphics, simplifying navigation and providing a site map, separating document formatting from content with style sheets, providing text equivalents for non-text elements, and improving metadata. During the year we continued developing our website to further improve accessibility to all members of the public.

Environmental matters

The Ombudsman is required to report on certain environmental matters under s 516A(5)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), detailing the office's environmental performance and its contribution to ecologically sustainable development.

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently

and in an ecologically responsible manner. The office's Environmental Management Policy focuses on the conservation of energy within the workplace, including the use of light, computer equipment, water management, transport management and organic recycling. The office recycles toner/printer cartridges, paper and cardboard products, classified waste and cans, bottles and plastic. These strategies are communicated to staff through the Workplace Relations Committee, the office intranet, and induction program. We are also introducing an electronic records management system, which will help to reduce paper usage.

The office uses recycled paper, and its reports are printed on recycled stock made from elemental chlorine free bleached pulp sourced from FSC certified well-managed forests. It is manufactured by an ISO 14001 certified mill.

The office's estimated energy consumption per person per year decreased by 2.7% from 2007–08 to 2008–09. This followed a decrease of 9% in the previous year. Data for 2009–10 was not available at the time of preparation of this report.

All our offices are shared with other tenants. When an office needs to move location, one factor we try to take into account in selecting a new location is the environmental credentials of alternative locations. During 2009–10 we were fortunate to move our Canberra office to new premises. The new accommodation is classified as 'A' grade with 5.0 green star and 4.5 NABERS ratings.

External scrutiny

Privacy

The Ombudsman's office is subject to the *Privacy Act 1988*. It provides information required for the Personal Information Digest. The Privacy Commissioner did not issue any report or make any adverse comment about the office in the past year.

Court litigations

The office was the respondent in two matters brought by one applicant in the Federal Magistrates Court.

In the first matter, the applicant sought an order that the Ombudsman make certain recommendations to an agency concerning his complaint. The Federal Magistrates Court dismissed the matter, taking the view that the Ombudsman's functions had been properly performed. The applicant appealed this decision to the Federal Court of Australia. The Federal Court of Australia dismissed all of the applicant's grounds of appeal. The applicant then sought an extension of time to appeal the decision to the Full Federal Court of Australia. The applicant filed notices of a constitutional matter under s79B of the *Judiciary Act 1903*. The Federal Court of Australia declined to grant an extension of time. The applicant then sought to appeal the decision to the Full Federal Court of Australia. The Full Federal Court dismissed the appeal with costs awarded against the applicant.

In the second matter, the applicant sought orders to, among other things, set aside our decision declining to investigate his complaint. The Court dismissed this application, noting that under section 6 of the *Ombudsman Act 1976*, the Ombudsman has a broad discretion whether to investigate particular complaints. The applicant appealed this decision to the Federal Court of Australia. The Federal Court of Australia dismissed all of the applicant's grounds of appeal and awarded costs against the applicant. The applicant sought special leave to appeal against this decision in the High Court of Australia. The High Court of Australia refused to grant special leave.

Tribunal litigation

The office was the Respondent in the Administrative Appeals Tribunal in three matters. All three applications were withdrawn at directions hearing.

Courts, tribunals, complaint bodies and regulators

The Ombudsman has jurisdiction to investigate the actions of court staff, other than when they are exercising powers of the court or performing functions of a judicial nature. We can investigate actions of the registry of the Administrative Appeals Tribunal (AAT). The office's jurisdiction also extends to other statutory tribunals,

to bodies with complaint functions and to regulators. We receive modest numbers of complaints about each of these bodies.

These agencies present a unique set of circumstances for the Ombudsman's office, arising from their special characteristics. Typically they are created, empowered and resourced with a view to their being able to put the final position on the matters within their competence. They work in areas where a high degree of specialist knowledge is required of their personnel. Their legislation often gives them a high level of protection from liability for what they do. Because their decisions are intended to be conclusive, subject to review by the courts (or in some cases, the AAT), the utility of a recommendation by the Ombudsman is very limited. Consequently, the Ombudsman generally does not investigate the merits of a decision made by one of these agencies, or the manner in which a tribunal member conducts a hearing.

Reports to the Auditor-General and Parliamentary committee enquiries

There were no reports specific to the operation of the Ombudsman's office by the Auditor-General or by Parliamentary committees. Our Internal Audit Committee examines all reports by the Auditor-General that may be relevant to the office, to identify any requirements for improvements in office procedures.

People management

Human resources

Effective and productive management of staff is a critical function within our office. Small and geographically dispersed, we face challenges in developing a well skilled and stable workforce.

The office continues to analyse the current business and economic climate in relation to our workforce profile. Emerging trends are evident in the following publications:

- Australian Public Service Commission 'State of the Service' Report 2008–2009
- Commonwealth Ombudsman staff survey

- the recommendations in 'Ahead of the Game: Blueprint for Reform of Australian Government Administration'.

A key human resources outcome we have been working towards is extending the average tenure staff have with our office. Lower staff turnover will result in efficiencies such as less effort and cost for recruitment and training, increased organisational knowledge, and improved consistency and effectiveness of our core business activities.

Staff survey

In March 2009 we conducted a staff survey. The results provided a measure of employee satisfaction at an organisation-wide level. The response rate was extremely high, with 93% of staff participating in the survey. Results were compared to the 2007 staff survey and in some instances also compared to a 'State of the Service' benchmark to provide a broader Australian Public Service (APS)-wide perspective.

Overall, the results showed that the majority of Ombudsman office staff were satisfied with the office as an employer and almost 90% were proud to tell others that they worked for the office. In many areas we significantly exceeded the 'State of the Service' benchmark.

We have prioritised organisational improvements to lift staff satisfaction with the office. The analysis highlighted the two main areas for improvement as career progression, and recognition and feeling valued.

There are several other areas that have less influence on overall satisfaction but are still considered a significant influence on how staff feel about the office. They are:

- recruitment and selection processes
- internal communication
- IT and information systems
- work-life balance.

Over the past 12 months we have:

- introduced an internal mobility register allowing staff to nominate to move within the office and improve career development opportunities
- introduced an online training and development system through Employee Self Service
- commenced refreshing the core module training for internal training
- moved to new premises in the ACT office, in the new building which allowed all staff to be located on the one level.

We will continue to review and further develop our human resources policies and guidelines to reflect responses from the staff survey.

Workplace relations

The current collective agreement reaches its nominal expiry on 30 September 2010. Negotiations are currently underway for a new enterprise agreement to cover the period until 30 June 2011.

The Commonwealth Ombudsman Collective Agreement 2008–2010 focuses on people, remuneration and employment arrangements, working environment and lifestyle, further streamlining of personnel practices and processes, and performance management and improvement to underpin salary increases.

A total of 151 employees are covered under the office's current collective agreement. Conditions are provided for the office's five Senior Executive Service (SES) staff under s 24(1) of the Public Service Act. No staff are employed under Australian workplace agreements or common law contracts.

The collective agreement does not make provision for performance pay. Salary advancement within each of the non-SES classifications is linked to performance. Determinations under s 24(1) provide for SES annual salary advancement, also based on performance, and do not make provision for performance pay. Non-salary benefits are not usually offered to employees with the exception of car parking as salary packaging for SES officers.

The office's Workplace Relations Committee provides a forum for discussion of issues surrounding implementation and operation of the agreement. It also provides the consultative, advisory and information-sharing mechanism between management and employees on matters affecting employment conditions in the office.

The committee consists of the Deputy Ombudsman or representative, three other members from senior management, two staff representatives and two union representatives.

The committee met four times in 2009–10.

Staffing profile

At 30 June 2010 the actual number of employees was 159, including the Ombudsman and a Deputy Ombudsman. One hundred and thirty-one employees were full-time. Twenty-eight

employees (17.6% of employees) were part-time and of these, 27 were ongoing. The full-time equivalent number of employees for the year was 146.

Table 4.1 shows the numbers of employees by gender and APS classification and salary range. Table 4.2 shows the office's staffing profile by location. Tables 4.3 and 4.4 show the office's part-time employee profile by location and classification.

During the year, 18 employees were engaged on an ongoing basis and 31 ongoing employees left the office, equating to a turnover rate of 20.5% (compared to 26% in the previous year). There were 44 separations including ongoing and non-ongoing employees. This included 11 transfers, 16 resignations, five retirements and five excess employees. Seven contracts ended. Table 4.5 shows staff separations by classification.

Table 4.1: Staffing profile by level, gender and salary range at 30 June 2010

At 30 June 2010 (at 30 June 2009)						
APS classification and salary range	Men		Women		Total	
	Ongoing	Non-ongoing	Ongoing	Non-ongoing	Ongoing	Non-ongoing
APS1 \$38,749 - \$42,830	-	-	-	-	- (-)	- (-)
APS2 \$43,854 - \$48,631	-	-	-	-	- (-)	- (-)
APS3 \$49,952 - \$53,914	-	-	2	-	2 (2)	- (-)
APS4 \$55,672 - \$60,446	10	1	15	1	25 (23)	2 (2)
APS5 \$62,094 - \$65,844	10	-	14	1	24 (18)	1 (1)
APS6 \$67,067 - \$77,040	17	1	18	-	35 (42)	1 (4)
EL1 \$85,976 - \$97,917	14	1	26	-	40 (43)	1 (1)
EL2 \$99,163 - \$117,320	7	-	12	-	19 (26)	- (-)
SES \$140,922 - \$158,714	1	-	4	-	5 (6)	- (-)
Statutory officers	3	-	1	-	4 (3)	- (-)
Total	62	3	92	2	154 (163)	5 (8)

Note: under the collective agreement, officers moving to the office from a higher salary range may be maintained at that salary until increments in the Ombudsman office salary range exceed the salary differential. Note: 'EL' is 'Executive Level'.

Table 4.2: Staffing profile by location at 30 June 2010

ACT	47	68	115
NSW	5	8	13
NT	1	0	1
QLD	2	5	7
SA	3	3	6
TAS	-	-	0
VIC	5	9	14
WA	2	1	3
Total	65	94	159

Table 4.3: Staffing profile showing part-time employees by location at 30 June 2010

Location	Men	Women	Total
ACT	5	15	20
NSW	0	3	3
NT	0	0	0
QLD	0	1	1
SA	0	2	2
TAS	0	0	0
VIC	0	2	2
WA	0	0	0
Total	5	23	28

Table 4.4: Staffing profile showing part-time employees by classification at 30 June 2010

Location	Men	Women	Total
APS1	-	-	-
APS2	-	-	-
APS3	-	1	1
APS4	-	2	2
APS5	-	4	4
APS6	1	3	4
EL1	4	10	14
EL2	-	2	2
SES	-	1	1
Total	5	23	28

Table 4.5: Staffing profile showing staff separations by classification at 30 June 2010

Location	Ongoing	Non-Ongoing	Total
APS1	-	-	-
APS2	-	1	1
APS3	-	-	-
APS4	7	3	10
APS5	2	1	3
APS6	5	5	10
EL1	9	3	12
EL2	6	-	6
SES	1	-	1
Statutory officers	1	-	1
Total	31	13	44

Career development and training

The office continues to focus on learning and development opportunities for staff. Our learning and development framework is based on three elements—leadership, corporate and core business programs.

There is currently a suite of 11 core training modules designed specifically to develop core competency and skills in investigations, inspections, writing, administrative law, office practices and record keeping. These modules are conducted regularly and all staff are required to attend the sessions.

Each staff member is encouraged to undertake learning and development programs that are designed to promote their capability in relation to their corporate and core business training and development.

A new electronic scheduling system was implemented that identifies learning and development opportunities, provides online booking facilities and records the training history for each employee.

Staff representatives delivered a variety of in-house training on information technology, financial, risk and fraud management and investigation workshops across all offices. This proved to be of great value resulting in an increase in consistency in the use of the office's complaint management system, financial framework and record keeping compliance.

The office supports staff attendance at courses, seminars and conferences identified in their personal development plans. We recognised and implemented development opportunities through job rotation, special project work, higher duties, placements with other agencies and representation on work committees. These programs have been well received with many staff taking up the opportunities to further develop their skills.

The office also supports staff who undertake relevant study at tertiary institutions. We offer staff assistance through study leave and/or financial assistance.

Occupational health and safety

During the year there were no accidents or injuries reportable under s 68 of the *Occupational Health and Safety Act 1991* (OH&S Act) and there were no investigations conducted within the office under sections 29, 46 or 47 of the OH&S Act.

All new employees are advised of the importance and responsibilities of both staff and management for health and safety in the workplace during their induction. New employees are provided with a workplace assessment in the first week of commencement and familiarisation with their physical work environment. Staff who work from home are also given workplace assessments.

Occupational health and safety committee and representatives

A health and safety representative is located at each office site. The representatives manage OH&S matters either through the OH&S Committee that meets twice a year, regular staff meetings or by seeking assistance from the OH&S officer. The Occupational Health and Safety Committee met twice in 2009–10.

Health and safety initiatives

During 2009–10 the office:

- met obligations for Comcare premiums—there was a significant reduction in the premium, reflecting the continuing success of our approach to managing OH&S
- arranged health assessments, where necessary
- conducted individual workplace assessments
- facilitated eye examinations, where necessary
- made first aid facilities and supplies available, and provided first aid training to First Aid Officers (refresher and senior first aid for new officers)
- provided OH&S training to representatives

- provided harassment and bullying awareness workshops
- conducted regular simulated fire evacuations
- conducted two health and safety inspections
- targeted individual health awareness through health management initiatives such as providing flu shots to employees free-of-charge and holding trauma awareness workshops
- implemented a national health month, which comprised a diverse range of health and wellbeing activities and information sessions.

The current collective agreement includes a 'promoting good health' allowance. This is available to all staff as a reimbursement for health-related lifestyle expenses.

To promote a supportive working environment, the office provides staff with access to an employee assistance program that provides a confidential counselling service, facilitation of teamwork issues, career advice and the management of any work-related or personal issues.

These measures contribute to maintaining a very low rate of accidents and compensable injuries in the workplace. Our workers compensation record is good, with unplanned personal leave rates decreasing. The average amount of unplanned personal leave for the office has decreased from almost 11 days per person in 2006–07 to eight days in 2009–10.

Financial management

The Office of the Commonwealth Ombudsman's operations are largely funded through parliamentary appropriations. Revenue is received from the ACT Government for the provision of ombudsman services in relation to ACT Government agencies and the Australian Federal Police when providing police services to the ACT.

Revenue is also received from AusAID to support the work of ombudsmen and similar entities in Indonesia, Papua New Guinea and Pacific Island nations. Details of the office's resources are included in Appendix 6.

The most significant item that had an impact on the office's financial results this year was the relocation of the Canberra office from Farrell Place to Childers Street. The office leased new accommodation on 1 December 2009 for a 15-year term. The lease offered a two-year rent free period. The fitout and furniture for the new accommodation cost approximately \$2 million. The impact of this new leasing arrangement was an increase in the office's expenses and therefore operating loss, and reduction in appropriation receivable offset by an increase in assets.

Financial performance

The deficit of \$1.120 million for the year ending 30 June 2010 compared to the \$0.929 million surplus in 2008–09. The office has received approval from the Finance Minister to operate at a loss of \$1.100 million.

Total expenses for the office were \$21.458 million. The increased level of expenses reflects timing differences in receiving funding and allocating resources required to support Ombudsman Northern Territory Emergency Response (NTER) initiatives, the use of surplus funds from the previous financial year to implement 'one-off' structural and business changes for the office and the accounting treatment of the office's Canberra accommodation lease.

Appropriation revenue in 2009–10 was \$18.795 million, \$0.569 less than in 2008–09. This is due in part to the office receiving \$0.566 million in 2008–09 as a result of its acquittal of the NTER 2007–08 no win – no loss funding. The office received further funding of \$0.122 million at Additional Estimates for the Norfolk Island government reform measure. This was offset by \$0.231 million for whole-of-government departmental efficiencies.

Financial position

The office's total equity—sum of the office's assets less its liabilities—has decreased by \$0.944 million due mainly to the deficit in 2009–10.

The Ombudsman's office is a small office with a standard suite of assets, such as information technology items, which require no special management measures beyond those which are standard in an accrual-based budgeting framework.

The office's total assets increased to \$9.884 million in 2009–10 from \$8.872 million in 2008–09. During 2009–10, the office leased new accommodation for its Canberra office. As a result of the new fitout, the value of the property, plant and equipment assets has increased. The office's assets by category at 30 June 2010 were:

- receivables (amounts due to be paid to the office—46% of total assets)
- property, plant and equipment (29%)
- other financial assets (relating to lease incentives—13%)
- intangibles (non-physical assets such as software—5%)
- cash (4%)
- other non-financial assets (relating to prepayments—3%).

The balance sheet shows cash holdings of \$0.368 million (\$0.128 million in 2008–09). The office's appropriation receivable decreased by \$1.974 million, from \$6.297 million in 2008–09 to \$4.323 million in 2009–10.

The office's non-financial assets increased by \$1.540 million to \$3.666 million in 2009–10 (\$2.125 million in 2008–09), primarily due to purchase of furniture and fitout for the new Canberra accommodation.

Total liabilities increased by \$1.956 million to \$7.621 million in 2009–10 (\$5.665 million in 2008–09). The change in liabilities was primarily due to the lease incentive for the new Canberra accommodation.

Procurement and grants

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

The office published its Annual Procurement Plan on the AusTender website (as required under the Commonwealth Procurement Guidelines) to facilitate early procurement planning and to draw to the attention of businesses our planned procurement for the 2009–10 financial year.

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

During 2009–10 the office entered into two new consultancy contracts involving total actual expenditure of \$43,472 (inclusive of GST). In addition, two ongoing consultancy contracts were active during 2009–10, involving total actual expenditure of \$110,928 (inclusive of GST). See Appendix 5—*Consultancy services advertising and market research* for details of new consultancy contracts. (Details are also available at www.ombudsman.gov.au.)

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website (www.tenders.gov.au).

Table 4.6 shows expenditure on consultancy contracts over the three most recent financial years.

Table 4.6: Expenditure on consultancy contracts, 2007–08 to 2009–10

Year	Number of consultancy contracts	Total actual expenditure
2007–08	8	\$248,678
2008–09	6	\$236,295
2009–10	4	\$154,400

The office's standard contract templates include an ANAO audit clause. The office did not sign any contracts in the reporting period of \$100,000 or more (inclusive of GST).

The office did not exempt any contracts or standing offers that cost more than \$10,000 (including GST) from publication in AusTender.

The office did not administer any grant programs during 2009–10.

Information management and work practices

In 2009–10 we continued to improve our use and management of information and work practices to support the performance of Commonwealth Ombudsman functions. We employed a whole-of-office strategic approach to information management that began in 2007–08. We are mindful of the increasing reliance on information technology for both internal purposes and as a form of communication with the public.

So as to build on the work practices and system changes of the past several years, we have continuously reviewed our information management practices. The aim is to deliver improved timeliness, efficiency and effectiveness in managing complaints, conducting inspections and generating reports.

Completed projects during 2009–10 include:

- a project to implement an electronic records management system
- the preparation and application of a number of issues papers to review business practices within the office
- the redevelopment of the work practice guidelines and improved electronic accessibility for staff
- mapping of office workflows to assist in learning and development opportunities for staff and the evaluation of business practices
- the virtualisation of all IT servers
- improved IT security and office security services
- improved internet service delivery.

We are continuing to broaden our electronic records management system in order to better integrate our complaint management system and workflows. A particular area of focus is our public contact centre capability.

IT security is being improved to give better information protection, along with enhanced interoperability with other agencies. We continue to look at ways in which our intranet can be improved.

We are looking into improvements to work practices and IT systems that will assist in the monitoring of issues of interest and automating the transfer of complaints to other agencies.

Feature

Ombudsman done proud at Brisbane Pride

Rainbow ribbons embellished the Ombudsman's message at Brisbane's Pride Fair Day, promoting equity and access to our services among lesbian, gay, bisexual, transgender and intersex (LGBTI) people and their communities.

More than 12,000 people marched to Musgrave Park on Saturday, 12 June for Pride Fair Day, where our staff spoke to more than 1,000 people about our services.

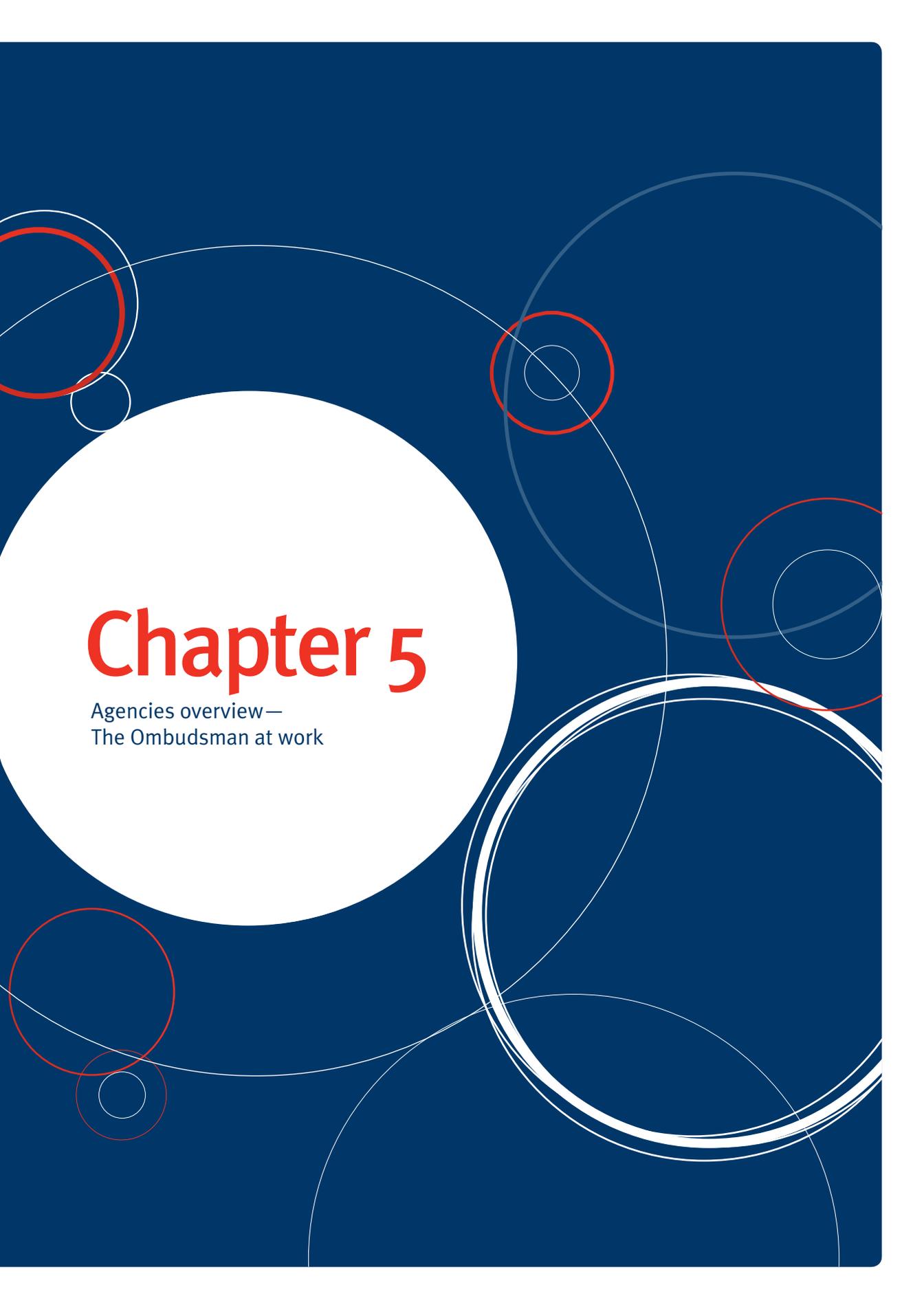
The office also hosted an information stall at the Sydney Gay and Lesbian Mardi Gras Fair Day in February and was a sponsor of the 7th National LGBTI Health Conference, *Health in Difference*

2010: *Doing Diversity Conference*, a major Asia-Pacific regional conference held in Sydney in April.

Our outreach to the LGBTI community was prompted by the Australian Government's landmark legislative reforms which removed discrimination against same-sex couples from 85 pieces of legislation. As a consequence of these reforms, same-sex couples have more contact with government about social security and veterans' payments, child support, aged care, Medicare and pharmaceutical benefits, tax and superannuation.



Ombudsman staff at the Sydney Gay and Lesbian Mardi Gras Fair Day, February 2010



Chapter 5

Agencies overview—
The Ombudsman at work

Agencies overview

Most of the approaches and complaints received by the Commonwealth Ombudsman about Australian Government agencies within the Ombudsman's jurisdiction (81%) related to the following agencies:

- Centrelink—5,199 approaches and complaints
- Child Support Agency—2,280 approaches and complaints
- Australian Taxation Office—1,810 approaches and complaints
- Australia Post—2,626 approaches and complaints
- Department of Immigration and Citizenship—1,600 approaches and complaints
- Australian Federal Police—219 approaches and complaints
- Department of Education, Employment and Workplace Relations—479 approaches and complaints
- Defence agencies—578 approaches and complaints.

This chapter assesses our work with these and other agencies in handling complaints and dealing with other broader issues during

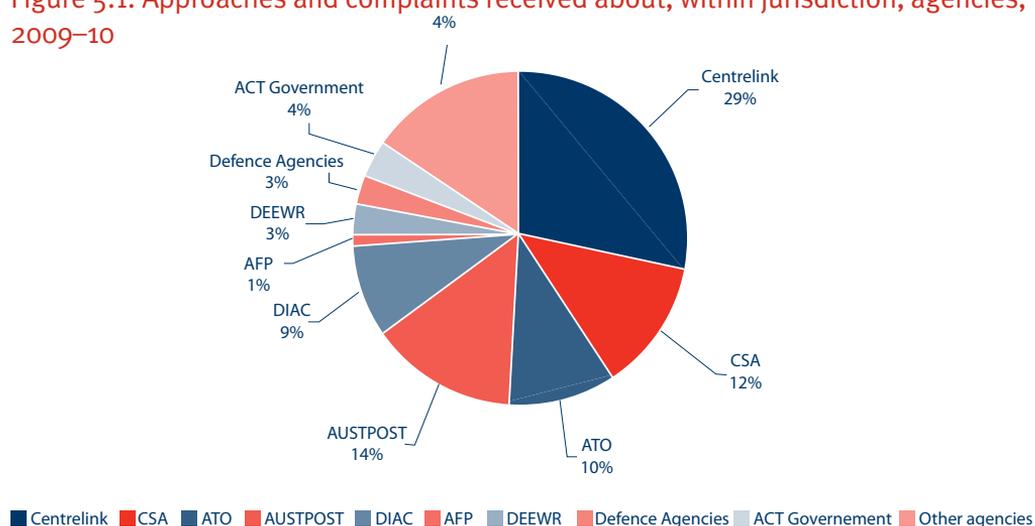
2009–10. It discusses the way agencies deal with freedom of information requests and the monitoring and inspections work we undertake.

It also looks at other areas of the Ombudsman's work:

- as Defence Force Ombudsman, dealing with complaints by current and former members of the Australian Defence Force
- dealing with complaints about the Australian Federal Police, including under the role of Law Enforcement Ombudsman
- as Immigration Ombudsman, including dealing with complaints from people in detention
- the broader Postal Industry Ombudsman role
- complaints about taxation as the Taxation Ombudsman
- with overseas students.

Figure 5.1 shows the number of approaches and complaints received in 2009–10 about agencies within the Ombudsman's jurisdiction. Detailed information by portfolio and agency is provided in Appendix 3—*Statistics*.

Figure 5.1: Approaches and complaints received about, within jurisdiction, agencies, 2009–10



Commonwealth Ombudsman

Australian Customs and Border Protection Service

The Ombudsman received 99 complaints about The Australian Customs and Border Protection Service in 2009–10, a small increase on the 94 received in the previous year. The main themes of complaint were:

- the processing of passengers at Australian international airports
- actions relating to the import or export of goods.

A common complaint made by those who have interacted with Customs and Border Protection at an airport is that they were not told why they were questioned or why their baggage was searched. Complainants often questioned whether an officer had the power to take the particular action.

One of the tasks of this office in responding to such complaints is to balance two competing public interests: transparency and

accountability in government processes, against the protection of sensitive information about investigation and detection methods used by the agency.

Customs and Border Protection officers exercise strong coercive powers in the airport environment and their interventions can be seen as intrusive and unduly personal. Officers routinely stop and question travellers and examine goods in their possession including diaries, mobile phones, cameras and computers. Officers can copy documents found in a passenger's possession and, in some circumstances, retain items for further examination.

In examining complaints received we also looked at the information that Customs and Border Protection makes available about travellers' rights and responsibilities and how a grievance can be made or redress sought.

Lack of information about making a complaint

Mr A complained to this office about questioning and baggage examination by a Customs and Border Protection officer. He claimed that officers failed to assist him when he wished to make a complaint at the airport, and that there was inadequate information at the airport about a traveller's right to make a formal complaint.

Our investigation identified that while Customs and Border Protection has a comprehensive complaints process, it is not supported by clear guidance to officers about how to handle complaints made at airports. A brochure explaining the complaint process is available in some areas within airports, however display of the brochure is limited and officers are not required to provide it when a traveller raise a grievance.

Customs and Border Protection agreed that several aspects of the initial complaint process at airports could be improved and is in the process of developing new guidelines to resolve this issue.

We look forward to working with Customs and Border Protection on improving its complaint-handling processes and making the information on avenues of complaint more accessible to passengers.

Penalties for a ring

Customs and Border Protection determined that GST was payable on a ring found in Ms B's luggage. She had not declared the ring and Customs and Border Protection imposed taxes and penalties totalling more than \$1,000. It impounded the ring when Ms B was not able to pay and issued a notice to her that if she was dissatisfied with the decision, she could 'lodge a taxation objection with the Commissioner within the specified periods'. The letter did not identify the Commissioner, provide the Commissioner's contact details or state the relevant period. Through her own enquiries, Ms B identified that the notice was referring to the Commissioner for Taxation. However, when she lodged a statement saying she would pay the GST but not the penalty, the ATO referred the matter to Customs and Border Protection because the objection was about the penalty. It reviewed the matter and upheld the penalty.

As a result of our enquiries, Customs and Border Protection reviewed the penalty again and reduced it. We formed the view that Ms B's review rights were not adequately explained. Customs and Border Protection acknowledged that the process should be made clearer, and discussed the objection process with the ATO. It has since updated the online content of the 'Notice of Goods Impounded and/or Tax Assessed' form to include information about the ATO's contact details. It also advised that new forms would be available that include revised guidelines for making objections.

The increased volume of information (and methods of storing information) that travellers now have available to them adds to the complexity of the Customs and Border Protection officer's role. Complaints to this office have often concerned an officer's power to examine laptops, memory cards and other

electronic devices containing large amounts of data, including photographs, financial records, contact details and other information that the person considers to be personal. In this context, the lawful and fair exercise of powers is increasingly important.

Copying a passenger's documents

Mr C's baggage was examined twice by Customs and Border Protection officers in a three-week period. Relying on information already available to them about Mr C, the officers stopped him so they could copy documents he was carrying. Our investigation identified that this was an invalid exercise of an officer's power. Customs and Border Protection accepted our assessment, and reinforced with its officers the circumstances that must exist to allow them to copy documents found in a traveller's possession.

Another complaint highlighted the need for consistent and correct record keeping before pursuing a debt. It also highlighted that systems need to be in place so that any issue over

outstanding amounts can be resolved as soon as possible. The longer the time taken to follow up an unresolved debt, the more difficult it becomes to satisfactorily resolve the complaint.

Pursued for an overdue fine

Mr D complained to our office about action being taken by Customs and Border Protection in October 2009 to recover an \$8,000 fine that was issued in 2007. Mr D contacted Customs and Border Protection to explain that the fine had been paid in full in 2007. Customs and Border Protection believed that \$500 remained outstanding and Mr D had to provide evidence to verify payment. Mr D advised Customs and Border Protection that the only record he had was his cheque book balance, and to obtain further evidence he would need to pursue the matter with his bank.

Mr D's records showed a payment of \$500 had been made to Customs and Border Protection's Perth office. Once it had received that information, Customs and Border Protection checked its records and acknowledged the payment had been made but had not been reconciled with its Debt Management Area. It withdrew its request for payment, apologised to Mr D and undertook to improve its processes.

During the year the Ombudsman commenced an own motion investigation into Customs and Border Protection's administration of some of its coercive powers in passenger processing. The investigation will assess Customs and Border Protection's policy and

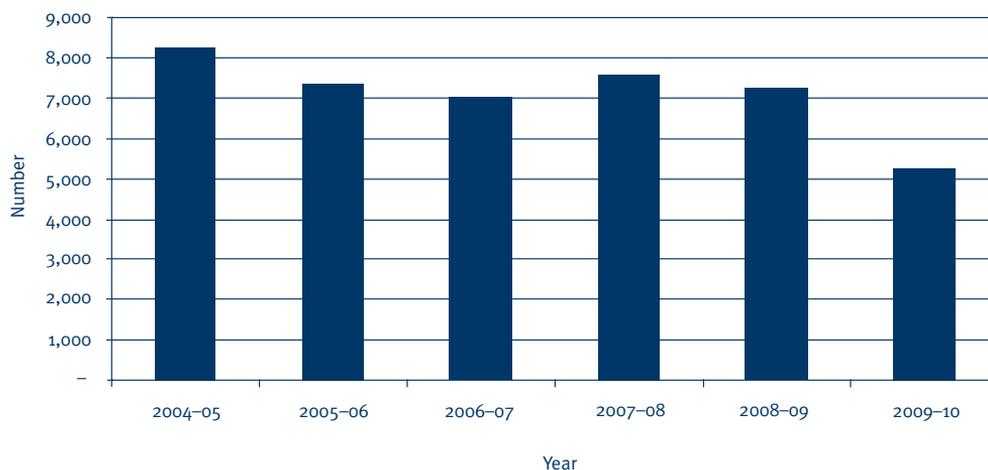
practice against legislation and principles of good administration, and in light of best practice principles set out by the Administrative Review Council. A report on the investigation is expected to be published in November 2010.

Centrelink

In 2009–10 the Ombudsman’s office received 5,199 approaches and complaints about Centrelink compared to 7,226 in 2008–09. This is a 28% decrease over the previous year and the lowest number in 10 years. The figure also includes 49 cases relating to the Northern Territory Emergency Response (NTER).

Despite the decrease, Centrelink continues to be the agency about which the Ombudsman receives the highest number of complaints. This is not unexpected given the high volume of transactions, the breadth and complexity of the services and payments that Centrelink delivers on behalf of Australian Government agencies. Figure 5.2 shows the trend in approaches and complaints over the past five years.

Figure 5.2: Centrelink complaint trend 2004–05 to 2009–10



Complaint themes

Although a number of factors are likely to have contributed to the reduction in Centrelink complaints, the absence of any stimulus or bonus payments (which generated large

numbers of complaints in recent years) and the implementation of a more flexible social security compliance framework, appear to have contributed to the significantly lower figure.

Procedural fairness

Over the years, the Ombudsman's office has received complaints from customers about payments being suspended and/or debts being raised on the basis of wrong information. In many cases, Centrelink has not told these

customers about the information it relied upon in deciding to suspend a payment or raise a debt, and therefore has not given them a chance to correct or provide more complete information.

An example of this can be seen in the case study, *Procedural fairness in decision making*.

Procedural fairness in decision making

Centrelink suspended Mrs E's parenting payment because it had identified that Mr E was transferring large sums of money through his bank accounts. Centrelink intended to investigate why these amounts had not been declared as income. Mrs E complained to this office about the suspension of her payment without warning or an opportunity to explain their circumstances. Centrelink subsequently learned that Mr E's accounts were being used as holding accounts for funds that were being transferred internationally for aid reasons, and that Mr and Mrs E derived no benefit from these transactions. As a result, Centrelink restored Mrs E's payments with arrears. Our office formed the view that Mr and Mrs E had been denied procedural fairness.

Transfer to more suitable payment

Previous Ombudsman reports have highlighted the effectiveness of analysing complaints from individuals to identify whether the same issue affects a larger number of existing or potential

customers. Our focus on identifying systemic problems has continued this year. An example of this approach can be seen in the case study, *Transfer to age pension*.

Transfer to age pension

We received a complaint from Ms F that Centrelink had not transferred her to the age pension (AP) when she reached age pension age in 1998. Ms F was on a lower payment until transferring to AP in 2009 and asked for a review of the start date of her AP (back to 1998). Centrelink decided that it could treat Ms F as having transferred to AP when she originally reached age pension age, and paid her arrears for the amount she had missed out on.

While investigating Ms F's complaint, we asked Centrelink about whether other customers had remained on a lesser payment despite reaching age pension age. We were advised that approximately 1,800 other customers had been identified as receiving another income support payment despite having reached age pension age and that Centrelink had subsequently invited those customers to apply for AP. We will continue monitoring this issue during 2010–11 to ensure that these customers are not disadvantaged.

Cross-agency issues

Many complaints to our office require us to make enquiries of more than one agency. This is particularly the case where one agency is responsible for delivering a product or service, while another has responsibility for the relevant policy or law.

Complaints that involve more than one agency can be particularly difficult to resolve. This challenge is evident in the case study *Medicare or Centrelink FAO service?*

Medicare or Centrelink FAO service?

Both Centrelink and Medicare Australia deliver services on behalf of the Family Assistance Office (FAO). Ms G complained to our office that the wording used in an FAO letter had caused her offence and confusion. Our investigation confirmed that the letter appeared to be inaccurate and confusing, and we suggested that Centrelink apologise to Ms G. Centrelink advised that the letter in question had been issued by Medicare and, as such, it would be more appropriate for that agency to apologise. We contacted Medicare to seek an apology and, following protracted discussions with both Medicare and Centrelink, eventually Medicare apologised to Ms G. It took nine months for the two agencies to agree who was responsible and take action to resolve Ms G's concerns.

In some instances the business of one agency can be affected by system errors or failures on the part of another agency, often to the

detriment of the customer. An example of this can be seen in the case study, *Cross-agency errors—FaHCSIA, Centrelink and ATO*.

Cross-agency errors—FaHCSIA, Centrelink and ATO

During 2009–10 the Australian Taxation Office (ATO) undertook a major upgrade of its information technology systems. The upgrade affected the ATO's ability to advise Centrelink that it had received tax returns. Also during this time, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) implemented a policy which saw customers have their Family Tax Benefit (FTB) suspended if they failed to lodge past year tax returns. The Ombudsman's office subsequently received a number of complaints from Centrelink customers whose FTB payments had been suspended because Centrelink's records indicated they had not lodged their tax returns. We encouraged these complainants to provide copies of their completed returns to Centrelink so that their payments could be manually restored pending receipt of official confirmation from the ATO.

Reports

Compensation for Detriment caused by Defective Administration

In August 2009 the Ombudsman's office released its own motion investigation report into the administration of the Compensation for Detriment caused by Defective Administration (CDDA) scheme. Under the scheme, the Ombudsman has a specific capacity to make recommendations that agencies reconsider cases where compensation has been refused.

The report focused on the handling of CDDA claims by Centrelink, the ATO and the Child Support Agency, but made recommendations relevant to all agencies handling CDDA matters. Since the publication of the report, the assessment of CDDA cases by Centrelink has improved. However, the office continues to be concerned about the lack of awareness of the scheme generally, particularly amongst non-government organisations representing people who are vulnerable to the effects of poor government administration.

Economic Security Strategy Payment

Our 2008–09 annual report reflected on the large number of complaints our office had received about the assessment of claims for the Economic Security Strategy Payment (ESSP). In November 2009 the Ombudsman's office released its report into the administration of the ESSP. The report focused on the broader lessons for policy departments for improving how they communicate about, and administer, payments to be delivered within tight time frames.

Review of circumstances leading to a fraud conviction

In May 2010 the Ombudsman's office released an investigation report into the handling of a fraud matter by Centrelink

and the Commonwealth Department of Public Prosecutions. The Ombudsman's report identified that both agencies relied on incomplete and inaccurate information in deciding to pursue prosecution against the customer. We expressed the view that, but for these errors, legal action and a conviction against the customer may not have eventuated. The report made recommendations for the agencies involved to provide redress to the individual customer, and to revisit their handling of her case and other similar fraud matters.

Reviews and delays

Our 2008–09 annual report noted continuing concerns with Centrelink's internal review processes and advised that we expected to release an own motion investigation report in 2009–10. This report has been completed and should be published before the end of 2010.

Engagement

In addition to investigating individual complaints, the Ombudsman's office has an important role in improving public administration. By maintaining regular, robust liaison with Centrelink during 2009–10 our office has been able to ensure it is informed of planned changes to social security and family assistance law and policy, provide input into how these changes might be implemented and communicated to customers. For example, we provided feedback to Centrelink about the way in which the same-sex reforms were communicated to customers who might be affected by them.

We also meet regularly with Centrelink to keep abreast of progress in changes to policy or operations that have resulted from Ombudsman recommendations. One example is the Government revisiting its approach to delivering payments to customers with acute or terminal illnesses.

Looking ahead

Same-sex initiatives

From 1 July 2009 Commonwealth legislation was revised to remove discrimination against same-sex couples. While most changes provided beneficial outcomes, in some cases in the social security and family assistance arenas, these changes had the potential to reduce or cancel the entitlements payable to some couples and families.

Early in 2010 the Government announced that Centrelink staff would take a ‘compassionate approach’ to raising or recovering debts resulting from these legislative changes. Centrelink acknowledged that fears of discrimination could result in same-sex relationships not being declared. The Ombudsman was able to advance procedural instructions to support more consistent outcomes and will continue to engage with Centrelink on these matters.

Acute and terminal illness

In March 2009 the Ombudsman’s office released an own motion investigation report into the assessment of claims for disability support pension (DSP) from people with acute or terminal illnesses.

Following our report, the government announced that from March 2010 customers with a serious illness receiving an activity-

tested payment could be granted a long-term exemption from activity testing. It also means that there are fewer reporting requirements that involve a job capacity assessment or repeated medical certificates.

Given the short time frame in which the new policy has been in place, we have not yet had an opportunity to assess the impact on customers.

Mental illness — servicing vulnerable customers

In 2009 we commenced an own motion investigation into the engagement of customers with a mental illness in the social security system. The investigation focused on the services delivered and overseen by Centrelink, the Department of Education, Employment and Workplace Relations and FaHCSIA in response to feedback from customers, carers, non-government organisations and agency staff that some customers with a mental illness have difficulty navigating the social security system.

Our investigation, *Falling through the cracks*, examines the effectiveness of current government policies and procedures as they affect customers suffering from a mental illness. The report should be published in second half of 2010.

Child support agency

The Child Support Agency (CSA) is an organisational unit within the Department of Human Services. In 2009–10, the Ombudsman received 2,280 approaches and complaints about the CSA, a decrease of 7.8% from the previous year. Approximately 28% of complaints were investigated.

Complaint themes

Complaint themes in 2009–10 included debt management, ‘care percentage’ decisions used in child support assessments, and a backlog in income reconciliations.

Collecting child support debts

The biggest area of CSA debt recovery is the collection of child support payable by payers for transfer to payees. However, the CSA also recovers overpaid child support from payees. A payee can be overpaid when the CSA retrospectively reduces the child support assessment, or if by error the CSA paid an amount to the payee without first having received it from the payer.

CSA’s debt enforcement method accounted for 14% of complaint issues, and was the largest investigated issue category. Almost as many complaints related to the CSA’s failure to collect (13.5%).

Debtors complain to us about the harshness of the CSA’s collection action and question the accuracy and fairness of the debts. Those relying on the CSA to collect debts and transfer money to them complain that the CSA is too lenient, or is not taking sufficient enforcement action. They may be frustrated by the CSA’s unwillingness to provide detailed or regular information about its efforts. By investigating these complaints we can independently confirm the reasonableness of the CSA’s actions, or alternatively, uncover and seek remedies for delay or inaction.

In 2009–10 we investigated three cases where the CSA had collected late payment penalties from a payer’s tax refund despite having agreed to cancel the penalties when the person had paid

off their child support debt. We were concerned that the CSA’s processes allowed this to happen and seemed to prevent the debtor from exercising their objection rights. The CSA has now refunded those penalties. In another case the CSA continued to charge late payment penalties on a debt that a court had suspended. We will continue to monitor the CSA’s administration of late payment penalties in 2010–11.

‘Care percentage’ decisions

We identified a pattern of complaints about the CSA’s administration of the rules for deciding what ‘care percentage’ to use for each parent when calculating child support, including delays, confusing advice and, in some cases, a lack of understanding on the part of CSA staff of the complex rules that applied from 1 July 2008. At the same time, we noted that the rules used by Centrelink to work out a parent’s level of care for Family Tax Benefit (FTB) did not seem to cause the same problems.

In the 2009–10 Budget, the Government announced that from 1 July 2010, it would align the CSA and Centrelink rules for working out care percentages (the ‘alignment of care’ measure). In preparation we met with policy officers in FaHCSIA to highlight the problems we had identified in complaints. Many of those problems appear to have been addressed by the alignment of care measure; however, we will continue to monitor this area of the CSA’s administration.

Income reconciliations

Last year we reported significant delays in the CSA reconciling parents’ estimated incomes against the Australian Taxation Office’s (ATO) assessments. This backlog arose from system problems and resourcing decisions within the CSA, not the ATO. As at 30 June 2010, the CSA reported having reconciled 249,732 estimates, with approximately 143,000 remaining. A change in child support law from 1 July 2010 will overcome the need for the CSA to manually calculate every estimate reconciliation. The CSA expects to complete the backlog of estimate reconciliations by 30 June 2011.

The CSA's reconciliation of a parent's income can lead to an additional child support debt for the payer or an overpayment of child support for the payee. If they have not kept detailed records of their income, the person whose income has been reconciled may not be able to challenge the CSA's decision. This was a problem in one complaint where the CSA reconciled a parent's 1999 income years later, in 2010. Lengthy delays like this mean that statutory time limits for the Change of Assessment (CoA) process and court applications for leave to apply for a CoA have often expired.

These statutory time limits can also have unfair results for one parent when the other parent lodges a late tax return showing that their income was less than the CSA had used in working out child support. Two complainants to this office have been required to repay money to the CSA that they received in good faith and have no way to challenge. We have recommended that the CSA assist these complainants to prepare an application to the Department of Finance and Deregulation for these debts to be waived.

The CSA's interaction with other Commonwealth agencies

The CSA and Centrelink share information to ensure that people receiving the higher rate of FTB for a child of a previous relationship also have a current child support assessment for that child. The following case shows how a CSA error can flow on to affect a person's FTB.

The CSA and the ATO share information required to administer the child support scheme. Sometimes, the automatic exchange of information is not enough. The case study *Caught in the wheels* shows that it can sometimes be difficult to get the two agencies to communicate with each other.

Little mistakes with serious consequences

A particular challenge facing the CSA is to ensure that its processes do not harm the relationship between separated parents. A small slip-up can have serious repercussions, as in the case study *A trail of errors*.

Computer says no!

The CSA mistakenly deleted Mrs H's child support case for her daughter from its system. It told Mrs H it would take up to three months to fix this problem. Based on a computer match shortly afterwards, Centrelink advised Mrs H that she had been overpaid \$9,000 in FTB. Centrelink's decision was based on records that showed no child support assessment since 2005.

Mrs H and the CSA told Centrelink about the error. Centrelink said that it would cancel the overpayment when the CSA fixed the mistake, but in the interim, it would deduct \$60 per fortnight from her FTB for the overpayment. Mrs H complained to the Ombudsman but it still took almost two months for the CSA problem to be resolved and for Centrelink to cancel the overpayment and refund the deductions to Mrs H.

Caught in the wheels

The CSA asked Mr J to pay a child support debt based on an incorrect ATO assessment. Mr J told us that although the ATO had since amended its assessment, the CSA refused to update his child support unless he could prove that the assessment was incorrect because of an ATO mistake.

We recommended that the CSA provide Mr J with a letter to the ATO explaining the information the CSA needed and why. The CSA did this, but the ATO refused to give Mr J a letter to take back to the CSA. Only at our request did the CSA contact the ATO to get the information it needed and amend Mr J's child support assessment, cancelling the incorrect debt.

A trail of error

Ms K was a child support payee with a fear of domestic violence from her former partner, Mr L. The CSA discovered that Mr L had underestimated his income for his child support assessment and asked him to pay arrears. Ms K was afraid that Mr L would force her to give back anything that the CSA collected for her. She spoke to a Centrelink social worker about her situation, then instructed the CSA to cancel her child support assessment and Mr L's arrears.

The CSA paid Ms K \$600 that it had intended to refund to Mr L. Ms K contacted the CSA to find out whether she should return it. The CSA told Ms K that she could keep it: Mr L might not know she had received the money and he would probably think the CSA had kept it. Ms K complained to the Ombudsman about this advice, as she was not sure what to do. She suspected that Mr L knew the CSA had paid the money to her and was afraid of what might happen if she attempted to conceal this from him. Our investigation of Ms K's complaint achieved the following:

- we were able to confirm for Ms K that Mr L was aware that she received the money, making it easier for her to handle any consequences
- the CSA advised Mr L that it had been 'remiss' in paying \$600 to Ms K and invited him to apply for compensation
- the CSA acknowledged the sensitive nature of Ms K's case and apologised to her
- the CSA re-examined the breakdown in its procedures and identified a system improvement to reduce the risk to other vulnerable payees.

Reports

Own motion investigations and submissions about the CSA

This year we published a report, *Australian Federal Police and the Child Support Agency, Department of Human Services: Caught between two agencies: the case of Mrs X (report 14/2009)*. The Ombudsman also made a written submission to an independent review of the CSA's administration by Mr David Richmond AO, *Delivering Quality Outcomes*.

In 2009 we commenced an own motion investigation into the CSA processes and practices involved in accessing a parent's 'capacity to pay'. Another own motion investigation commenced in 2009 relates to 'write only' procedures, which limit service to customers who display difficult and challenging behaviour. Both investigation reports are due for release in the second half of 2010.

Improved timeliness for CSA objections

We have previously reported our concern about the CSA's failure to finalise its internal reviews, known as objections, within the 60-day period set by law. In 2009–10, results significantly improved and compliance is now nearly 100%.

Better Departure Prohibition Order procedures

The CSA can stop a person who owes arrears of child support from leaving Australia by making a Departure Prohibition Order (DPO). In June 2009, the Ombudsman released a report *Child Support Agency: Administration of Departure Prohibition Orders (Report No 8/2009)* with eight recommendations, which the CSA has implemented. The CSA now has better DPO procedures and its letters contain a comprehensive list of appeal rights and options to challenge a DPO.

Comcare

Comcare regulates workers' compensation and work health and safety. The majority of complaints received by our office about Comcare concern its management of claims from injured workers. During 2009–10 our office received 72 complaints about Comcare, down from 95 the previous financial year, representing a 24% decrease.

Comcare will often need to consider a range of medical information when making decisions regarding eligibility for compensation. This can prolong the time taken to make a decision, which is a source of frustration for complainants. During 2009–10 the office was able to assist complainants by ensuring any unnecessary delays were addressed and facilitating better explanations of decision processes.

The investigation of two complaints about Comcare highlighted a gap in its ability to fully compensate claimants who had suffered a financial loss due to administrative error. In both cases the complainants had originally missed out on their proper entitlement due to an error in calculation. The mistakes were undetected in one case for 13 years, and 10 years in the other. Upon discovering the error, Comcare paid the amount originally owed, but determined that under its legislation it could not pay interest on that money.

Although the office accepted that the payment of interest in these cases was problematic under Comcare's legislation, the Ombudsman issued a report (report 4|2010) recommending that Comcare give further consideration to the issue of compensation for the two complainants. The Ombudsman also recommended that Comcare consider how it could address similar claims in the future.

In response, Comcare found a way to fully compensate one of the complainants and has indicated that it hopes to at least partially compensate the other. Comcare has also given the office an undertaking to develop and seek approval for a scheme to deal with future claims for compensation caused by its defective administration. It is hoped that such a scheme will enable the complainant who has only been partially compensated to receive their full entitlement.

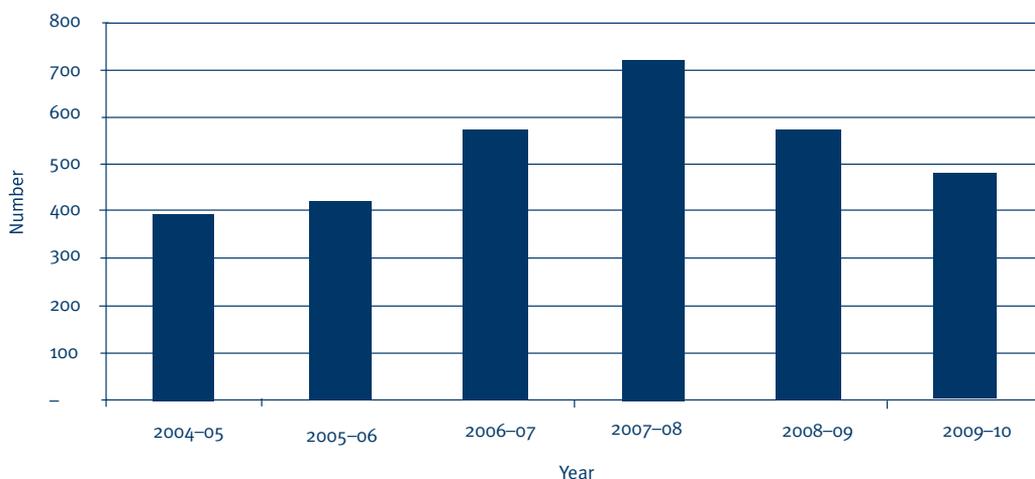
It is pleasing to note that after the report was issued, Comcare undertook its own review to ascertain if there were other similar cases. While the review has not identified any further underpayments, Comcare's proactive response to the report is a good example of how an agency can use feedback from individual complaints as an opportunity to improve customer service more generally.

Department of Education, Employment and Workplace Relations

In 2009–10 the Ombudsman’s office received 479 approaches and complaints about the Department of Education, Employment and Workplace Relations (DEEWR). This is a 16% decrease from the 571 approaches and complaints we received in 2008–09. Figure 5.3 shows complaint trends over the past five years.

The number of approaches and complaints received about DEEWR during 2009–10 was the lowest in the past four years, and sees a return to the level of complaints received prior to the implementation of the Welfare to Work social security reforms.

Figure 5.3: Complaints received for the period 2004–05 to 2009–10



Complaint themes

As part of our ongoing work in looking at complaint trends and themes, we engaged with DEEWR to discuss issues about individuals as well as broader groups of customers, and to make recommendations for how policies and procedures might be improved.

Some of the issues that our efforts focused on in 2009–10 were about the:

- accuracy and consistency of decision making about applications for pre-migration skills assessment

- advice given by contracted providers
- timeliness of decisions made under the General Employee Entitlements and Redundancy Scheme (GEERS).

Apprenticeships

During 2009–10 the Ombudsman’s office investigated several complaints about the handling of claims made under the Australian Apprenticeship Incentives Program administered by DEEWR. Two main issues emerged from these complaints: quality of advice given by the Australian Apprenticeships Centre about claimants’ eligibility; and consistency in decision making.

Consistency in decision making

The case study *Australian Apprenticeship Support Services* is an example of an

investigation which considered the adequacy of DEEWR's guidance to staff to ensure consistency of decision making.

Australian Apprenticeship Support Services

Ms M took on an apprentice and expected to receive an incentive payment. When she found out that she did not qualify for the payment because of a change made to the guidelines while the apprentice was working for her, Ms M complained to this office. Our investigation found that DEEWR's decision to refuse Ms M's claim was not unreasonable. However, no consideration had been given to whether Ms M's claim could be granted under the 'exceptional circumstances' provision of the payment guidelines.

Discussion with DEEWR revealed that it did not have any examples or guidance regarding what might be considered exceptional circumstances. We queried DEEWR about the lack of information for claimants to decide whether or not to seek payment under exceptional circumstances. A lack of guidance also gives decision makers broad discretionary powers. DEEWR advised that it does not consider specific examples would be appropriate, but explained that staff considering claims of exceptional circumstances need to discuss these to ensure consistency of outcomes. Our office is currently considering whether to pursue this issue further.

Compensation for advice or actions of contracted providers

During 2009–10 our office received a number of complaints from people who believed they had been financially disadvantaged as a result of advice given or actions taken (or not taken) by providers contracted to deliver services on behalf of DEEWR. If the complainant had dealt directly with DEEWR on these matters, it would have been open to them to lodge a claim for compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. However, they had no such avenue of redress when dealing with contracted providers.

Our office provided DEEWR with an issues paper on this topic in June 2010, suggesting that it consider implementing some CDDA-type means of compensating victims of defective administration under existing contracts and incorporating this process into new contracts.

In response DEEWR acknowledged that the suggestion raised in the issues paper was worthy of further consideration, however, the matter raised broader issues that should be canvassed at a whole-of-government level. DEEWR further noted that consideration might be given to revisiting the issue after the Senate Legal and Constitutional Affairs Committee issues their report on government compensation payments.

Policy supporting sensible decisions—Trades Recognition Australia and the Trans-Tasman Mutual Recognition Agreement

In 2009 the Ombudsman’s office received a complaint about the interaction between two schemes for assessing skills for living

and working in Australia. Our investigation, outlined in the case study *TRA and the TTMRA*, highlighted the incongruence of a licence that had been granted to a person on the basis of an international mutual recognition scheme not being considered suitable evidence to assess their job skills for permanent residency. This resulted in DEEWR agreeing to revisit its approach to these matters.

TRA and the TTMRA

Mr N was a New Zealand citizen living in Australia who was issued a licence to work as an electrician under the Trans-Tasman Mutual Recognition Agreement (TTMRA). Mr N decided to apply for permanent residency, and was required to undergo a skills assessment conducted by Trades Recognition Australia (TRA). Despite the fact that he was already living and working as a licensed electrician in Australia, TRA rejected Mr N’s application on the basis that he had not sufficiently demonstrated his qualifications.

Our investigation revealed that under the Uniform Assessment Criteria (UAC) used by TRA to assess applications, a licence issued under the TTMRA was not considered suitable evidence of a qualification. We highlighted the lack of logic in this approach and, as a result, TRA has given an undertaking that it will revisit its treatment of licences issued under the TTMRA in the course of its review of the UAC.

Updates

Trades Recognition Australia

In our 2008–09 annual report we noted that we had received a large number of complaints from applicants wishing to obtain trade recognition for migration purposes. Applicants were unclear why their applications had been unsuccessful. In 2009–10 the number of complaints reduced significantly, though it is not yet clear whether this reduction is the result of improved decision making, recording and advice by TRA, or other factors, such as a recent change in TRA’s assessment process. We also note that there is a cost to applicants in seeking a review.

The office will continue to monitor the adequacy of feedback that TRA provides to applicants prior to decision review.

Job seeker transfers

It is pleasing to note that the number of complaints regarding job seeker transfers has reduced significantly during 2009–10. While there could be a range of reasons for this reduction, it is worth noting that DEEWR implemented its new ‘Job Services Australia’ (JSA) model of employment services from 1 July 2009. The JSA model replaced the previous Job Network and is promoted by DEEWR as giving job seekers and providers increased flexibility to access appropriate support and services.

Despite the reduction in complaints on this issue, it continues to be a significant source of complaints for our office and we will continue to monitor it in the coming year.

Cross-agency issues

Child care payments—Centrelink and DEEWR responsibility

In previous annual reports we have discussed the complexities of investigating complaints that involve more than one agency. In 2009–10 we received a number of complaints about the Child Care Management System (CCMS), which is used by the Government to exchange information with child care providers about customer usage and entitlements. While Centrelink delivers the payments to assist families with the cost of child care, DEEWR has responsibility for managing the CCMS and relationships with child care providers. This has led to customers experiencing confusion and difficulty in understanding which agency is responsible for resolving errors in the assessment of child care entitlements. The following case study, *Centrelink or DEEWR CCMS?* illustrates just such an example.

Looking forward

In March 2010 DEEWR implemented a new model of delivering employment services to people with a disability, called Disability Employment Services. This model replaces a number of different ways that these services were previously delivered, and combines them into two distinct streams of support.

Given the short time frame in which the new model has been in place, we have not yet had an opportunity to fully assess how the new model is working for jobseekers. We will monitor this area for complaints during 2010–11.

Centrelink or DEEWR CCMS?

Ms O complained that she had not received her quarterly child care tax rebate (CCTR) payment despite contacting Centrelink more than 15 times. She advised that, at the request of Centrelink, her child care provider had resubmitted its attendance data three times and still no payment had been forthcoming.

We contacted Centrelink and DEEWR and were advised that, in order for the problem to be rectified, Ms O's child care provider would have to retract all previous attendance data and resubmit the data. This information had not previously been provided to Ms O because she had been dealing with Centrelink and not with DEEWR, who oversees the CCMS.

We contacted Centrelink and DEEWR to draw their attention to the problems faced by families when trying to understand why their CCTR had not been paid, and recommended that a suitable complaint process be implemented. DEEWR and Centrelink subsequently advised that there was a process in place through Centrelink with escalation points to the CCMS. The agencies advised that, following our investigation, they had met to review the complaint process and explore further improvements.

Department of Environment, Water, Heritage and the Arts and Department of Climate Change and Energy Efficiency

During 2009–10, we received 341 complaints about the Department of Environment, Water, Heritage and the Arts (DEWHA), and 153 complaints about the Department of Climate Change and Energy Efficiency (DCCEE).

In contrast, in 2008–09 we received only 46 complaints about DEWHA and six complaints about the Department of Climate Change. In 2009–10 we formally investigated 64 complaints about DEWHA and 69 complaints about DCCEE.

Most complaints received during 2009–10 concerned the Australian Government's energy efficiency and renewable energy programs, particularly the solar panel rebate under the Solar Homes and Communities Plan, the solar hot water rebate under the Energy Efficient Homes Package, the Home Insulation Program, and the Green Loans program.

On 8 March 2010, DEWHA's energy efficiency and renewable energy functions were transferred to the Department of Climate Change, which became the Department of Climate Change and Energy Efficiency.

Complaint handling

Many of the complaints we received raised concerns about DEWHA's failure to respond adequately to enquiries and complaints lodged directly with that department. In light of this, in September 2009 we commenced an own motion investigation into DEWHA's complaint-handling policies and processes.

In its response to this investigation, DEWHA acknowledged that enquiries and complaints to the department had increased in parallel with the expansion in its energy efficiency programs, and that its complaint-handling arrangements were no longer adequate given its changed circumstances. It advised that it was in the process of revising its complaint-handling policies and procedures, with reference to the Ombudsman's *Better practice guide to complaint handling*.

In early 2010, staff from the Ombudsman's office and DEWHA met via teleconference to discuss the department's enquiries and complaints processes, particularly in relation to the Green Loans program.

After the transfer of DEWHA's energy efficiency programs to DCCEE in March 2010, we decided to finalise our investigation without publishing a report, given that DEWHA was already in the process of bringing its complaints policies and procedures into line with our *Better practice guide to complaint handling*. We will continue to work with DEWHA as it goes through this process.

We also worked closely with DCCEE as it established new complaint-handling processes after responsibility for the energy efficiency program was transferred to it. Once again, we will continue to work with the department as it implements a centralised complaint-handling system that reflects our better practice guide.

Delay in processing

Mr P applied for a solar panel rebate in early 2009. The claim form indicated that processing would take six weeks. Five months later Mr P complained to our office that his application had not been finalised, and that DEWHA had not explained the delay, despite him making several phone calls to the department and writing to the Minister. The department explained to us that the delay was caused in part by Mr P's application having been incomplete. The department had sought the missing information from the installer, who had taken two months to provide it. However, the department acknowledged that it had not responded appropriately to Mr P's complaints. It had not explained to him that his application was incomplete, nor that it had sought the information from the installer.

No complaint process

Ms Q applied for a solar hot water rebate in May 2009. Several weeks later she contacted DEWHA to confirm that it had received her application. She was told that that information was not available, and to call back in four weeks. Four weeks later, Ms Q called the department and was told that the department still could not confirm that it had received her application because of delays in processing applications. Ms Q complained to our office that when she then asked to speak to a supervisor to lodge a complaint, she was told that there was no process available to do so. Subsequently Ms Q's application was approved, but there was a delay by the department in depositing the funds into her bank account. Ms Q then lodged an online complaint with the department, and made further phone calls, but the department did not respond to her complaint. The recorded reason was: 'Due to the tone of her calls I have not attempted to respond or provide further explanation to her complaints (misinformation, poor service, incompetence etc.)'.

Solar panel rebates

On 8 June 2009, the Minister for the Environment announced that the Australian Government would only accept completed applications for the popular \$8,000 solar panel rebate that were sent to DEWHA before midnight on 9 June 2009.

We subsequently received many complaints about DEWHA's rejection of applications because they were received late or were incomplete. We carefully considered the reasonableness of the department's criteria

for determining whether an application had been sent before the 9 June 2009 cut-off, the reasonableness of its criteria for deciding whether an application was substantially complete or not, and how the department applied these criteria in particular cases.

In many cases, we were able to satisfy the complainants that the department's criteria were reasonable, and had been properly applied in their cases. In other cases, the department agreed to reconsider the applications as a result of our investigation.

We also received complaints about solar panel applications having been lost. The department confirmed that more than 1,000 applications may have been lost. Most of these were claimed to have been sent in bulk by installers before the 9 June cut-off. It was unlikely that an investigation by this office would be able to determine whether any particular applications had in fact been lost, and whether the loss had occurred in transit or after they had been received by the department.

In light of this, we again focused on the reasonableness of the criteria used to determine whether to accept resubmitted applications. DEWHA and DCCEE proactively engaged with us in designing the process for considering resubmitted applications. We ensured that the criteria were clearly communicated to the installers who had complained to our office, as well as to their individual customers.

Group application

Fifty permanent residents of a caravan park formed a group to apply for solar panel rebates through a single installer. The installer claimed to have submitted all 50 applications prior to the 9 June 2009 deadline. DEWHA accepted 43 applications, but rejected seven for lateness and/or incompleteness. Upon review, one application was accepted but the rejection of the other six was upheld. However, after investigation by our office, the department (now DCCEE) conducted a second review and granted approval for the remaining six applications.

Two out of three

Mr R complained that an installer had submitted three applications for the solar panel rebate for himself and two other members of his family. The other two applications had been approved, but his had been rejected as incomplete. Our investigation confirmed that, in Mr R's case, the installer had neglected to include the part of the application in which the installer certified that the proposed system would comply with the relevant standards and legislative requirements, meet the rebate guidelines, and was appropriate for Mr R's location. We considered that it was not unreasonable for DCCEE to have assessed the application as materially incomplete.

Lost applications

Mr S has a business installing solar panels, and complained that he had sent in more than 3,000 solar panel rebate applications before the 9 June 2009 cut-off, but DEWHA had no record of receiving 618 of these. Mr S had met with the department in October 2009, and had followed up but had not received clear advice about the missing applications.

Mr S also complained that the department had paid the rebate to three of his customers whose applications had been lost, after they had submitted duplicate applications together with statutory declarations stating that their original applications were posted by 9 June 2009. However, DEWHA had not adopted this for other missing applications.

In response to our inquiries, DEWHA advised that it had approved Mr S's three customers' applications in error. It again met with Mr S and advised him that it was still finalising its policy on lost applications. Mr S also contacted us after the meeting and expressed concerns about the department's request that he provide copies of the original applications. He explained that very few of his customers had kept copies.

We discussed the situation with DEWHA and also DCCEE (after responsibility for the program was transferred to it in March 2010). We emphasised the need for a timely resolution to the problem, given the large number of people who were affected.

Ultimately, in May 2010 DCCEE wrote to all applicants whose applications were missing, inviting them to resubmit their applications, together with supporting evidence to show that they had applied before the 9 June 2009 cut-off. Where applicants had not kept a copy of their original application, they were offered the opportunity to submit a duplicate application together with a statutory declaration to that effect.

In our view, this policy for dealing with lost applications seemed reasonable.

Home Insulation Program

We received more than 60 complaints concerning DEWHA/DCCEE's administration of the Australian Home Insulation program. Most of these complaints were from householders who were concerned about delays in rebate applications being approved, or from installers about approved rebates being paid.

Some householders were concerned about the quality and safety of the insulation that had been installed in their homes, and whether the department was taking steps to regulate installers and check the quality and safety of the insulation materials used.

Householders also complained about fraudulent claims for the rebate in relation to their properties. In some cases, the possibility of a fraudulent claim came to the householder's attention when their rebate application was rejected because a rebate had already been paid for their property. In other cases, the householder received a letter from the department confirming that a rebate had been paid to an installer for their property, when the householder had not in fact made an application. In these cases, we advised the complainant to draw the department's attention to the issue so that it could take compliance action.

Green Loans program

We received 126 complaints about the Green Loans program from Green Loans assessors concerned about difficulties in obtaining

assessment bookings, or about delays in the processing of invoices and difficulties in communicating with the departments generally.

Green Loans assessors

We received complaints from Green Loans home sustainability assessors about the DCCEE's delayed payment of their invoices. In some cases, the complainants had contacted the department numerous times to enquire about the status of their payments. Although they had used the dedicated email address and phone number advertised by the department, they had not received any response. DCCEE advised our office that the same team processing the payments was also required to deal with complaints and enquiries. As payment processing was considered a priority, the department was not able to respond to complaints or enquiries in a timely manner. At our suggestion, DCCEE improved the information it provided to assessors about payment time frames by posting regular payment processing updates on its website, and amending its auto-reply email message to inform complainants to expect delays and to advise which invoices the department was currently processing.

Systemic issues

Many of the complaints to our office echoed media concerns about the energy efficiency programs. The Australian Government has responded to some issues by making changes to administration, or by commissioning an inquiry into the relevant aspect of the program.

We declined to investigate complaints where the departments were already taking steps to

remedy problems, and where our investigation would have duplicated another inquiry. However, even in these cases we liaised regularly with the departments to ensure that they were aware of the full range of issues and concerns that complainants were raising with us, and to ensure that steps were being taken to address the problems. We also regularly sought improvements to their complaint-handling processes and the way in which information was provided to the public.

Department of Families, Housing, Community Services and Indigenous Affairs

Indigenous programs in the Northern Territory

The office has been funded until 2011–12 to provide independent oversight of the Northern Territory Emergency Response (NTER) and the Closing the Gap NT initiatives.

Apart from overseeing the NTER and the Closing the Gap NT initiatives, the Indigenous Unit of the Commonwealth Ombudsman also monitors all Australian Government programs that have an impact on Indigenous Australians in the Northern Territory (NT).

Complaints received from Indigenous Australians in the NT primarily relate to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Education, Employment and Workplace Relations (DEEWR) and Centrelink. This is to be expected as they are large and complex government agencies responsible for programs that have an impact on people's everyday lives. The Ombudsman also works with other agencies as the need arises.

Complaint themes

The Ombudsman's office dealt with 322 complaints relating to the NTER or Indigenous programs in the NT. Almost all of these complaints were received during outreach to 39 communities and town camps.

In considering these statistics the following should be noted:

- the number of complaints received is directly related to the number of outreach visits conducted because few complaints are received from Indigenous people through the office's usual avenues (telephone, letter and internet)

- the Ombudsman's office's outreach program is scheduled to ensure adequate time is available for investigations to be completed, and issues to be pursued
- it is clear from our outreach visits that there are many more complaints than this office is presently resourced to handle.

The issue which attracts the highest number of complaints is housing. Problems arise from complex leasing arrangements, the Strategic Indigenous Housing and Infrastructure Program (SIHIP), the devolution of housing repair and maintenance services to local shires, as well as the delivery of municipal and essential services to communities. Such complaints are recorded against FaHCSIA; however, they often also concern the NT Department of Housing, Local Government and Regional Services (DHLGRS), for example:

- housing repairs and maintenance
- rent
- tenancy agreements
- housing allocation decisions
- housing reference groups
- municipal and central services—such as mowing, fencing, repairs to and usage of public buildings.

The case studies on the following page highlight the diversity of concerns.

Other major issues of complaint relate to Income Management, the School Nutrition Program, Job Services Australia providers and land council decisions. Businesses and individuals also complain about the BasicsCard scheme.

House maintenance

Ms T complained about the condition of her house, saying that the stove did not work and that no repairs or maintenance had been undertaken in her community for some time. This was an issue for many people in the community.

Our investigation revealed some confusion about who was responsible for the repairs. While FaHCSIA was the landlord, responsibility for tenancy management and repairs had been devolved to the NT DHLGRS. DHLGRS had provided funding to the local shire for repairs and maintenance, but the shire was not clear on whether stoves were included in those things they were required to maintain.

As a result of this complaint and our investigation, the shire arranged for Ms T's stove to be replaced, along with 19 others in her community.

Community access to playgrounds

Residents of a remote community complained that there was no play equipment for the children outside of school hours as the school gates were locked at the end of the school day. We were told that new play equipment had been ordered for two other communities in the area, but not for this community. While we were in the community we saw metal grids placed in the area where the community said they would like a playground located.

When we investigated, we were advised that the Shire Council had not ordered play equipment for this community because there was play equipment at the school. Following our investigation, the Shire Council ordered new play equipment and the agency will fund the erection of shade cloth over the play area.

BasicsCard usability

Mr U owned a roadhouse and had applied to Centrelink to be approved as a BasicsCard merchant for fuel, power and groceries. Centrelink had approved Mr U to be a BasicsCard merchant for fuel and power, but not for groceries because the policy, which was developed by FaHCSIA, did not allow roadhouses to sell groceries through BasicsCards. Mr U had requested a review of the decision, but did not receive a response.

Following an Ombudsman investigation of this complaint, Centrelink reviewed its decision and decided to approve Mr U's roadhouse for the full range of BasicsCard purchases, including groceries. We recommended that Centrelink review its decision letters to merchants so that it explained the merchant's review rights. Centrelink accepted our recommendation and amended its template letters. The complaint investigation also prompted a review of the roadhouse policy.

Complaint themes and cross-agency issues

It is evident that most agencies have not established accessible complaint mechanisms of their own in remote communities.

Consequently, many issues that could be resolved by agencies do not come to their attention until we raise the complaint with them.

The need for improved communication was the subject of a public report that we released in late 2009 arising from complaints about asbestos management in remote communities.

A recurring theme throughout complaints is a concern about poor communication or a lack of information provided to Indigenous people about government programs affecting them. This is particularly acute where program decisions are made but not adequately conveyed or explained. Passive delivery of information, and information which is inappropriately targeted, misleading, unclear, untimely, inaccessible or simply non-existent lies at the heart of a significant number of complaints investigated by the Ombudsman, either as a primary issue or related factor.

This often involves a failure to engage, or interpreters not being available (which is the subject of a separate public report under consideration by this office).

This issue is seemingly at odds with the observation made by a number of community organisations that Aboriginal communities feel they have been 'over-consulted'. Perhaps it is the same few prominent community leaders who have been consulted many times on issues of lower importance, and on broader more important issues, consultation with communities has not been well targeted. An ongoing issue reported to this office is the failure of clear follow-through or reporting back on consultations.

Poor communication is often compounded by the increasing trend towards service delivery involving two and often three tiers of

government. While multijurisdictional service delivery can present complex problems for agencies, there is an increased risk of people being passed from one level of government to another without their concerns or needs being addressed.

The Ombudsman's role is particularly complex in this area because so many programs for Indigenous Australians are cross-agency or multijurisdictional. Additional issues arise because of the way Council of Australian Governments (COAG) agreements define or describe Australian Government responsibility for outcomes.

Programs and services may also be delivered through memorandums of understanding (MOU) and service level agreements between the Australian and NT Governments or through more direct funding to states and territories. We generally assert Commonwealth jurisdiction on the basis that the Commonwealth, primarily via FaHCSIA, is accountable for the delivery of outcomes under these high-level agreements.

Reports

The Commonwealth Ombudsman is currently drafting a report about agency access to Indigenous language interpreters.

We are also finalising a report under s 15 of the Ombudsman Act that arose from an investigation into a specific complaint concerning the administration of Performance Funding Agreements for service providers based in remote Indigenous communities. Another report we are currently finalising relates to the review rights of income-managed people in the NT.

Engagement

In addition to complaint investigations, the Ombudsman's office conducts regular formal liaison meetings with the key agencies involved in Closing the Gap NT programs. The aim is to gain early feedback about various government programs and to provide an opportunity for agencies to adjust and refine their programs and processes before more people are adversely affected.

This strategy has the potential to address a problem before it affects more clients and attracts wider attention and criticism. The Ombudsman is in a strong position to contribute to the improved delivery of government programs and if these cooperative objectives are understood, improved outcomes should follow.

The Ombudsman's office deals predominantly with FaHCSIA, Centrelink and DEEWR and attends regular liaison meetings in Darwin and Canberra. During 2009–10, we attended agency liaison meetings with other agencies that run programs for Indigenous people and remote communities in the NT, including:

- the Attorney-General's Department
- Department of Broadband, Communications and the Digital Economy
- Department of the Environment, Water and Heritage
- Department of Health and Ageing.

During the year, we also met regularly with:

- the Indigenous Policy Branch of the Department of the Prime Minister and Cabinet in an effort to advance whole-of-government issues and receive updates from inter-agency forums of which we are not members
- the Coordinator-General for Remote Indigenous Services to share information and discuss relevant issues and approaches
- Territory Housing—a joint Australian and NT Government office in Darwin.

Outreach

The Commonwealth Ombudsman is the primary avenue of independent oversight of many Australian Government Indigenous programs. As a result, visits to Indigenous communities in the NT form a very important component of our outreach program.

An MOU with the NT Ombudsman signed in December 2009 facilitates a single interface for people who wish to complain about cross-jurisdictional issues in the NT.

The frequency of outreach visits and the time taken to investigate complaints can be significantly lengthened due to agency response times. We recognise the challenges that a large government agency such as FaHCSIA has in responding to our questions, which will often relate to a complex and multijurisdictional environment. We are currently refining our approach to complaints that involve cross-agency issues in consultation with FaHCSIA and relevant NT Government agencies.

Community organisations

We continue to examine how we can best engage with community agencies and organisations in the NT. These organisations are an important source of information about issues of concern and they also have the capacity to refer their clients to our services.

In 2009–10 we continued to share promotional and educational activities with other organisations. For example, together with the NT Ombudsman we made a presentation to the Batchelor Institute.

Other activities included information presentations about Ombudsman services to community board meetings and other community organisations such as the Central Australian Youth Link-Up Service (facilitating internet access at Papunya).

Looking ahead

Many complaints arise from the experience of one individual who is lost in the enormity of government programs. People need to know where to get information about government programs that affect them.

After more than three years of the NTER and Closing the Gap NT, communication challenges in remote NT remain a significant issue, and are the underlying cause of many complaints.

These challenges are shared by the office in its own communication with Aboriginal people and communities in the NT and nationally. The office is committed to improving its engagement to make its own services more widely accessible.

A project officer was engaged to develop an Indigenous communication and engagement

strategy in 2010. A key part of this project is formal evidence based research in order to shed light on how we can communicate better. We want to find out what messages Indigenous people respond to and why. We want to target our messages better and use the most appropriate tools. This research will be completed in the second half of 2010. It will assist the office to:

- be accessible to more Indigenous Australians
- use best practice communication with Indigenous Australians
- engage more closely with community and other stakeholders by sharing this information.

In other policy areas, decision-making tools can get in the way of good decisions at the expense of policy outcomes. The case study *Helping Children with Autism Scheme* illustrates this issue.

Helping Children with Autism Scheme

Ms V was granted assistance under the Helping Children with Autism (HCWA) scheme, which aims to support early intervention for under-school-age autistic children. Ms V complained to us that FaHCSIA had refused her claim for the Outer Regional and Remote Payment (ORRP), which provides additional assistance for HCWA recipients, because her address was not considered 'outer regional and remote' (under the Accessibility Remoteness Index of Australia (ARIA+) tool used to assess ORRP claims). Ms V complained that she would not be able to use the HCWA funding she had been granted because she could not afford to travel to access these services.

We advised FaHCSIA of our view that while a grantee may live near a 'service centre' as classified by ARIA+, it does not necessarily follow that there is a FaHCSIA approved provider in the vicinity of that service centre. We suggested that FaHCSIA consider using an alternative method of assessment. In response, FaHCSIA agreed to implement a special consideration for assessing ORRP applications. Under the changes, Ms V was granted the ORRP for her family. In addition, as a result of this enquiry other internal review processes were implemented to assist families seeking assistance.

Fair Work Ombudsman

The Office of the Fair Work Ombudsman (Fair Work Ombudsman) was established on 1 July 2009 to promote harmonious, productive and cooperative workplace relations, and to monitor, enquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws. Its predecessor, the Office of the Workplace Ombudsman, had similar functions, although the Fair Work Ombudsman has a greater educational role.

In 2009–10 we received 57 complaints about the Fair Work Ombudsman, compared to 65 complaints about its predecessor the year before. The main issue centred on the conduct of investigations.

During 2009–10 we undertook an own motion investigation (*Fair Work Ombudsman: Exercise of coercive information-gathering*

powers, report no. 09|2010) focusing on the policies and guidelines used by the Fair Work Ombudsman when exercising its powers during investigations. We used the principles contained in the Administrative Review Council's (ARC) *The Coercive Information-Gathering Powers of Government Agencies* (report no. 4, May 2008) as a guide.

Overall, we found that the Fair Work Ombudsman is acting consistently with the principles contained in the ARC report. We were impressed with the quality of the procedures in place to manage the coercive information-gathering powers used by its inspectors. The own motion report included some recommendations for further procedural improvement, which were positively received by the Fair Work Ombudsman.

Department of Health and Ageing

The Ombudsman finalised 151 approaches and complaints about the Department of Health and Ageing (DoHA) in 2009–10, of which 57 were investigated.

The main themes arising from complaints were:

- the quality of DoHA investigations into aged care complaints
- the currency, accuracy and appropriateness of communications with the public (including material made available to the public on DoHA's websites)
- access to DoHA services in remote communities.

Complaint themes

The most common type of complaints received about DoHA concerned its Aged Care Complaints Investigation Scheme (CIS) and its decisions on recommendations made by the Aged Care Commissioner (ACCr).

In September 2009, the Ombudsman made a submission (based on complaints received) to DoHA's *Review of the Aged Care Complaints Investigation Scheme* conducted by Associate Professor Merrilyn Walton.

Respecting the dignity of care recipients

The complainant's father and another resident had raised some concerns during a general meeting of the care facility. They felt that the manager was rude to them in response. The complainant said that the following day the manager had spoken to each of them separately in their rooms and they felt that this was bullying in response to the incident at the meeting. The manager said she spoke 'sternly' to the residents but had not treated them with disrespect.

The CIS decided that there had been a breach of the requirement to respect the dignity of care recipients, but that this had been rectified and no further action was required. Both the facility and a resident's family appealed to the ACC. The facility argued that there had been no breach of the requirements and the resident's family argued that there should be further action taken. The ACC decided that there was insufficient objective evidence of the conversations to establish that a breach had occurred.

In this case the complaint process met regulatory needs, but placed the parties in an adversarial position. The process did not address the perceptions of the parties, which were likely to continue to affect their ongoing relationship. Addressing these matters is important to the way residents feel in a care facility that is essentially their home.

Our concerns about the complaints investigation scheme include:

- the time frame of 14 days for a person to appeal to the ACC against a decision of the CIS is too short. Complainants in the aged care context may need to talk about their complaint with family members before proceeding and most similar administrative appeals processes allow at least 28 days
- the scheme does not cover government funded aged care services outside the *Aged Care Act 1997*, such as flexible programs providing services to Aboriginal and Torres Strait Islander Communities
- the scheme is directed towards regulatory rather than complaint resolution outcomes, often leaving a complainant's dispute unresolved or without redress
- the scheme does not always offer sufficient opportunity to comment before a decision or a recommendation is made

- in some cases the reasons for decisions of the department's delegate to accept or reject the ACC's recommendations are not sufficiently transparent.

In particular, the current complaints scheme has not provided the type of resolution mechanism required in circumstances where there will be an

ongoing relationship between a care facility and care recipient.

The case *Explaining decisions* how a complaint can remain unresolved due to inadequate explanation to the complainant of the reasons for a decision.

Explaining decisions

Mr W's care facility decided that it could no longer care for him due to his increasing needs and that he would be better placed elsewhere. The User Rights Principles (the Principles) provide for certain processes to be followed where a residence either asks or requires a care recipient to leave in these circumstances. In this case the care facility said it did not follow the process under the Principles because Mr V left the facility voluntarily.

On Mr W's behalf, the complainant complained to the CIS and to the ACC that Mr W had not left voluntarily, but rather was told he would have to leave.

The CIS weighed up what both parties said had occurred in a meeting between the facility and the complainant and decided that it couldn't reach a positive conclusion about whether Mr W had been asked or required to leave. This was because the facility's officers may have understood the complainant's reactions (including crying) as expressing sadness at the situation, but not as disagreement with the proposal that Mr W be relocated. The ACC did not agree and referred to a contemporaneous file note made by the care facility after the meeting, which referred to still having to convince the complainant.

The Secretary's delegate decided not to accept the ACC's recommendation, referring to what each party had originally said to the CIS and deciding that it couldn't be positively satisfied whether Mr W was asked or required to leave. Despite its prominent place in the reasoning of the ACC, the delegate made no reference to the file note. Because the complaint was about how a particular conversation was perceived at the time, the contemporaneous file note was a significant relevant consideration which needed to be addressed in the reasoning for the decision.

In response to our enquiries, DoHA advised that it has reviewed the CIS's letters and conducted a training program focused on the provision of clear and logical statements of reasons. However, while it acknowledged that the reasons afforded the complainant in this case could have been clearer, DoHA did not provide a statement addressing the file note to the complainant in this case. This omission left the complainant to wonder whether or how the file note was taken into account, and reduced the likelihood that the decision would be acceptable to the complainant.

Associate Professor Walton's report on the Review of the Aged Care Complaints Investigation Scheme was publicly released on 12 April 2010. Since then, DoHA has advised that it will work with the aged care sector, consumers and others to develop and implement a range of quality improvements to the CIS. In particular, these will include:

- more timely responses to complaints through early risk assessment and resolution
- greater access to clinical expertise
- improved processes, procedures and training for the CIS
- a broader range of options for resolution of complaints
- an enhanced communications strategy for the CIS
- improved access to an independent review of the CIS's decisions and processes.

We will monitor the effectiveness of the proposed improvements through complaints made to this office.

Communication and publicly available information

The case study of Mr V is also an example of a failure to understand what information a member of the public would expect to be addressed in government correspondence.

In 2009–10 we conducted a number of investigations that showed room for improvement in communications with members of the public by some areas of DoHA, including the Therapeutic Goods Administration (TGA) and material available to users through the TGA website.

In two complaints about the regulation of therapeutic goods that the complainants believed had caused serious side effects to their family members, we found that DoHA, through the TGA and its committees, had conducted substantial regulatory work. However, DoHA's responses to the complainants' enquiries did not do justice to this work and left the complainants believing that insufficient work was being done.

Regulation of naltrexone implants

In 2009 we received a number of complaints about the regulation of the manufacture and supply of naltrexone implants (used in the treatment of drug addiction). The product is not approved for marketing or supply in Australia but, under an exemption in the *Therapeutic Goods Act 1989*, may be manufactured by a medical practitioner for the treatment of a life threatening illness in their own patients.

The complainants questioned the intensity of compliance activity conducted by the TGA to ensure the requirements for the exemption were met. We found that the TGA had recently focused on this area to ensure compliance with the requirements for the exemption. However, we also found that the TGA's guidelines published on its website did not accurately reflect its legal compliance powers, and that responses to people who had complained to the TGA about the use of the implants had referred them to an internet page on which these incorrect guidelines could be found. The TGA corrected its guidelines as a result of our investigation.

Access to DoHA services in remote communities

The Ombudsman's Indigenous Unit has observed aged care arrangements and received complaints about aged care services during its outreach to communities and town camps. The underlying theme in aged care complaints received by the Indigenous Unit is the inaccessibility or unavailability of aged care services. Residential aged care is viewed favourably by complainants in remote communities. However, we receive regular feedback that the focus on care and treatment in larger centres has meant that older people may be forced to leave their communities to be cared for or miss out on care because they find it too difficult to leave their communities. Elderly Indigenous people often choose to remain in their community with minimal or no services, rather than be away from family, social networks and spiritual supports in their country.

Complainants have raised concerns with the Ombudsman about the complexity of the process for applying for aged care funding and its associated costs. They have advised the office that these difficulties dissuade organisations from providing aged care services in remote areas.

Communication is another common theme in aged care complaints received by the Indigenous Unit. It is the Ombudsman's experience that in some communities there is uncertainty as to whom residents should approach about aged care needs: the shire, the health clinic or the Australian Government representatives stationed in the community. It is often difficult for complainants to navigate the aged care bureaucracy to determine their entitlements. This challenge is exacerbated for complainants who do not speak English, or who speak English as a second, third, fourth, or even fifth language, as is often the case in the NT.

As the Office of Evaluation and Audit has identified, there are currently no Indigenous aged care quality standards. The Indigenous Flexible Aged Care Program operates outside of the *Aged Care Act 1997*, and does not have to comply with the mainstream aged care quality standards. There is also currently no requirement to provide a complaint and redress mechanism under the flexible aged care program. Although the Ombudsman does have jurisdiction to take complaints relating to Indigenous aged care arrangements, it is our view there should be mechanisms for redress within government agencies, and clients and their families should be made aware of these.

Medicare

In 2009–10 the Commonwealth Ombudsman received 171 approaches and complaints about Medicare Australia (Medicare), up marginally from 161 received for the 2008–09 year.

Approaches and complaints received by the Ombudsman about Medicare are diverse and range from entitlement enquiries and

complaints about service delivery to incorrect advice and policy matters.

Complaints alleging incorrect advice are particularly difficult to resolve as Medicare does not have a system for recording the details of verbal advice given to customers, as illustrated in the case study *Recording verbal advice*.

Recording verbal advice

Ms X's doctor had lodged the necessary Medicare forms for a person to be placed on its dental plan permitting access to benefits for certain dental treatment. The form did not ask whether the treatment was to take place within a hospital.

Ms X advised the Ombudsman's office that she called Medicare's dental health plan phone number to confirm that the GP care plan items had been claimed and paid before starting dental treatment, as this is a Medicare requirement. Ms X said that she was informed that approval had been given. Ms X later contacted Medicare to see if her anaesthetic fee and hospital bed expenses would be claimable. Ms X said that she was told they would not, but all other treatment costs would be met. Ms X then went ahead with the treatment.

Subsequently, her surgeon recommended that Ms X contact Medicare and cross-check the Medicare item numbers that had been used. She again called Medicare's general public enquiries phone number and was informed that all listed item numbers could be claimed. However, when she attended the Medicare office and presented her receipts, Ms X was informed that, because the treatment had taken place in a hospital, it was not claimable.

Ms X rang Medicare's general public enquiries phone number again and was told that the item was claimable. Ms X then requested to be transferred to a supervisor. The supervisor noticed that Ms X was also claiming for an anaesthetic on the same date and asked whether the procedure had occurred in a hospital, to which Ms X replied 'yes'. She was then advised that, as the treatment had occurred in a hospital, a benefit was not payable.

Ms X complained that she was not told at the outset that the treatment could not be claimed if carried out in a hospital. However, because Medicare does not have a system for recording verbal advice given to customers, there are no records of exactly what Ms X was told and any advice given can only be inferred from all of the circumstances.

The Ombudsman has raised this issue with Medicare, and Medicare advised that it is examining various options for recording verbal advice.

Electronic funds transfer

Another complaint highlighted the risks for customers of government services moving

towards electronic funds transfer systems, as seen in *Incorrect BSB*.

Incorrect BSB

The complainant had accidentally given Medicare an incorrect BSB number for the payment of her benefit. Medicare used the number as provided and paid the benefit into an unknown person's account. Medicare contacted the Reserve Bank of Australia (RBA), which advised that the payment could not be retrieved. The RBA provided information to us about its processes and capacity to retrieve payments in these circumstances. Under the Bulk Electronic Clearing System rules, the RBA will contact the destination financial institution, which will then use its best endeavours to contact its customer about the matter.

If the customer consents, the destination financial institution will withdraw the amount and repay it to the RBA. Otherwise, the requesting agency will need to take separate steps to identify the recipient and use any applicable laws to recover the money. There is no industry time limit on the RBA making a request to a destination financial institution. In this case, Medicare had paid the amount at the direction of the complainant and there was no legal obligation on it to take further action to recover the payment on behalf of the complainant. In concluding our investigation, we suggested to Medicare that it ensure customers are apprised of the importance of accuracy in providing their account numbers.

Compensation for Detriment caused by Defective Administration

Early in the financial year we observed delays in the processing of requests made by customers under the Compensation for Detriment caused by Defective Administration (CDDA) scheme under Finance Circular 2009/09.

As a result of enquiries made by the Ombudsman about the length of time taken to process claims, Medicare revised its processes by:

- introducing a simplified and faster process for requests where the claimed loss is less than \$1,000, the claim does not involve complex legal issues and the claimant is not represented
- arranging training for Medicare officers, working in a range of program areas, about the operation of the CDDA scheme
- obtaining the approval of the Minister for Human Services for 14 positions within Medicare to approve claims for compensation up to the value of \$250.

Freedom of information

This was the last full year for which this office was responsible for investigating actions taken by Commonwealth agencies under the *Freedom of Information Act 1982* (FOI Act).

The *Australian Information Commissioner Act 2010* commences from 1 November 2010. That Act creates offices of the Australian Information Commissioner and the Freedom of Information Commissioner who, together with the existing Privacy Commissioner, will be responsible for information access and related matters in the Commonwealth.

In 2009–10 we received 137 complaints about FOI requests. During the year we finalised 159 complaints about FOI, addressing 161 issues. Of these, 120 were about access to personal documents and 41 about access to general documents. As with previous years, the majority of complaints were about delay, the imposition and remission of fees and charges, and decisions that were not well explained.

Our experience is that complaints to the Ombudsman about delay can often be avoided if agencies better inform applicants about the

progress of their request, and the reasons for the delay. The Ombudsman continues to encourage agencies to improve the level of contact with FOI applicants to decrease the need for our involvement. In cases where the Ombudsman finds there has been a delay, the usual remedy is to speed up the processing of the request and provide an apology to the applicant. In some cases we have suggested that the agency provide additional resources to manage their processing of FOI requests, and appropriate staff training in the requirements under the FOI Act.

Section 15(3) of the FOI Act provides that an agency must take reasonable steps to assist a person to make a valid request. In some complaints we investigated, agencies did not meet their obligations under this provision. Some agencies did not assist an FOI applicant where an FOI request was invalid, or where the agency suggested that the request be dealt with informally outside the FOI Act.

Monitoring and inspections

The Ombudsman is required under law to inspect the records of law enforcement and other enforcement agencies in relation to the use of covert powers. We do this to determine compliance with legislative requirements governing the use of those powers, which include:

- telecommunications interceptions by the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and the Australian Commission for Law Enforcement Integrity (ACLEI)
- access to stored communications by Commonwealth agencies, including the AFP, ACC, ACLEI, Australian Customs and Border Protection Service and the Australian Securities Investment Commission (ASIC), and state and territory agencies
- use of surveillance devices by the AFP, ACC and ACLEI, and by state and territory law enforcement agencies (under Commonwealth legislation)
- controlled operations undertaken by the AFP, ACC and ACLEI.

In addition, we have the function, recommended by the Senate Rural and Regional Affairs and Transport Legislation Committee in 2006 and agreed by the Department of Agriculture, Fisheries and Forestry (DAFF), to review investigations carried out by the Biosecurity Services Group within DAFF.

We were involved in inspection and oversight of 16 different agencies, at both Commonwealth and state level, under the requirements of four different Commonwealth Acts.

Definitions

Telecommunications interceptions are the recording of telephone conversations or other transmissions passing over a telecommunications network. Interceptions occur under warrant for the purposes of obtaining information relevant to an investigation.

Stored communications typically refer to emails and text messages, but may include images or video, which are electronically stored by a telecommunications carrier or internet service provider. For instance, an SMS message is stored by a carrier and sent when the intended recipient is able to take the message. Stored communications access occurs under warrant for the purposes of obtaining information relevant to an investigation.

Surveillance devices are typically listening devices, cameras and tracking devices that are used to gather information for criminal investigations and for the safe recovery of children. The use of these devices usually requires a warrant.

A controlled operation is a covert operation carried out by law enforcement officers under the *Crimes Act 1914* (Cth) for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence. An authority to conduct a controlled operation permits, within limits, a law enforcement officer to engage in conduct that might otherwise constitute an offence.

Telecommunications interceptions

Under Chapter 2 of the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is required to inspect the records of the AFP, the ACC and ACLEI twice a year. We do this to ascertain the extent of compliance with requirements to destroy restricted records, keep documents connected with the issue of warrants and keep records of interceptions. Our office has provided oversight of the regime since 1988.

Our office may report any contraventions of the TIA Act that come to our notice in the course of the inspections.

In September 2009 we presented reports to the Attorney-General on inspections of the AFP and ACC undertaken in 2008–09 (ACLEI did not conduct any interceptions in that year).

We conducted two inspections each of AFP and ACC records in 2009–10 relating to warrants that were issued between April and September 2009, and October and December 2009 (ACLEI did not conduct any interceptions during this period).

The AFP was generally found to be compliant with the requirements of the TIA Act. Three recommendations were made, two of which related to the keeping of ‘use and communication logs’ and the other to the description of offences on warrants.

The ACC was found to be compliant with the requirements of the TIA Act. No recommendations were made.

In general, the level of compliance with the requirements of the TIA Act is very high. The telecommunications regime has been in operation for a considerable period and there is a good understanding by agencies of the legislative requirements. The process is highly automated with appropriate safeguards.

Stored communications

Under Chapter 3 of the TIA Act, the Ombudsman is required to inspect the records of enforcement agencies that relate to the access of stored communications. Our role is to ascertain the extent of compliance with the relevant provisions of the TIA Act. During 2009–10 we carried out 17 inspections of stored communications records maintained by 15 agencies.

Those agencies were the AFP, ACC, ASIC, New South Wales Crime Commission, NSW Police, Queensland Police, Crime and Misconduct Commission, South Australia Police, Tasmania Police, Victoria Police, Office of Police Integrity, Western Australia Police, Corruption and Crime Commission (CCC) and Australian Customs and Border Protection Service. In the case of Customs there were three inspections in different regional offices.

The stored communications access scheme is designed to permit access to communications that have been stored by a carrier, rather than permitting enforcement agencies to monitor communications over a period of time, which would be akin to interception. This is particularly evident in the short period that a warrant remains in force, being five days from issue or until first executed.

The legislative controls and restrictions governing access to stored communications are generally set at a lower level than those relating to telecommunications interception. This, together with tighter time frames for accessing stored communications, places a significant obligation on agencies to closely manage stored communications access if they are to be compliant with the TIA Act.

Problems were again identified with respect to access of stored communications and compliance with the TIA Act. There also continues to be disagreement about the requirements that legislation places on both agencies and carriers. These difficulties have been compounded by a lack of record keeping demonstrating when warrants are executed. We have raised our concerns with the Attorney-General.

Surveillance devices

Under the *Surveillance Devices Act 2004* (Cth) (SD Act), the Ombudsman is required to inspect the records of Commonwealth, state and territory law enforcement agencies that utilise powers under the SD Act.

During 2009–10, two inspections each of the AFP and the ACC and one inspection of the CCC were conducted. The inspections examined records relating to surveillance devices warrants, tracking device authorisations and emergency authorisations that had expired or were revoked between 1 January 2009 and 30 June 2009 and 1 July 2009 and 31 December 2009. We provided a report to the Attorney-General in March 2010, which was tabled in the Parliament in June 2010. The report contained the results of inspections finalised during January to December 2009.

Overall there was a high level of compliance by each of the agencies inspected. However, we have raised concerns with the ACC and AFP in relation to their preference to obtain new warrants to authorise ongoing surveillance activities rather than utilising extension provisions within the SD Act. While the practice of obtaining a new warrant is not unlawful, it has the potential to obscure the duration that a target has been under surveillance and the subsequent impact on the target's privacy. This is a relevant consideration for issuing officers. We have continued to draw attention to this issue with agencies and the Parliament.

Controlled operations

Part IAB of the *Crimes Act 1914* (Crimes Act) prescribes the process of applying for, granting, and ending an authority to conduct a controlled operation. Where a controlled operation is authorised, law enforcement officers and certain other persons are generally exempt from criminal liability arising in the course of such an operation, and are indemnified from civil liability.

The Ombudsman has the function of inspecting and overseeing the requirements of Part IAB of the Crimes Act. The Ombudsman must also produce a report on the results of inspections (published in November 2009), and brief the Parliamentary Joint Committee on the ACC. During the year we conducted four inspections of controlled operations records that ended between 1 February 2009 to 31 July 2009 and 1 August 2009 to 31 January 2010—two each at the AFP and the ACC. We concluded that both agencies were generally compliant with the legislative requirements.

In conducting the inspections, we are always mindful of the sensitivities involved in controlled operations and the amount of information we need to access in order to perform our function. We must have access to sufficient information to allow our office to give reasonable assurance that operations are conducted within the bounds of an authority. At the same time we must be cognisant of security implications. We emphasise to agencies that the decision about what is sufficient information is a matter for us to determine taking into consideration the need to balance these factors.

Prior to 19 February 2010, the Crimes Act permitted controlled operations to be conducted for a maximum of six months on the condition that they were externally reviewed by the Administrative Appeals Tribunal after three months.

On 19 February 2010 the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* came into effect and a large number of changes were made to Part IAB of the Crimes Act.

Of particular note was the extension of the period of a controlled operation from a maximum of six to 24 months, subject again to external scrutiny requirements. Explanatory memorandum for the new legislation makes it clear that any one operation has a distinct limit to its operation. We are discussing these changes with the ACC, including how they affect the approval and conduct of operations.

Review of investigations — Biosecurity Services Group

During 2009–10, we undertook an own motion investigation into the activities of the Compliance Branch, Biosecurity Services Group, in DAFF. The own motion investigation was conducted at the Sydney office of the Compliance Branch.

The Compliance Branch undertakes investigations of possible breaches of legislation administered by DAFF (for example, the *Quarantine Act 1908*), and provides briefs of evidence to the Commonwealth Director of Public Prosecutions to consider criminal prosecution in certain cases.

Our understanding of this function flows from a recommendation contained in the Senate Rural and Regional Affairs and Transport Legislation Committee's report on the administration by DAFF of the 2004 outbreak of citrus canker. In its June 2006 report, the Committee criticised DAFF for its response to the citrus canker outbreak and the failure of an earlier investigation to prevent or mitigate the outbreak.

As a result, the Committee recommended that the Commonwealth Ombudsman review investigations carried out by the then Australian Quarantine and Inspection Service (now the Biosecurity Services Group).

As part of the own motion investigation, we looked at the Sydney office's timeliness in commencing investigations, the training and qualification of investigators, its compliance with legislative requirements in using enforcement powers and adherence with policies issued by DAFF. We are currently completing the report on the results of this investigation.

It is expected that we will continue the own motion investigation of the Compliance Branch in 2010–11, visiting regional offices in Melbourne, Adelaide, Sydney, Perth and Brisbane. DAFF provides funding to the Ombudsman to carry out this function.

Providing greater assurance

As we advised in our previous annual report, the introduction of the stored communications access regime increased the number of inspections we conducted and reports we provided by 60% in 2008–09. This prompted a rethink of the way we approach inspections to allow us to provide greater assurance to the Attorney-General and the Parliament that agencies are properly using their covert and coercive powers.

In 2009–10, we made significant changes to our work practices, focusing on a more robust and risk-based approach to our auditing. The changes include:

- identifying specific areas of risk for each agency by gaining a better understanding of their internal processes and controls for the use of covert powers
- assessing areas within each regime where the highest levels of risk exist for agencies and their stakeholders, and developing inspection methodologies to focus on these areas
- developing materiality thresholds to make a more consistent and objective assessment of an agency's compliance with legislative requirements
- developing tests that more rigorously cross check against and interrogate electronic records and systems.

We will continue to implement these enhancements in 2010–11.

As a result of these changes, our reports will provide a more balanced view of an agency's performance against legislative requirements. The reports will not simply raise issues of non-compliance, but include an assessment of agencies' internal safeguards and performance against legislative requirements.

The effectiveness of these changes is already evident. Our inspections are focused on those areas where problems are likely to arise, yet they are conducted in shorter time frames with fewer resources.

We aim to provide more targeted advice to agencies to assist their legislative compliance and, at the same time, a greater level of assurance to the Parliament on agency performance.

Assisting agencies

In February 2008, the ACC implemented an ‘excellence in compliance’ strategy to improve its legislative compliance. As part of this, the ACC worked with us, was open about problems and listened to our advice. In our most recent report on surveillance devices and in our two most recent reports on telecommunication interceptions, the ACC was found to be compliant with all requirements of the Acts and no recommendations were made by our office.

Such results are, in part, about accepting oversight and inspection as a necessary and integral part of a regime where extraordinary powers are granted by the Parliament. When agencies accept that and work with us, oversight and inspection can provide both assurance and improved compliance.

Tasmania Police, Queensland Police and the Crime and Misconduct Commission have stood out as agencies keen to seek our advice on compliance issues and maintain communication with our office. In preparing to use certain powers for the first time, ACLEI has also sought our assistance and we are keen to work with the Commission to ensure high levels of legislative compliance.

Contributing to policy and legislative change

In monitoring compliance with the various Acts, the Ombudsman is able to observe accountability mechanisms and assess those that work well and those that do not. Armed with this knowledge, we made submissions to the Senate Committee on Legal and Constitutional Affairs in 2009–10 in relation to the:

- Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009
- Parliamentary Joint Committee on Law Enforcement Bill 2010
- National Security Legislation Amendment Bill 2010.

The Ombudsman’s oversight role gives us a unique perspective on the use of special powers. We have developed a deep understanding of the working arrangements and administrative processes that enforcement agencies employ.

We understand the limitations and problems that legislation can create, often inadvertently. Yet we are able to distinguish between limitations imposed for purposes of accountability and those that manifest as unintended consequences. We continue to seek opportunities to engage with law enforcement agencies and the Attorney-General’s Department to add value in this area.

Overseas students

Subject to amendments to the Education Services for Overseas Students (ESOS) legislation, the Commonwealth Ombudsman will have a new role in relation to international students in 2011.

The Ombudsman will have jurisdiction to investigate complaints from international students intending to study or currently enrolled with private education providers where there is not already a statutorily independent complaint

body available to them. The office will also assist private education providers to develop and improve their own internal complaint-handling processes in line with best practice.

A Bill containing those amendments was referred to the Senate Education, Employment and Workplace Relations Legislation Committee on 25 June 2010. The Committee is due to report in late 2010.

Defence Force Ombudsman

Each year the Commonwealth and Defence Force Ombudsman (DFO) receives, on average, between 550 and 750 approaches and complaints about Defence-related matters. This year we received 578 complaints, a decrease of 5% from last year's figure of 609.

Among Defence-related agencies are the Department of Defence, each arm of the Australian Defence Force (ADF), Department of Veterans' Affairs (DVA) and Defence Housing Australia.

We can investigate approaches as either the Commonwealth Ombudsman or the

DFO depending on the circumstances of the complaint. Complaints that arise as a result of a person serving or having served in the ADF are usually investigated under the DFO role. These employment-related matters can include complaints about termination, promotion, postings, pay and entitlements.

The Commonwealth Ombudsman usually investigates complaints from members of the public about Defence-related agencies and the ADF. Complaints of this nature can include issues such as weapons firing ranges, military aircraft noise, contracting matters and service delivery.

Table 5.1: Defence-related approaches and complaints received, 2005–06 to 2009–10

Agency	2005–06	2006–07	2007–08	2008–09	2009–10
Australian Army	169	145	138	141	111
Defence Housing Australia	29	36	28	43	31
Department of Defence	138	106	135	157	176
Department of Veterans' Affairs	276	256	139	160	167
Royal Australian Air Force	80	57	48	45	39
Royal Australian Navy	54	50	59	49	43
Other (see breakdown for 2009–10 in Appendix 3)	4	20	15	14	11
Total	750	670	562	609	578

Department of Defence

We received 176 approaches and complaints about the Department of Defence and the ADF. Significant issues arising from these complaints included:

- delays associated with the Redress of Grievance (ROG) process
- failure to provide adequate reasons to unsuccessful candidates seeking re-enlistment to the ADF
- problems associated with record keeping.

Our office received 20 complaints about delays in the ROG process, a matter that is currently the subject of a joint review by our office and the Department of Defence. Since we reported on this issue in last year's annual report, the problem of delay appears to have become more pronounced.

The ROG process involves a defence force member's Commanding Officer (CO) as the first avenue of complaint. The CO normally has 90 days in which to investigate the complaint and, if the member's concerns cannot be resolved at that point, the member has the statutory right to refer their complaint to the chief of their service.

Once a complaint is referred to the service chief no formal time frame for action applies, although a 180-day benchmark has been agreed.

Complaints to our office have highlighted delays in some cases of 12 months to two years before the service chief makes a determination on the complaint. Our view is that this time frame is excessive and we are working with Defence to develop a range of recommendations aimed at improving the underlying risk assessment methodology and review process attached to the ROG system.

Unreasonable delay

Lieutenant Colonel (LTCOL) Y lodged a Redress of Grievance (ROG) with his administrative CO in August 2008. At the time he complained to our office in November 2009, LTCOL Y's ROG had been dealt with by his CO and forwarded to the service chief for review. LTCOL Y complained that his complaint had not yet been allocated to a case officer to prepare a brief for the service chief. That is, some 14 months after initially lodging his complaint, it had still not been allocated for further action.

We approached Defence about this delay and were advised that it would refer the complaint to a case officer to consider the matter. By this time we had also commenced our joint review of the ROG process with Defence, and our advice to LTCOL Y was that in addition to assisting to have his case actioned, we were following up on the systemic issues related to such delays.

Another significant issue investigated by our office concerns the reluctance of the services to provide reasons to unsuccessful candidates seeking re-enlistment to the ADF. Our office received seven complaints about this subject, and while this may not be a large number, it raised a concern about a key principle of good administrative decision making.

When a person who has previously served in the ADF leaves (for whatever reason) and

then seeks to re-enter the ADF at a later date, the relevant prior defence service Career Management Agency (CMA) is consulted as part of the re-enlistment process.

Defence Force Recruiting (DFR) asks the CMA for comment on the suitability of the candidate. The CMA refers to the candidate's previous service history and, where this is acceptable, the person is usually recommended and the re-enlistment process can continue.

Complaints to our office indicate that where an application for re-enlistment has been turned down by the CMA, reasons are not provided by the CMA to DFR so that the candidate can be advised. Some complainants were told that they should have known why they were discharged previously and that this would be the reason they are not suitable for re-enlistment.

Our view is that this approach is a poor substitute for a set of adequate reasons supporting an adverse administrative decision. It is problematic for the candidate and for Defence. The candidate

has a right to know the reasons relating to the decision so that, if they wish, they can appeal the decision.

In some cases we have investigated it was clear that Defence had a valid basis to not recommend a candidate and, had it provided those reasons, it is unlikely that a complaint would have arisen.

We are currently involved in discussions with Defence about this issue and expect to be able to positively influence the way in which reasons are given to re-enlistment candidates in the future.

Failure to provide adequate reasons for a decision

Mr AA had previously served in the Army and applied to re-enlist in the ADF, this time with the Royal Australian Air Force (RAAF). His application was accepted and a request for a service suitability check was forwarded to the RAAF CMA. The CMA sought advice from the Army about Mr AA's prior service. Mr AA had previously been discharged for involvement with prohibited substances, but this wasn't included in the advice given to DFR. It simply referred to Mr AA being assessed as an unsuitable risk for employment with the RAAF.

Mr AA complained to our office and we investigated the failure to provide adequate reasons to Mr AA. In our view, given the reasons for Mr AA's discharge, it was reasonably open to the RAAF to reject his application for re-enlistment. However the RAAF should have taken steps to ensure a more complete basis for their decision was given to the candidate.



An Ombudsman staff member met with HMAS Coonawarra Crew

Record keeping is another fundamental aspect of good administration. Failure to accurately record events contemporaneously or to ensure records are properly kept can affect a person's eligibility for benefits or entitlements.

We saw evidence of problems associated with record keeping through complaints we received.

These problems ranged from the incorrect assignment of a discharge category for an ADF member through to the removal of documents from a person's service record. The explanation for these failures is often associated with a lack of training or attention to detail.

Poor record keeping puts entitlements at risk

Ms BB was approved to play civilian sport while serving in the ADF. Approval to play in civilian competitions means that a service member who is injured while playing sport will receive medical treatment and, where appropriate, compensation or rehabilitation as a Defence member.

Ms BB asked that the letters approving her participation in civilian sporting competitions be kept on her personal file, held by the unit clerical staff. Some months later, Ms BB had reason to inspect her file. When she did so, she noted that none of the documents approving her participation in sport were on the file. No explanation was available for the missing documents.

The documents approving participation in civilian sport are important. If Ms BB was injured playing sport, there would be no question that medical treatment would be provided by the ADF. If, in later years, she developed a disability from a sporting injury, then the documents would support any claim she made for compensation or disability made to Department of Veterans' Affairs.

Department of Veterans' Affairs

The Department of Veterans' Affairs (DVA) administers a wide range of services and benefits to almost half a million Australians. During 2009–10 we received 167 approaches and complaints about DVA.

Complaints about DVA are often complex. Depending on the nature, time and place of a person's service with the ADF, eligibility for benefits, rehabilitation or compensation under one or more of three pieces of legislation may be possible. An important role of our office can be to offer a better explanation for a decision or action.

In addition to complexity of provisions, it is common for complainants to have mental and physical health conditions that need to be considered in responding to complaints appropriately. Because of this, it sometimes takes time to develop an accurate understanding of the complaint issues and the interaction the claimant has had with the department prior to a complaint reaching our office. In such cases we have found DVA ready to assist by providing information to clarify its

involvement with the person and discussing any follow-up issues. DVA has also provided training to our staff and briefings on emerging issues when requested.

Notwithstanding this complexity, we have observed that DVA regularly advises claimants of their available review rights and invites veterans to consider resubmitting a previously refused claim under the same or alternative legislation if they feel their condition has worsened over time. DVA has also established a client liaison unit that deals with particularly complex cases and allows claimants to have regular contact with a dedicated case officer. From our perspective, this shows that DVA recognises the life-long relationship it has with most of its client base.

With some DVA complaints, the only remedy that is available is to provide a better explanation for the agency's decision.

Where something has gone wrong—for example, a systems failure, we have noticed an increased willingness by DVA to apologise.

The complex nature of service

Ms CC served in the ADF, suffered an injury, was discharged and receives Incapacity Payments under the *Military Rehabilitation and Compensation Act 2004* (MRCA). She complained to our office that these payments had reduced after 45 weeks of receipt. She also complained that the distinction between warlike and non-warlike service was unfair and discriminatory.

We wrote to Ms CC and explained that the reduction in her incapacity payment was not unreasonable given the operation of the MRCA. We also explained, in some detail, the reasonableness of the distinction between warlike and non-warlike service in the ADF and the differing degree of entitlement that can result from the nature of a person's service.

Without providing a tangible remedy, our independent view was able to allay the Ms CC's concerns that DVA was not acting in a fair manner.

Defence Housing Australia

Defence Housing Australia (DHA) provides housing and relocation services to ADF members. DHA also maintains properties and manages leases with members of the public who lease their houses to DHA. When an ADF member relocates on posting, DHA calculates and arranges for the payment of associated allowances and benefits.

During 2009–10 we received 31 approaches about DHA. This was eight fewer than the previous year and represents a decrease of about 19% in the number of complaints.

While a small number of complaints were received, many of the matters considered by our office related to the adequacy of policy concerning ADF removals and allowances payable to ADF personnel. DHA is responsible for delivering a service on behalf of Defence using policy created by Defence. Therefore such cases tend to be about Defence policy. Possible systemic issues relating to the adequacy of entitlement policy and accessibility of this information have been considered as part of our own motion investigation into factors affecting conditions of service decisions in the ADF.

In the future, DHA will be responsible only for housing matters and the management of leases with DHA. The functions associated with an ADF member's removal on posting and payment of allowances will be handled by TOLL Transitions.

We have met with Defence staff responsible for the implementation of the TOLL Transitions contract and the transition of these functions to ensure that processes to provide a smooth transfer of responsibilities are implemented and that adequate complaint-handling mechanisms exist.

Formal reports and submissions

Two major investigations were commenced during the 2009–10 financial year. The first was a joint review with the Department of Defence into delays associated with ROGs once they are elevated to the relevant service chief.

Our second investigation was an own motion investigation into decisions on conditions of service in the ADF. The results of these investigations will be reported in the 2010–11 annual report.

At the invitation of Mr D J Campbell, Senior Counsel assisting the HMAS *Success* Commission of Inquiry, we provided a submission on matters of administration of the ADF that affect the system of military justice. Our submission discussed the complexity of Defence administration and the delay in finalising redresses of grievance.

Stakeholder liaison

Our office meets regularly with representatives from Defence and DHA. As part of our work with DHA we will be meeting more frequently to assist where we can with the establishment of the department's new complaint-handling area. Given TOLL's new role in relation to ADF removals and payment of allowances, we also plan to meet with that agency to ensure complaints are being adequately managed.

During the year staff from our office met with representatives from the Returned and Services League (RSL) of Australia, travelled to a large number of military establishments and spoke with commanders, administrators and general service members about the role and function of the DFO. We also delivered presentations to service training courses, most notably to the RAAF. We plan to conduct similar outreach in the forthcoming financial year.

Immigration Ombudsman

Immigration and Citizenship

In 2009–10 we continued our program of inspections of immigration detention facilities, own motion investigations into systemic issues, monitoring of compliance and removal actions, and ongoing engagement with the Department of Immigration and Citizenship (DIAC) through regular meetings and consultation on proposed initiatives. This preventive approach has been helpful in reducing the volume of complaints received about systemic issues. It has helped DIAC to quickly implement processes to address underlying problems.

In addition to the statutory review of two-year detention cases which commenced in 2005, the Ombudsman regularly reviews all cases where a person has been held in detention for six months or more. Our work continues to expand with our oversight role for immigration activities on Christmas Island, which remains the central point for processing irregular maritime arrivals.

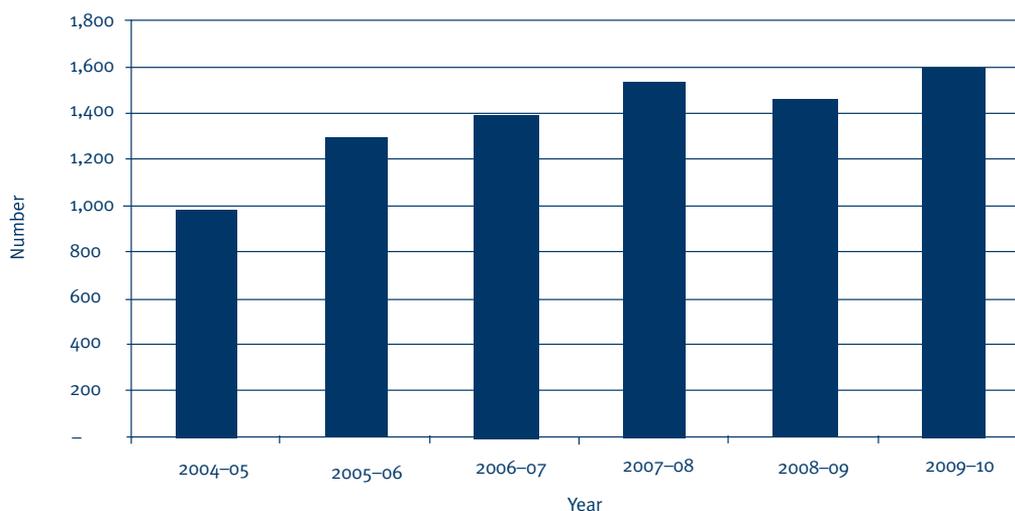
Complaints themes

In 2009–10 we received 1,600 approaches and complaints about DIAC, a 10% increase from the previous year. Figure 5.4 shows the number of approaches and complaints received in the past six years.

In 2009–10 the following areas of DIAC's administration were a particular focus of complaint:

- changes announced to the General Skilled Migration Program
- delays associated with security clearances
- international student visa processing.

Figure 5.4: Department of Immigration and Citizenship approach and complaint trends, 2004–05 to 2009–10



Complaint handling

Monitoring of DIAC's internal complaint-handling processes

Throughout 2009–10 we have been actively monitoring the quality of DIAC's internal complaint handling, which is conducted by its Global Feedback Unit (GFU). This supports our decision to encourage complainants to try to resolve their problem with the agency before the Ombudsman becomes involved.

An important monitoring activity for the Ombudsman has been to meet and liaise with the GFU staff to discuss their processes for taking, resolving and completing the complaints it receives. We also discussed our role with them and our better practice guidelines for complaint handling. We monitor the unit's complaint-monitoring practices and reporting by reviewing GFU complaint records.

Our monitoring activities noted that generally the GFU's complaint handling was satisfactory and had properly dealt with the issues raised by complainants. In the small number of cases where we found the complaint handling incomplete, the underlying themes related to complaints about delays in security clearances. When the complexity of a case required it to be referred to the processing area, GFU had experienced difficulties in getting a timely response. These problems have been raised with DIAC on a case-by-case basis.

On 29 June 2009 DIAC appointed Serco to manage all of its detention centres. The changeover of management was implemented in stages throughout the remainder of 2009.

In November 2009, DIAC re-established a centralised Complaints Handling Unit (CHU) to address all detention service-related

complaints and to monitor the quality and timeliness of responses provided to our office. The new process required Serco to register all complaints, requests and feedback with the GFU, which helped DIAC to proactively monitor trends and identify systemic issues that needed to be addressed. This has resulted in a stronger focus on DIAC's management of the services provided by Serco and its compliance with the terms of the contract.

Detainees are encouraged to raise issues with Serco in the first instance. Our office is focusing on addressing the systemic issues raised through complaints and inspections of detention centres.

General Skilled Migration program

During the 2009–10 financial year, we received a large number of complaints about the introduction of changes to the General Skilled Migration (GSM) program. Changes to the GSM introduced processing priorities for skilled visa applicants, a reduction in the number of occupations on the *Skilled Occupations List* (which determines the occupations that are eligible for general skilled migration), removal of the Migration Occupations in Demand List and ceased the processing of unfinalised applications received before 1 September 2007.

We have continued to work with DIAC to resolve complaints received from skilled migration applicants who believe that DIAC has dealt with their applications in an untimely or unfair manner as a result of the changes. DIAC undertook to keep us informed about the changes that were announced to the GSM program in order to assist the affected applicants. We liaised with DIAC to develop useful information for complainants that clearly explained the changes and how their current applications were affected.

Security clearance delays

We received a number of complaints from visa applicants who were concerned about the

time taken to finalise their visa applications. The following case provides a good illustration of the type of unnecessary delay some complainants have experienced.

Security clearance issues

Ms DD, a British citizen, complained about DIAC's delay in finalising an application for permanent residency for herself and her partner, Mr EE, who was included in the application as her dependent spouse. DIAC claimed it had no control over the delay because it was caused by a security check of Mr EE's background, which was being conducted by an external agency.

Our investigation revealed that DIAC had failed to provide mandatory information about Mr EE's family, travel and residential history to the external agency. Several requests for the missing information had been made by the external agency before DIAC provided the documentation required to complete the security check.

Shortly after Ms DD complained to the Ombudsman, the visa was granted. This office recommended that DIAC consider apologising to Ms DD and Mr EE.

Our investigations found that in a majority of cases, delays were due to the high number of visa applications requiring security clearance checks that were being carried out by external agencies. Coupled with these high volumes of applications, the unforeseen closure of some overseas processing locations caused delays. These delays were not always within DIAC's direct control.

DIAC has worked with external agencies to tackle delays caused by problems in the referral process, which have resulted in the development of a dedicated system to manage and monitor the referrals and clearances.

DIAC has actively sought to identify and resolve outstanding paper-based referrals and record them in the system so that progress can be properly monitored. Ongoing support and training of onshore and offshore staff has also been implemented. We have noted a decrease in the number of complaints due to delays in processing security clearances.

Throughout 2009–10, DIAC has provided our staff with demonstrations and briefings of the new referral system and how it deals with arrears. This has greatly assisted the Ombudsman investigation officers in their work.

International student visa processing

During 2009–10, there was extensive media coverage about the exploitation of international students and the quality of education they were being provided. DIAC briefed the Ombudsman's office about the preventive measures it was taking to address this issue. These involved working with the Department of Education, Employment and Workplace Relations to identify non-genuine education providers and migration agents, more rigorous checking of documentation and information provided with applications, and developing awareness campaigns for students in the countries affected most by the alleged exploitation. The increased rigour in assessing applications led to an increased number of refused applications and more complaints from migration agents and students alike.

Some complaints stemmed from the reforms to the GSM program, particularly changes to the skills needed in the Australian labour market. Changes to the skills sought meant the studies being undertaken by some students aspiring to gain permanent residency became redundant.

There was also a period of several months during which a review of the skills sets Australia needed was conducted. Students, migration agents and educational institutions raised concerns about the impact this had on their capacity to make informed decisions.

Our office noted some processing issues related to students, particularly concerning misunderstandings about the verification of course completion dates provided by educational institutions. The case study *Student visa issues* illustrates one such issue.

Student visa issues

Ms FF applied for a permanent visa with a condition that the application must be made within six months of completing an appropriate Australian course of study. The ‘completion date’ used to calculate this period (as defined within DIAC guidelines) is the date that students are notified of their results. Despite making the application within the required time frame, the application was refused.

Our investigation established that the refusal was based on Ms FF’s last day of attendance at the course rather than the date she was notified of the course results.

Ms FF gave DIAC her certificate, which had the correct date. However, the decision maker did not use that information and sought confirmation from the educational institution of the ‘completion date’ instead of the date Ms FF was first notified of her results. This error was compounded because the request asked the educational institution to choose between two dates (neither of which was relevant) and did not indicate how the information would be used by the decision maker.

Ms FF queried the visa refusal notice, however, DIAC reiterated its decision. DIAC advised her that it had relied on the completion date confirmed by the educational institution and that she should pursue her claims through the Migration Review Tribunal (MRT).

Our investigation asked DIAC to consider whether the information it sought from the educational institution would ensure the correct date had been provided. As a result DIAC vacated the decision without the need to have it reviewed by the MRT.

Monitoring and inspecting DIAC’s detention, compliance and removal activities

Since the annual report of 2008–09 was published, the number of people detained by DIAC has significantly increased. On 25 June 2010 there were 4,077 people in some form of detention, both onshore and offshore, including immigration detention centres, residential housing, transit accommodation and community detention.

Immigration detention inspections program

Our program of inspection visits to Immigration Detention Centres (IDCs) and other places of immigration detention aims to monitor the conditions and services provided to detainees, and assess whether those services comply with the immigration values and obligations of DIAC and the contracted service provider.

The issues we have focused on in our inspections reflect complaints received and matters raised by detainees as part of the regular client consultative meetings conducted by the service provider and DIAC in the IDCs.

During the year we conducted inspections at all IDCs, including Brisbane Immigration Transit Accommodation, Maribyrnong IDC, Melbourne Immigration Transit Accommodation, Perth IDC, Perth Immigration Residential Housing, Port Augusta Immigration Residential Housing, Sydney Immigration Residential Housing, Villawood IDC and specified alternative places of detention.

We provided DIAC with feedback on a range of issues, including:

- the handling of complaints by the service provider
- placements within IDCs and transfers to other less restrictive immigration detention environments
- recreational activities available to detainees
- the availability of information about the role of the Ombudsman and access to our complaint forms.

Detention—irregular maritime arrivals

People entering Australia at Christmas Island or another place excluded from Australian territory for migration purposes are designated as irregular maritime arrivals (IMAs). An IMA may not lodge a valid protection visa application unless the Immigration Minister personally decides to permit the application.

The number of IMAs being detained on Christmas Island has significantly increased over the 2009–10 period. When Ombudsman staff visited the island in October 2008 there were only 31 people in detention. By September 2009, this number had reached 700.

When Ombudsman staff visited the Christmas Island IDC in late February 2010, there were 1,700 people detained in the centre, growing to 2,441 people detained on Christmas Island as at 25 June 2010.

Since early in 2010 a minimal number of IMAs has been transferred from the Christmas Island detention facilities to onshore IDCs and

immigration residential housing. For instance, unaccompanied IMAs identified as minors (under the age of 18) have been accommodated in the Port Augusta Immigration Residential Housing. This is in keeping with the Australian Government's policy position that minors should not be detained in the more restrictive setting of an IDC.

A non-statutory refugee status assessment (RSA) has been operating since 2008 to progress the claims of IMAs. Features of the RSA process include free migration agent assistance for asylum seekers who appear to engage Australia's international protection obligations, independent review of unfavourable RSA assessments, better procedural guidance, and oversight by the Ombudsman. The Ombudsman continues to conduct an oversight role of the RSA process under the own motion powers of the Ombudsman Act.

During 2009–10 Ombudsman office staff made visits to Christmas Island and inspected detention conditions, dealt with complaints from detainees, oversaw the RSA process and interviewed detainees who have been detained for more than six months. On these visits our staff also reviewed the entire immigration processing experience from arrival on the island to the point of a visa being granted to a person or a person's removal from Australia.

Managing arrivals, and consequent health, law enforcement and immigration processes on Christmas Island involves multiple Australian Government agencies, contracted service providers, non-government organisations and legal representatives.

Ombudsman staff monitored the processes followed by government agencies and service providers, liaised with the many stakeholders and met with detainees and their legal representatives. They were also in close contact with members of the Christmas Island community and those involved in providing services and support to people detained at the IDC, in alternative detention and in community detention.

We received a broad range of complaints from people detained on Christmas Island. The issues investigated in these complaints included:

- delays in the processing of RSA cases, in particular the delays in arranging for review hearings and issuing review decisions
- delays in finalising security clearances (which is a requirement before a detainee may make an application for a protection visa after receiving a positive RSA decision)
- access visits and contact between relatives detained in separate places on Christmas Island
- overcrowding and the lack of opportunity to be placed in a less restrictive immigration detention setting such as community detention.

We have noted improvements in key areas. These include:

- more interpreters being made available to detainees
- more DIAC case managers for detainees, assisting to streamline and manage any potential backlog or delays in processing detainees
- a better coordinated cross-agency approach to processing RSA claims.

Compliance and removals

Monitoring of DIAC's compliance functions demonstrated an improvement in its compliance field operations and training. The main purpose of this ongoing monitoring is to assess the effectiveness of DIAC's policies and procedures governing the location, identification and detention of unlawful non-citizens.

Some concerns remained, however, which included:

- some compliance staff were not confident in using the new IT system for the identification and 'single-view' of a client (we suggested more staff training to address the issue)

- the basis used to establish 'reasonable cause to believe' that a person of interest could be found at a particular place was not clear in some warrant applications. (For example there did not appear to be sufficient surveillance of some premises to ensure that the 'persons of interest' were present, before committing a large compliance team to approach the premises).

Field observations by Ombudsman staff indicated that DIAC officers were detaining people as a last resort, in keeping with the Minister for Immigration and Citizenship's statement relating to 'detention values'.

We also observed some of the DIAC training sessions for its field operations staff who plan and conduct compliance activities.

Reporting on people held in immigration detention

Two-year review reports

Under the *Migration Act 1958* (Migration Act), the Ombudsman is required to review the cases of people held in immigration detention for two years or more. Section 486N of the Migration Act requires DIAC to provide a report to the Ombudsman within 21 days of a person having been in detention for two years. If the person remains in detention, DIAC must provide new reports to the Ombudsman at six-monthly intervals.

The Ombudsman provides the Immigration Minister with an assessment of the appropriateness of the person's detention arrangements under s 486O of the Migration Act.

The number of s 486N cases has continued to decline. In announcing the immigration detention values in July 2008, the Minister identified three groups as being subject to mandatory detention:

- all unauthorised arrivals, for management of health, identity and security risks to the community

- unlawful non-citizens who present unacceptable risks to the community
- unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Where a case has not fallen clearly into any of these groups, the Ombudsman has requested that the Minister review whether continuing detention is consistent with the immigration detention values.

Recurring issues in our preparation of s 486O reports have been the:

- physical and mental deterioration of people who have been subject to confinement in IDCs
- difficulty of justifying restrictive immigration detention solely on the grounds that a person's identity cannot be conclusively established.

Table 5.2 shows that DIAC provided 45 reports under s 486N during 2009–10, just over half the number provided in 2008–09. The table also shows the number of s 486O reports the Ombudsman provided to the Minister. The Minister tabled 42 reports in the Parliament.

The case study on the following page, *Two year review—identity investigation*, shows some of the facets of our work in this area.

Six-month review reports

DIAC and the Ombudsman agreed that DIAC would provide a report to the Ombudsman every six months while a person is detained. The Ombudsman would then report back to the Secretary of DIAC on the appropriateness of the person's detention arrangements.

The Ombudsman provides a consolidated report to the Minister. The six-month review process runs parallel to the statutory process, where upon the Ombudsman reports to the Minister on detentions of more than two years. In practical terms the new non-statutory review regime provides faster feedback from the Ombudsman to DIAC and more frequent external scrutiny of individual detention cases.

DIAC provided the first report to the Ombudsman in April 2009. Reports have covered people detained for periods from six months to 18 months, and the Ombudsman has provided a report on a number of cases to the Secretary of DIAC.

Table 5.2: Reports under s 486N and s 486O of the Migration Act, 2009–10

	Report on person											Total
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	
s 486N reports received from DIAC	15	10	8	6	0	0	0	1	2	2	1	45
s 486O reports sent to the Minister	16	8	7	3	2	0	1	1	3	2	0	43

* The first report is after a person has been in detention for two years, and subsequent reports are made every six months. Some reports may be combined.

Two-year review—identity investigation

Mr GG arrived in Australia as a stowaway with no identity documents and was detained in November 2007. He told us that he was born in Sudan, but was taken to Kenya at the age of seven for safety reasons. He said that he received minimal schooling, was a domestic servant with a family for many years and as an adult transited through a number of African countries before coming to Australia. He claimed to be a citizen of Sudan.

The history of DIAC's investigation of Mr GG's nationality raised some concerns with this office. Initially DIAC was inclined to accept Mr GG's nationality as Sudanese. However, another area within DIAC stated that there was conflicting information about Mr GG's nationality and proceeded to investigate numerous alternative nationalities. We were concerned that DIAC was relying on speculative information and Mr GG's childhood recollections.

There appeared to be an expectation that a person in Mr GG's situation should have a clear memory of childhood details that were never of critical importance to him. Despite DIAC's attempts to establish Mr GG's identity and nationality, after more than two years the issue of identity was not resolved as at the end of June 2010, and Mr GG remains in detention. In May 2010 the Minister noted our concerns and requested that DIAC prepare a formal response addressing the issues that we raised.

Table 5.3: Immigration and detention-related own motion reports, under the *Ombudsman Act 1976*, 2009-10

	1st report	2nd report	Total
Received from DIAC	165	8	173
Review sent from Ombudsman	84	5	89
Closed without review*			83

* Our office does not complete a report if the person is removed or released before being interviewed by Ombudsman staff.

Issues arising in our preparation of six-monthly reports

- Concerns about the risk assessment factors that are considered when deciding upon the type of immigration detention environment in which a person may be placed (for example community detention, residential housing or an IDC).
- The probity applied to the information relied upon to support placement decisions of detainees in immigration detention.
- Delays in providing medical assessments that have an impact on the case management progress.
- Delays in finalising security clearances that have an impact on the health and welfare of detainees accommodated in the more restrictive immigration detention environments.
- Access to medical services, with the additional difficulty in providing medical or specialist medical services to detainees being accommodated in remote locations, both onshore and offshore.

Six-monthly review—health information

Mr HH is a citizen of the People's Republic of China (PRC) who was detained at Villawood IDC in November 2008 after over-staying his Bridging Visa. Mr HH told the Ombudsman's office that he was tortured and gaoled for his Falun Gong practice in the PRC.

In June 2009 DIAC advised that Mr HH's mental health appeared to be deteriorating, and following an incident of self harm in February 2009, Mr HH was referred to the Service for Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS). DIAC requested information from DIAC Detention Health Services on three occasions. After a delay of six weeks, DIAC received Mr HH's diagnosis of Post-traumatic Stress Disorder. The Ombudsman noted that the delayed provision of medical advice to those responsible for assessing the impact of continued detention on the management of people who are showing signs of mental distress was not consistent with DIAC's Detention Health Framework.

DIAC confirmed that internal provision of health information had been identified as a problem and correcting protocols were put in place in July 2009. Following the Ombudsman's assessment, procedures were implemented to ensure a smooth flow of information while still protecting the privacy of detainees' health records.

Own motion investigations

In July 2009, the Ombudsman released *Department of Immigration and Citizenship: Invalid visa applications* (Report No 10/2009). This investigation focused on DIAC's management of invalid visa applications and considered the problems that can occur when invalid visa applications are poorly managed. The investigation looked at the timeliness and adequacy of advice given to visa applicants about their invalid visa applications.

The report found that overall, DIAC's management of applications was in accordance with current policy and legislation. However, key areas in need of attention related to:

- improving the clarity of DIAC policies

- addressing the delays associated with assessing invalidity
- improving the advice to visa applicants about the invalidity of their applications
- improving record keeping practices.

DIAC has been taking steps to address these issues, preparing six-monthly reports on its progress for the Ombudsman.

Law Enforcement Ombudsman

Law Enforcement

The Commonwealth Ombudsman is also the Law Enforcement Ombudsman and has a comprehensive role in oversight of Australian Government law enforcement agencies. The Ombudsman deals with complaints made about the Australian Federal Police (AFP), Australian Crime Commission (ACC), Attorney-General's Department (AGD), Australian Transaction Reports and Analysis Centre (AUSTRAC) and CrimTrac. We also review the AFP's complaint-handling arrangements.

The Ombudsman has statutory responsibility to inspect the records of law enforcement agencies and other agencies to ensure compliance with legislative requirements applying to selected law enforcement and regulatory activities.

This work is described in the *Monitoring and inspections* section of this report.

Australian Federal Police

Complaints about the AFP are dealt with by the AFP under the *Australian Federal Police Act 1979* (AFP Act) and may also be investigated by the Ombudsman under the Ombudsman Act. The Ombudsman is notified by the AFP of complaints received that are categorised as serious conduct issues (category 3 under the AFP Act).

Complaints made by members of the public about the actions of members of the AFP remained an important part of our work in the reporting period. In addition, the Ombudsman's oversight of the AFP complaint-handling system through reviews conducted under Part V of the AFP Act was a focus of our efforts in 2009–10. We also completed one own motion investigation and commenced another; both are discussed later in this report.

At the start of 2009–10 two cases remained outstanding and were handled by the AFP and oversighted by the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). That Act was repealed in December 2006. Both cases have been completed.

Review of complaint handling

The Ombudsman has a responsibility to review the administration of the AFP's handling of complaints through inspection of AFP records. This includes records of the handling of complaints about ACT Policing. The Ombudsman reports to the Commonwealth Parliament annually, commenting on the adequacy and comprehensiveness of the AFP's handling of conduct and practice issues, and inquiries ordered by the Australian Government Minister.

The office conducted inspections to review the AFP's administration of complaint handling and provided three reports to the AFP Commissioner as follows:

- September 2009 for the period 1 August 2008 to January 2009
- June 2010 for the period 1 February 2009 to 31 July 2009
- July 2010 for the period 1 August 2009 to 28 February 2010.

The results of these reviews will be reported to the Parliament in the latter part of 2010.

The most recent report to the Parliament, which covered review activities conducted during 2008–09, was tabled in December 2009.

This report shows that the AFP has been striving toward consistent quality of complaint resolution. The technology used for complaint management remains an issue, as does timeliness for complaint resolution.

The AFP has noted that improving the standard of adjudications of (the more serious) category 3 complaints has caused delay in finalising some matters. It has sought to address this by establishing an AFP Professional Standards Adjudication Panel. This will be a panel of seven Senior Executive Service band 1 officers that will assist the Manager Professional Standards by adjudicating category 3 complaints.

The report noted that the AFP had made progress in improving its complaint-management practices and procedures, particularly in outcome letters. There remains further room for improvement in the consistency of communication (particularly when matters are delayed), and keeping the complainant abreast of the progress of their complaint.

The AFP has generally responded positively to the reviews conducted by the Ombudsman's office. The AFP is now addressing the constraints concerning its data collection and reporting capabilities. The Ombudsman has suggested that when this has been accomplished, the AFP will need to focus on analysing the data collected. It should aim to use the analysis to improve its administration of complaints and provide insight into organisational issues.

Complaint themes

During 2009–10 we received 389 approaches and complaints related to the work of the AFP at the local (ACT community policing), national and international level. Of these, 188 were immediately advised to contact the AFP in the first instance. The office further examined 122 of

the complaints. Collectively, the most common issues concerned:

- inappropriate action, such as excessive delay, failure to act, inadequate investigation (145)
- conduct on duty (88)
- property and exhibits (58)
- arrest (24).

In 44% (169) of the approaches, the complaints were about AFP members acting in their ACT community policing role. Our work in this area is described in more detail in the ACT Ombudsman annual report, available at www.ombudsman.act.gov.au.

Of complaints alleging inappropriate action, 30% were about excessive delay in either the investigation of the complaint or the adjudication. While the introduction of the Adjudication Panel should assist with those complaints delayed at the adjudication phase, complaints to us have also been about delays at other stages of the investigation.

Lengthy delays occurred in some of the more minor cases, as the following case study shows.

Excessive delay and inadequate explanation

Mr JJ lodged a complaint with the AFP in early 2007, in which he sought an explanation about why AFP officers had stopped and questioned him on three separate occasions over a three hour period for the same alleged incident. The AFP sent him a reply two years later that did not address his concerns.

Mr JJ then complained to us about the incompleteness of the explanation and the length of time that it took for the AFP to reply. Our investigation revealed that no action was taken to investigate the complaint, despite repeated requests from the Professional Standards area. When another investigator was assigned to look into the matter, he did not question the officer who was the subject of the complaint (and who was a higher-ranking officer than the investigator).

We recommended that the AFP apologise to Mr JJ for the delay in finalising his complaint, which it did. We were also able to provide Mr JJ with a more detailed explanation of the events in question, and to confirm that he was not adversely recorded on any AFP database. Mr JJ was greatly reassured and he expressed his gratitude. We were critical of the delay in this case. The AFP advised that improved protocols for managing complaints against senior officers had been put in place in response to recommendations from an earlier Ombudsman's report.

Complaints finalised

Under the Ombudsman Act, we finalised 331 complaints about the AFP. In 188 cases we referred the complainant to the AFP on the basis that a complainant should contact the relevant agency before asking the Ombudsman to conduct an investigation. We completed 53 investigations and referred 13 cases to other agencies, courts or tribunals, or the Minister. Some investigations that were commenced during the period are yet to be completed.

Own motion investigations

An own motion investigation was conducted following a complaint against a senior officer in the AFP. It was alleged that the officer misused his position in the AFP to send three AFP officers to intervene on a relative's behalf in a property dispute.

This investigation did not find any evidence to support the allegation. It did identify specific deficiencies with the AFP's investigation of the original complaint, more general deficiencies in the policy and procedure for dealing with complaints against senior AFP officers, and a problematic ACT Policing practice of attending when property is removed or locks changed in disputes about property rights.

As a result of this investigation the AFP introduced improved protocols for the investigation of complaints against its senior officers.

In March 2010, the Ombudsman commenced an own motion investigation to determine if the AFP's payments to witnesses, particularly large payments, is a widespread practice, and if so, whether the governance in place is suitably robust. The investigation is ongoing.

Who hit me?

Mr KK was in a car accident that was attended by ACT Policing. He was injured in the accident and unable to obtain the other party's name and address at the scene. Mr KK contacted ACT Policing by telephone and in person to ask for the other party's contact details so that he could make an insurance claim. According to Mr KK, ACT Policing advised that it was unable to give him that information for privacy reasons. This was incorrect advice. We advised Mr KK that for a small fee he could apply for a copy of the accident report, which would contain the name and address of each party in the accident.

Search warrant process

Mr LL complained about the actions and alleged harassment by the AFP in relation to members of the Tamil community.

The police conducted a terrorism-related operation that resulted in charges being laid against three individuals. The complaint particularly related to the execution of search warrants and access to interpreters. The search warrants were executed on several residences and places of business for members of the Tamil community who were not charged with any offences, but were contacted (or had search warrants executed on their premises) by the AFP in its evidence gathering.

We investigated the complaint from Mr LL, concentrating on the way the AFP interacted with members of the Tamil community. Our investigation found that the process followed by the AFP during the execution of the search warrants was not unreasonable.

Australian Crime Commission

Complaints about the ACC are managed under the Ombudsman Act. The ACC also notifies the Ombudsman's office about other significant matters, allowing us to consider whether further investigation is warranted. In 2009–10, we received seven complaints about the ACC, all of which we declined to investigate.

The Ombudsman conducted an own motion investigation into the ACC's collection, storage and dissemination of information. The investigation was prompted by a request from the ACC's Chief Executive, following a leak to the media in September 2008 of an ACC document detailing conversations at a ministerial dinner.

The investigation established that the ACC performs its intelligence gathering role in accordance with its legislation and that it does not appear to hold improper or unauthorised records. The creation of the document in question was entirely inappropriate, but seems to have been an anomaly.

However, the Ombudsman found that the ACC needed to improve the way it handled sensitive information. Central to the issue were conflicting policies, guidelines and other documents (such as all staff emails from senior management).

The Ombudsman noted that staff appeared to be confused about whether the organisation endorsed a 'need-to-share' or a 'need-to-know' policy. The Ombudsman also found that conflicting and out-of-date internal information policies, multiple databases with varying degrees of security and low staff

morale increased the risk of confidential ACC intelligence falling into the wrong hands.

The Ombudsman acknowledged the ACC's efforts to build a culture of integrity and improve information handling, and made recommendations to assist this process. The report recommended that the ACC should:

- develop an overarching information governance policy as a matter of high priority
- review the guidance given to consultants in relation to the use of ACC information
- develop a definition for unauthorised information access and enforce it
- consider improving audit and incident reporting systems.

The ACC accepted the recommendations and advised that the report set out a constructive way to address the identified issues.

The Ombudsman's report, *Australian Crime Commission—Review of collection, storage and dissemination of information*, report 15|2009, is available at www.ombudsman.gov.au.

Australian Commission for Law Enforcement Integrity

The Ombudsman can refer allegations of corruption against law enforcement officers to the Integrity Commissioner of ACLEI. The Ombudsman can also investigate complaints about ACLEI. In 2009–10, we received two complaints about ACLEI. We investigated one and declined to investigate the other.

CrimTrac

In 2009–10, we received two complaints about CrimTrac. We declined to investigate the complaints, both of which related to the Australian National Child Offender Register.

AUSTRAC

In 2009–10, we received five complaints about AUSTRAC. We declined to investigate four complaints and were still assessing the other at the end of the reporting period.

Attorney-General's Department

In 2009–10, we received 36 complaints about the Attorney-General's Department.

We investigated six and declined to investigate 30. The complaints we investigated alleged failure to act, and provision of deficient advice. We made no adverse findings against the agency.

Postal Industry Ombudsman

Postal Industry

The Postal Industry Ombudsman (PIO) role was established in October 2006 as an industry ombudsman function for the postal and courier industry. Australia Post is automatically subject to the PIO's jurisdiction, and other private postal operators (PPOs) can register with the PIO. At 30 June 2010 the following PPOs were registered with the PIO:

- Australian Air Express Pty Ltd
- Cheque-Mates Pty Ltd
- D & D Mailing Services
- Federal Express (Australia) Pty Ltd
- The Mailing House
- Mailroom Express Pty Ltd
- Universal Express Australia Pty Ltd
- 329 Motorcycle Courier Services.

Complaint themes

The PIO received 2,421 approaches and complaints in 2009–10, a 19.5% increase on

the 2,026 approaches received in 2008–09. Some of this increase can be attributed to the growing public awareness of the PIO. Table 5.4 shows the number of approaches received, and complaint investigations commenced and completed, during the year.

The PIO can only investigate activities relating to the provision of a postal or similar service. The PIO cannot consider complaints about other aspects of a postal provider's operations, such as employment matters or environmental issues. The Commonwealth Ombudsman retains jurisdiction over those administrative actions of Australia Post that do not fall within the jurisdiction of the PIO.

A complaint about Australia Post may be transferred from the Commonwealth to PIO jurisdiction, or vice versa. Further detailed reporting, including the number of times complaints were transferred from the PIO jurisdiction to the Commonwealth jurisdiction, is provided in Appendix 4.

Table 5.4: Approaches to, and investigations by, the PIO in 2009–10

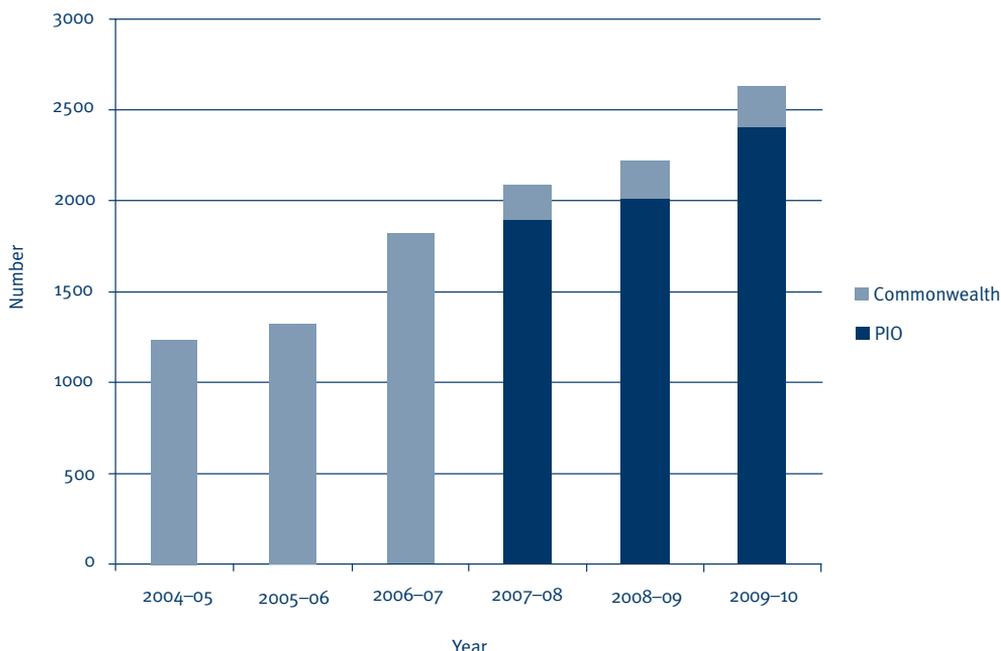
	Approaches received	Investigations commenced	Investigations completed
Australia Post	2,410	503	439
Private Postal Operators	11	2	1
Total	2,421	505	440

Australia Post complaints overview

In 2009–10, we received 2,626 approaches and complaints about Australia Post across PIO and Commonwealth jurisdictions. This is an 18.3% increase on the 2,219 received in 2008–09. Figure 5.4 shows the number of complaints received about Australia Post during

the past six years, and the division between the Commonwealth and PIO jurisdictions. While the overall number of complaints to our office is small when compared to the volume of mail delivered daily by Australia Post, there is a significant upward trend, with overall complaint numbers doubling over the six-year period.

Figure 5.5: Australia Post complaint trends, 2004–05 to 2009–10



The three main issues for complaints about Australia Post were: recurrent problems in the method of mail delivery (23.6%); the customer contact centre’s quality of service (17.8%); and one-off problems with registered post (10.0%). Some of the major investigations and themes we have worked on this year are discussed in the rest of this section.

Passports lost in the mail

In June 2010 we published a report on an own motion investigation into the loss of passports in the mail. The investigation was prompted by an increase in the number of complaints we received about this problem. Although the number of complaints received by our office

may seem relatively modest when compared to the large number of passports sent by mail, the consequences for those whose passport goes missing can be significant.

The most frequent causes of complaint are that passports are lost, and that the amount of compensation offered by Australia Post is inadequate. We examined Australia Post’s processes and practices relating to lost passports and compensation arrangements.

We also sought information from the Department of Foreign Affairs and Trade (DFAT). DFAT sends out many passports through the post and is the agency responsible for issuing passports and dealing with reports of their loss.

Our investigation concluded that there are measures that Australia Post and DFAT could put in place to capture better data about lost passports. This would enable better analysis of patterns of loss and expose any possible systematic stealing of passports.

We recommended that Australia Post redraft its terms and conditions and other information it provides to the public about sending passports through the post, and about the compensation payable if a passport is lost.

Generally speaking, we did not consider it unreasonable for Australia Post to exclude payment of compensation for consequential loss (such as loss of income related to time off work to deal with a lost passport). However, customers should be made aware of the difficulties that may arise in the event of a lost passport.

Both DFAT and Australia Post accepted our recommendations and advised us that they are taking steps to implement changes and improvements. We appreciate the detailed responses both agencies provided, and their assistance in explaining some of the issues involved in handling reports of lost passports.

Compensation

During the year we undertook an own motion investigation into the level of compensation paid by Australia Post for loss or damage of postal items. We regularly receive complaints about compensation available for uninsured ordinary post and registered items.

In February 2010 we released our investigation report *Australia Post: Determining levels of compensation for loss or damage of postal items* (report No. 1|2010).

Our investigation found that the maximum level of \$50 payable for items sent by ordinary post had not changed since 1987 and its real value had halved since that time. The basic compensation level of \$100 for registered post items had not changed since 1996 and its real value had decreased to \$70.

We disagreed with Australia Post's view that compensation provided for ordinary items should be set as a proportion (half) of that for registered items. In our view, the link between the ordinary letter service and the registered service is unwarranted.

Australia Post has a monopoly over the ordinary letter service whereas the service for registered items is open to competition.

We recommended that Australia Post formally review its compensation level for ordinary post items, and in particular consider the rationale for the original and current \$50 level, and whether that rationale is valid when viewed independently of compensation levels payable for other services.

The Australian Competition and Consumer Commission (ACCC) has a statutory role in monitoring price increases for Australia Post's letters service. We recommended that when Australia Post advises the ACCC about proposed increases to the basic postal rate, it include information on the compensation levels for the service.

Australia Post did not accept our views and recommendations. Its 2010 price notification submission to the ACCC did not include information about compensation levels.

'Safe drop' program

In September 2008 Australia Post instituted its *Safe Drop* delivery policy nationwide. This was a significant change in delivery practice. Under this program, non-signature items that do not fit in an addressee's letterbox can be left in a safe place on the property, rather than being taken back to the post office and carded for collection, as was the previous practice. Items can only be left if they are out of view of the street, safe from weather and pets, and undamaged. Items requiring a signature upon delivery cannot be left.

During the year we monitored safe drop complaints and in March 2010 we released the report *Australia Post: 'Safe Drop' program—a review of the first year* (report No. 3|2010).

Our review did not find any systemic problems or widespread concerns with the *Safe Drop* program. However, we recommended that Australia Post give further consideration to ways that may improve the program. Issues related to:

- additional training and awareness for staff about safe places for delivery
- a procedure for people who want to opt out of the *Safe Drop* program
- leaving a card when an item is 'safe-dropped'.

Australia Post confirmed that conditions under which safe-drop delivery may be made are set out in its procedures and advised that management within delivery areas continue to ensure the procedures are followed. It also confirmed that its policy requires a notification card is to be left at all times when a parcel is delivered by the safe-drop method.

However, Australia Post considered that developing a procedure for people who wish to opt out of the program would be cost prohibitive. Instead, it has made available 'Do not safe drop' labels that an addressee can request a sender attach to a parcel at the time of lodgement.

Customer contact centres

In our last annual report we noted that Australia Post was in the process of implementing national complaint-handling guidelines. It was also rationalising its existing structure of six customer contact centres into two centres (in Melbourne and Brisbane), which became operational in early 2010.

These changes to systems will affect Australia Post's complaint handling. We are continuing to monitor arrangements and hope the new structure will demonstrate improvements in Australia Post's complaint handling.

We acknowledge the commitment of Australia Post's customer service officers and note that the recurring themes in complaints tend to involve limitations in complaint-management systems, and issues with training and policy guidance.

Private Postal Operators

In May 2009 we asked all registered Private Postal Operators (PPOs) to complete a questionnaire about their complaint-handling processes. The questionnaire was designed to help us understand how PPOs manage complaints and describe the information they give their clients about the PIO. Six of the eight registered PPOs responded.

The PPOs considered they had a high level of customer satisfaction and believed this was why the number of complaints coming to our office is low. We found that while PPOs may refer their customers to us, they do not necessarily do so as a matter of course.

We concluded that the role of the Ombudsman as an avenue of complaint has not been well promoted by PPOs. To address this we asked them to include information on the Ombudsman and a link to our website on their websites, and to refer dissatisfied complainants to us. Several PPOs agreed to do so.

We have continued to liaise with other postal industry stakeholders, particularly the Post Office Agents Association Limited.

Case studies

The following case studies indicate the diverse nature of the complaints regarding Australia Post that have been handled by the Ombudsman during the year.

Street delivery

Australia Post told Ms MM she could receive a street delivery service if she put a letter box on the boundary of her property. However, Ms MM's property is accessed via a council easement and private road. The council would not let her put a letter box on its land, and Australia Post would not drive down a private road. Australia Post did not act on Ms MM's complaints, and continued to charge her the full price for a post office box as it had been doing for several years. Our investigation confirmed that street delivery could not be made to Ms MM, and therefore she was eligible for a discounted rate for her post office box. Australia Post agreed with our view and refunded \$500 to Ms MM.

Registered Post and compensation

Mr NN sent a registered post item containing retail vouchers valued at more than \$1,200. The addressee did not receive the item, and Australia Post had not obtained a signature to verify delivery. Australia Post refused Mr NN's request for compensation because the delivery contractor advised it had a standing authority from the addressee to leave parcels at the address.

Upon investigation, the delivery contractor was unable to provide a written confirmation of authority to leave parcels without a signature. As a result Australia Post offered Mr NN discretionary compensation of \$1,200 plus the postage costs.

'Lost' item

A horse saddle sent interstate by registered post went missing in transit. The sender, Miss OO, complained to Australia Post and provided photos to help the search. Australia Post said it could not locate the saddle and offered Miss OO \$100 compensation in accordance with its terms and conditions. Miss OO was concerned that Australia Post had not conducted a thorough search for the saddle.

We asked Australia Post to clarify what searches it had conducted. After our contact Australia Post located the saddle at a Mail Redistribution Centre (MRC) and returned it to Miss OO. Australia Post discovered the saddle had arrived in the MRC shortly after Miss OO sent it, but its details had not been entered on the MRC database and so it had not been found through a database search.

We concluded that if the MRC had catalogued the item on the database in a timely fashion, and if Australia Post had circulated the photos of the saddle to relevant MRCs, Australia Post may have located the saddle earlier.

Secure delivery

For many years a caravan park and Australia Post had an informal arrangement whereby residents' incoming and outgoing mail would be delivered and collected by the postal delivery officer from a locked box on the property. Ms PP, a park resident, complained that the park manager had access to the collection box and was using that access to interfere with residents' mail.

When we investigated, Australia Post agreed with our view that it had an obligation to provide a greater level of security if it was going to collect mail from the box. Rather than cancel the collection service altogether, which it was entitled to do, Australia Post liaised with the initially reluctant park manager to get written agreement for the locks to be changed. As a result, only Australia Post staff could access the box. Park residents were able to continue a long-standing and convenient mail collection arrangement with greater security.

Retail products

Ms QQ purchased a Visa card valued at \$100 from a post office. When she tried to use the card 24 hours later, she found it had no available credit. She contacted Visa and was told that Australia Post had not 'activated' the card. She then contacted Australia Post and was told it could not compensate her for the cost of the card. Following our investigation Australia Post reconsidered its decision and advised that it would activate the card.

Ms RR's daughter purchased a Visa card from a post office. When Ms RR received it, she found the card had expired prior to purchase. Ms RR's daughter requested a refund. The post office staff acknowledged she had purchased the card, but refused a refund as she did not have the original receipt. Ms RR complained to Australia Post and made several follow-up calls but received no response.

When we investigated, Australia Post was able to verify that Ms RR's Visa card number matched Australia Post's transaction record and confirmed that the Visa card had already expired at the time of purchase. Australia Post refunded the value of the card to Ms RR and issued a letter of apology. Australia Post's product manager also implemented a pop-up system to check gift card expiry dates prior to sale.

Taxation Ombudsman

The Commonwealth Ombudsman investigates complaints about the Australian Taxation Office (ATO) as well as the newly-established Tax Practitioners' Board (TPB). In 1995 the Ombudsman was given the title of Taxation Ombudsman following a recommendation by the Joint Committee of Public Accountants. It recognised the unequal position of the ATO and taxpayers, and aimed to give greater focus to the investigation of complaints about the ATO.

The TPB was established on 1 March 2010, taking over responsibility for the regulation of tax agents and BAS (Business Activity Statement) agents from the previous state-based Tax Agents' Boards. With one centralised board now dealing with tax agent regulation, we look forward to a productive relationship with the TPB and to this end we are liaising with the TPB regarding the establishment of its complaint-handling and review processes.

Australian Taxation Office

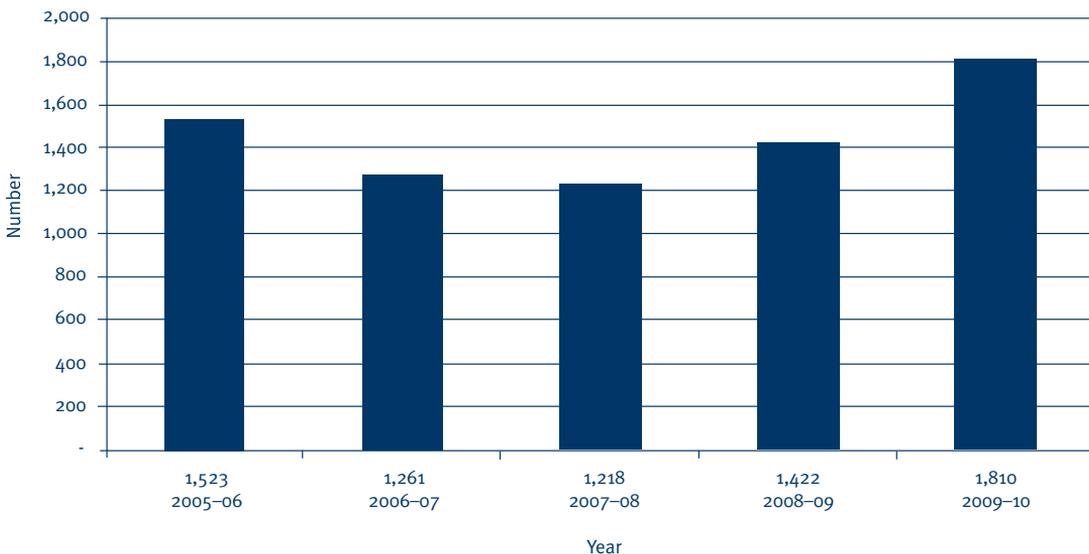
Complaint themes

In 2009–10 we received 1,810 approaches and complaints about the ATO, an increase of 27.3% from 1,422 received in 2008–09. This was a continuing trend from the previous year and amounts to a 48.6% increase in the two years to 2009–10. It is the highest number of complaints about the ATO in five years. The current level is similar to the highs reached in 2003–04, when

complaints about the period of mass-marketed tax schemes were tapering off.

The increase in complaints to the Taxation Ombudsman in 2009–10 is in contrast to an overall reduction in the complaints to the Ombudsman's office of 18%. This may be a reflection of the impact of the economic climate on many taxpayers, particularly in relation to complaints about superannuation and debt collection.

Figure 5.6: ATO complaint trends, 2004–05 to 2009–10



Delays in receipt of refunds, amended assessments and other interactions with the ATO have generated the most complaints from taxpayers and tax professionals. The ATO's Change Program for income tax release was a new source of a significant number of complaints. The most frequent and significant complaint issues are discussed below.

During the year we finalised 1,762 approaches and complaints, of which 316 (17.9%) were investigated. This is a similar number of complaints investigated to the previous year, but a lower percentage (last year 23% of complaints were investigated). One reason for the slightly lower than expected investigation rate is that, in 2009–10, we introduced streamlined information exchange procedures with the ATO. These procedures involve the ATO providing this office with limited information about its interactions with the taxpayer complaining to us. In some cases, this information has enabled us to resolve the complaint without progressing to a full investigation. This procedure was particularly effective when resolving complaints about delays in receiving refunds.

We transferred 22.5% of the complaints we received directly to ATO Complaints under our assisted transfer process. Transfers occur when the taxpayer has not already complained to the ATO, and they agree to us referring their complaint directly to the ATO's complaint-handling system. This is an increase from the 14% complaint transfer rate in 2008–09, but more in line with the 2007–08 transfer rate, which was 25%. We believe that the assisted transfer process is a valuable service to assist people to pursue their complaints through the most appropriate mechanism.

In 2009–10 we achieved one or more remedies in 56% of the cases we investigated. The most common remedies were better explanations (36% of all remedies), apologies (13%), and actions being expedited (13%).

Most frequent complaints

The complaints we received covered a broad range of ATO activities and products. The most frequent complaints related to the lodgement

and processing of forms (31%), debt collection (13.3%) and superannuation (12.7%). While these have been the most frequent complaint topics in previous years, there has been some growth in the percentage of complaints about superannuation.

The Change Program

The ATO's Change Program for income tax release in January 2010 was a new source of complaints and accounted for about 12% of the complaint issues recorded in 2009–10. Most of these complaints concerned delays in lodgement and processing. The Ombudsman provided a submission to the Inspector-General of Taxation's (IGT) Review into the ATO Change Program.

The office recorded 195 approaches and complaints about the implementation of the income tax release of the ATO's Change Program to the end of June 2010. Most of these issues were about delay in receiving expected refunds. Other main areas of complaint included:

- delay in receiving a replacement Tax File Number (TFN), where the TFN had been compromised
- government benefits delayed/changed due to information from the ATO not being received by Centrelink
- inadequate communication from the ATO
- inadequate response by the ATO when a complaint had been made.

These complaints showed that the Change Program had caused considerable inconvenience to taxpayers and, in some cases, caused consequences with other agencies, such as Centrelink and the Child Support Agency (CSA). Many complainants expressed frustration about the inconsistent information available about the Change Program.

In our submission to the IGT we recommended that the ATO's response to problems with its systems should:

- include clear messages to the community about any delays when they occur, not after the fact

- ensure that the messages taxpayers receive when they contact the ATO are consistent with public comments being made by the ATO
- ensure all areas of the ATO and key external stakeholders are aware of problems and identified ‘workarounds’.

Lodgement and processing

Almost a third of the complaints we received during the year were about lodgement and processing issues. These most commonly related to income tax assessments and refunds. Many of the complaints related to delays in receiving a refund or confusion about the tax assessment.

Debt complaint issues

Complaints about collection of debts continued as a major complaint category in 2009–10, accounting for more than 13% of all approaches to this office. The most frequent sources of complaint were payment arrangements, debt waiver or write-offs, actions of debt collection agencies, offsetting of refunds or credits against debts, and garnishee action.

Unresolved issues with TFN compromise from Change Program roll out and subsequent consequences with Centrelink

Mrs SS complained to us about a delay her husband, a Centrelink pension recipient, had experienced waiting for a new TFN. Mr SS was advised of a possible compromise of his original TFN as a result of suspected fraud. Consequently Mr SS was assessed as having a level of taxable income that caused Centrelink to raise a debt against Mrs SS’s Family Tax Benefit (FTB) payments. ATO records showed Mr SS had not lodged an income tax return in either 2008 or 2009 when the incorrect returns were lodged.

Mr SS applied to the ATO for a new TFN after the ATO advised him of the suspected TFN compromise. Mr SS rang the ATO on three occasions over three months to enquire when his new TFN would be issued. The ATO advised him that due to the Change Program systems upgrade there would be a delay in processing his new TFN. No firm time frame for issuing his new TFN was given.

After his last unsuccessful enquiry with the ATO, Mr SS complained to the Ombudsman about the ongoing delay in the ATO issuing his new TFN.

The ATO subsequently issued a new TFN to Mr SS and wrote to him to explain and apologise for the delay he had experienced. Our further enquiries revealed that Centrelink advised Mrs SS that it was waiting to receive the updated tax data from the ATO so that it could correct her FTB debt. The Ombudsman asked the ATO and Centrelink to expedite this process.

Debt released after reconsideration by ATO

Mr TT complained that he had incurred a \$23,000 tax liability after relying on oral advice he had received from the ATO about the transfer of his UK pension into an Australian superannuation fund. Based on this advice, he transferred the funds believing he would not incur any tax liability on the transfer.

After experiencing difficulties in obtaining information from the ATO about the liability, he was advised to lodge a claim for compensation and did so. The ATO refused the claim on two premises. First that Mr TT could not provide evidence that he had received incorrect advice, and second that he had not suffered financial detriment but had rather gained from the transfer.

Mr TT complained to our office. Despite finding problems with the ATO decision, our office considered it was not in a position to further the matter towards an acceptable remedy. Mr TT was subsequently granted a review by this office, which prompted further investigation. Upon review, we found that the ATO decision had:

- failed to properly apply an assessment of plausibility and instead seemed to interpret 'plausibility' with 'possibility'
- introduced a profit motive for Mr TT, saying that one of the reasons he transferred the money at the time he did was to take advantage of a higher exchange rate, and provided a flawed calculation as evidence of a gain.

After considering the issues raised by this office, the ATO agreed to waive Mr TT's debt.

Superannuation complaint issues

In 2009–10 nearly 13% of complaint issues recorded related to superannuation, including complaints about superannuation co-contribution payments and unpaid superannuation guarantee payments.

Superannuation guarantee complaints commonly came from employees concerned about delays, a lack of information, or uncertainty about the ATO's progress towards collecting unpaid superannuation. We

previously noted a reduction in the number of these complaints investigated from 2007–08 to 2008–09 (52 to 32). This decrease is attributed to improved processes, funding and changes to secrecy restrictions. In 2009–10 the number remained steady with 35 received. This still accounts for more than half of all investigated complaints relating to superannuation. It remains a substantial area of complaint. The ATO can continue to improve its timeliness and communication, as identified in our informal review in 2008–09.

Lessons learned from automated decision making

Mrs UU complained about the ATO's review decision that she was not eligible to receive the superannuation co-contribution for 2007–08 because her income was too high. The ATO had determined that her income for superannuation co-contribution purposes was more than \$100,000, much higher than the \$58,980 income cut-off. Her taxable income for the year was nil. Mrs UU argued that the ATO had incorrectly included an increase in the value of trading stock of more than \$100,000 during the year.

In response to our investigation, the ATO maintained that its calculation of Mrs UU's income was correct. We continued our investigation and suggested that the ATO had used the wrong test for dealing with trading stock increases, effectively double-counting these in her income assessment. The ATO then advised that there was a problem with the business rules for calculating income in this type of case that it had been working to resolve for many months.

Despite an estimated 16,000 taxpayers being affected by this issue and another business rule problem, the ATO's complaint staff had not been told about the problem. As a result of our investigation, the ATO acknowledged shortcomings in its internal risk/issue escalation processes and engagement with its complaint staff and took action to improve it. We also recommended that the ATO review its processes for advising taxpayers where it makes review decisions that are later found to be incorrect. In addition to being paid the correct amount, it is important that taxpayers have written confirmation about the correct basis on which their contribution was determined.

Unreasonable delay in release of superannuation funds

Ms VV had requested urgent early payment of her superannuation funds on the grounds of medical and financial hardship. Upon receipt of her application the ATO advised Ms VV that payment would be made within three to four weeks. When no payment was received in the period indicated by the ATO, Ms VV complained to the Ombudsman.

Our investigation revealed that all direct superannuation payments to taxpayers from Superannuation Holding Accounts were unable to be processed due to technical difficulties arising from the Change Program deployment. However, the ATO did not make this known to affected taxpayers for some time after the problems first arose, and no manual workaround was implemented as an interim fix.

We found that there were flawed administrative procedures involved in the processing of these superannuation payments to taxpayers. The ATO agreed with our finding, and undertook to address the problems by:

- identifying and implementing contingency procedures to mitigate possible systems failures
- providing timely and adequate advice to taxpayers and ATO staff when such failures occurred
- identifying and giving priority to hardship cases such as Ms VV.

Reviewing tax administration

In addition to resolving individual complaints, we use information from complaints to identify potential systemic problems in tax administration. Through our project work, including our own motion investigations and less formal reviews, we review the effectiveness of specific areas of tax administration and consider areas for improvement.

The Ombudsman's office meets regularly with the ATO to canvas ways to improve administration and prevent or respond more effectively to complaint issues. We also liaise regularly with the Inspector-General of Taxation and provide information or submissions to IGT reviews.

ATO's use of access without notice powers

In February 2010 we released an own motion report on the ATO's use of 'access without notice' powers. These wide-ranging powers allow the ATO to enter a business or private premises, without the owner's permission, to examine and copy documents relevant to an investigation. The report was based on:

- a review of a selection of access without notice visits conducted by the ATO in the period 2005–06 to 2007–08
- the Ombudsman's office observing a coordinated, simultaneous multi-site access without notice visit in several states
- a review of the supporting documentation that guides the ATO's staff in the use of its access without notice powers.

We concluded that it was right and proper that the ATO used its access without notice powers only in exceptional circumstances, defined by a genuine belief that documents might be

destroyed if notice was given, a well-founded concern that fraud or evasion is occurring, or inappropriate secrecy by the taxpayer. However, we suggested (and the ATO agreed) that the ATO's commitment to public accountability would be strengthened by:

- greater transparency through, for example, reporting use of the powers in its annual report
- fine-tuning the *Access and Information Gathering Manual*, especially in relation to the ATO's excisable goods regulatory role
- improving the electronic case management system.

Resolving tax file number compromise

During the year we identified concerns with the ATO's response when TFNs have been compromised or TFN records are incorrectly linked. TFN integrity and ATO data and systems quality are areas of high importance to the tax system.

In our view the action taken by the ATO in several cases involving TFN compromise was unreasonable. Our investigations suggest a systemic failure by the ATO to properly recognise and respond to the issues faced by taxpayers who, through no fault of their own, have their TFNs compromised or are incorrectly linked, by the ATO, to another person's TFN.

In the cases we investigated, the taxpayers with compromised TFNs had not been able to resolve their problems with the ATO, despite having made a number of attempts to do so. Responses to these investigations suggest that there is a need for the ATO to improve its systems and processes for resolving more complex TFN compromise cases.

Ongoing problems from ATO failure to recognise TFN compromise

Since at least 2002 until an Ombudsman investigation in 2009, ATO systems allowed two taxpayers to share the same TFN. Mr WW complained to us because he had been unable to resolve his problem with the ATO in which he and another taxpayer with a similar name were sharing the same TFN. The other person was not required to lodge income tax returns, but had reported the TFN for his pension and bank interest income.

As a result, the ATO had attributed the other taxpayer's income to Mr WW under its income-matching program. When Mr WW had contacted the ATO about the incorrectly matched income, the ATO had only acted to put the TFN on a list of numbers not suitable for matching. The situation recurred when the non-matching list was updated. Mr WW complained to the Ombudsman that the ATO had not dealt with the underlying problem. Mr WW said the ATO had advised that it would probably keep happening and he was upset about the prospect of having to have his record corrected on an ongoing basis.

When we investigated, the ATO advised that because of the age of the TFN, it was uncertain whose TFN the number had been originally, or how it had come to be shared. However, TFN compromise procedures should have been commenced to resolve the situation when problems had arisen. This had not occurred because the ATO had only treated the situation as an incorrect match and had not recognised the case as a compromised TFN.

In response, the ATO accepted our view and advised that it had updated its procedures to improve identification of compromised TFNs and escalate these to a senior technical officer.

Other submissions

The Ombudsman made submissions to government reviews of elements of tax administration relating directly to our role as an independent complaint-handling agency for taxation matters, including:

- the Inspector-General of Taxation's review of the ATO Change Program
- the Treasury proposal paper, *Action against fraudulent phoenix activity*.

We indicated that we broadly supported the measures proposed to enable the ATO and ASIC to prevent and respond to those who deliberately seek to evade their tax responsibilities through phoenix activities.

We noted the need to ensure that appropriate review mechanisms are included to enable the ATO to apply discretion in cases of disputed liability to avoid penalties being unfairly or arbitrarily imposed. In addition, our submission

reinforced the need to ensure that decision-making processes are robust and transparent, based on clear criteria and appropriately documented.

Outreach

As Taxation Ombudsman we seek to promote ourselves as a place where people can complain about their problems with the ATO and have them investigated. We have replaced the annual *Taxation Ombudsman Activities Report* with a bi-annual e-bulletin. It is hoped that this will provide a more accessible and up-to-date form of communication with complainants, peak bodies, tax agents and other interested parties. We attended the Tax Institute Conference and sponsored a session on self-managed superfunds, a source of common complaint.

We also have agreement with the ATO to provide Taxation Ombudsman brochures at ATO shopfronts.

APRA, ASIC and Treasury

Australian Prudential Regulation Authority

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies and most members of the superannuation industry.

In our 2008–09 annual report we noted an increase in complaints about APRA relating to the processing of applications for early release of superannuation benefits, particularly on mortgage relief grounds, which may have been related to an overall increase in applications of that type to the agency. Common complaint themes in that year were processing delays and unclear and/or piecemeal requests for information from applicants.

In September 2009 we commenced an own motion investigation into the processing of early release of benefit applications. Following consideration of APRA's formal response to our request for information, we advised APRA in June 2010 that we were no longer investigating the matter and that neither a report nor recommendations would be issued. We recognised action taken by APRA to address potential processing delays in periods when high numbers of applications are received as a reason to discontinue the investigation.

Complaint themes

In 2009–10 we finalised 174 enquiries about APRA, of which 61 were investigated. As in previous years, the majority of complaints concerned the processing of applications for early release of superannuation benefits.

Common complaint themes related to:

- the quality of advice about the exact nature of information that APRA requires from applicants
- multiple officers handling applications
- applicants not being advised that APRA can, in limited circumstances, authorise partial release of superannuation for the purpose of obtaining the information required by the regulations covering early release, such as a specialist medical opinion.

Case studies

The circumstances in which APRA can approve early release of superannuation benefits are set out in regulations made under the *Superannuation Industry (Supervision) Act 1993*. APRA is of the view that it must have evidence which relates directly to the prescribed circumstances before approval can be given and is not inclined towards inference.

The Ombudsman's office resolved a number of complaints by helping people understand the details of APRA's requirements. However, in many cases, the very circumstances that gave rise to the person seeking early access to their superannuation benefits also limited their capacity to meet prescriptive requirements.

Attention to criteria

Mr XX suffered from a serious medical condition for which he took medication. Unfortunately the medication had a detrimental effect on his teeth. He sought early release of his superannuation benefits to obtain dental treatment. APRA requested that Mr XX provide certification from a dental specialist, but Mr XX did not see a dental specialist because the problem was caused by the underlying medical condition for which he saw a different specialist. Meanwhile Mr XX borrowed money from his parents to proceed with the urgent dental treatment.

Following contact from our office, APRA re-assessed Mr XX's application, and required him to provide evidence from a registered medical or dental practitioner that the treatment was required to accommodate needs arising out of the other medical condition. These conditions were able to be met and the requested amount was released.

Clarity of information requested

Ms YY had ticked a box on APRA's application form indicating that the application was made on the basis of alleviation of an acute or chronic mental condition, yet her supporting documentation was from a reconstructive surgeon. APRA asked Ms YY to obtain supporting information from a medical specialist and a general practitioner, but did not explain that if she wished to pursue release on that ground, the medical specialist from whom she needed certification would need to be a psychiatrist. It was not until after Ms YY had re-submitted her application with the additional evidence that she was informed that this was the wrong medical specialist.

Improved flexibility

Mr ZZ contacted the Ombudsman after seeking early release of his superannuation benefits to assist with medical expenses relating to an operation and treatment for cancer. He had provided medical evidence of his condition, but was advised that the doctor also had to certify that it was 'a life threatening illness' and one for which treatment was unavailable in the public health system. The doctor maintained that his previous letters should have been sufficient.

On investigation we were advised by APRA that Mr ZZ's application had been declined on two occasions because his doctor's letters did not contain the precise wording APRA required. APRA offered to send a letter to the doctor advising of the required wording. We explained that the complainant advised that the doctor had previously said that his letter should be sufficient.

APRA agreed that the matter was too complex for the complainant to explain to the doctor exactly what was required. APRA then telephoned the doctor and was able to obtain the information necessary to approve the application.

Australian Securities and Investments Commission

The Ombudsman finalised 163 approaches and complaints about the Australian Securities and Investments Commission (ASIC) in 2009–10. While this is an increase on last year, we now see fewer complaints about penalty fees than in previous years. This may be due to the improvements made by ASIC reported in our 2008–09 annual report.

Complaints were made to ASIC about a wide range of programs. This year, however, one common complaint theme related to decisions

made by ASIC not to investigate or take action on complaints made to it. In most cases this office found that these complaints could be resolved by:

- providing more information about ASIC's discretion not to investigate
- providing more information about ASIC's regulatory goals
- seeking a more detailed explanation from ASIC.

Publication of addresses

We received two complaints about ASIC's policy of publishing (in its online gazette) the addresses of persons to whom money may be owed as a result of a compulsory acquisition of their shares. ASIC advised that it prints the addresses to avoid confusion between people with similar names and to assist in ensuring that the correct people receive their entitlements.

Maintaining that they had personal safety grounds for not wishing their residential addresses to be made publicly available, complainants had approached ASIC asking that the addresses be removed, but to no avail.

We referred one complainant to the Privacy Commissioner, who advised that it was not unlawful for ASIC to include the address, even though the *Corporations Act 2001* (Cth) only required that the individual's name be published. We then put the view to ASIC that, as the individuals had come forward to ASIC to ask that their details be removed, the gazette had performed its function and there was no purpose to be served by retaining the details in the online register.

On this occasion ASIC advised that it could not remove the details for technical reasons and that it could not control the working of other search engines through which the person's details, having once been published, could be obtained. We pointed out that the decision about the format of the publication had been made by ASIC and that, as publication of people's residential addresses could expose them to risk, ASIC needed to develop a mechanism to remove these details upon request as do other agencies like the Australian Electoral Commission.

After further consideration, ASIC advised that it had established that it could suppress the electronic publication of the complainant's address and had put this into effect.

Appointment of registered agents

Mr AB complained that a company acting as a registered agent with ASIC had set up a company and named Mr AB as director without his consent. The company had subsequently borrowed money and gone into liquidation. We investigated the process by which a person or company can become a registered agent with ASIC and how an agent could register a company without the person named as director being made aware of that fact.

ASIC informed us that, in deciding to register an agent, it relies upon the full and correct completion of a form which requires that the applicant attest that they will adhere to the *Corporations Act 2001*, including not knowingly lodging documents that are false or misleading. The form does not require disclosure of any matters relevant to suitability. However, ASIC undertakes an examination of the *Register of Disqualified Persons* and will not register a deregistered company as a registered agent. There are no particular qualifications required of agents and no other suitability assessments are made. ASIC further advised that, upon lodgement of its form for notifying the appointment of an agent, ASIC sends out two notices: one to the company confirming the appointment of the agent and one to the agent confirming the nomination by the company.

However, the notices are only generated where the form notifying of the appointment of an agent is lodged in paper form and not where it is lodged by electronic means. In the latter case, a standardised email noting receipt is sent to the registered agent who lodged the document. Therefore no confirmation was sent to Mr AB; instead an email was sent only to the person purporting to be his agent.

We raised concerns about the process for registration of agents and confirmation of their appointment with ASIC. In response, while noting that complaints about registered agents were few, ASIC agreed to consider improvements to its registration form and also agreed to review its confirmation notice process with a view to extending notification to company office holders where a registered agent is appointed using the online service.

The Treasury

The Treasury's primary role is to provide advice to government. The Ombudsman receives a small number of complaints about The Treasury,

which tend to be about their management of enquiries from the public. Complaints include failing to respond to correspondence within a reasonable time frame or to keep records of public enquiries.

Feature

Good › better › best

Good better best—changes in public integrity was the central theme of the Commonwealth Ombudsman's 2009 national conference held in Canberra on 23 and 24 September. It brought together policy makers, legal practitioners, community representatives and expert guest speakers, to discuss the challenges to complaint handling in our changing world.

The conference opened with dinner, at which the Hon. John Clarke QC gave a keynote address. Mr Clarke provided a critical assessment of administrative accountability, transparency and cross-agency operations with reference

to his experience as head of the Australian Government's inquiry into the counter-terrorism investigation into Dr Mohamed Haneef.

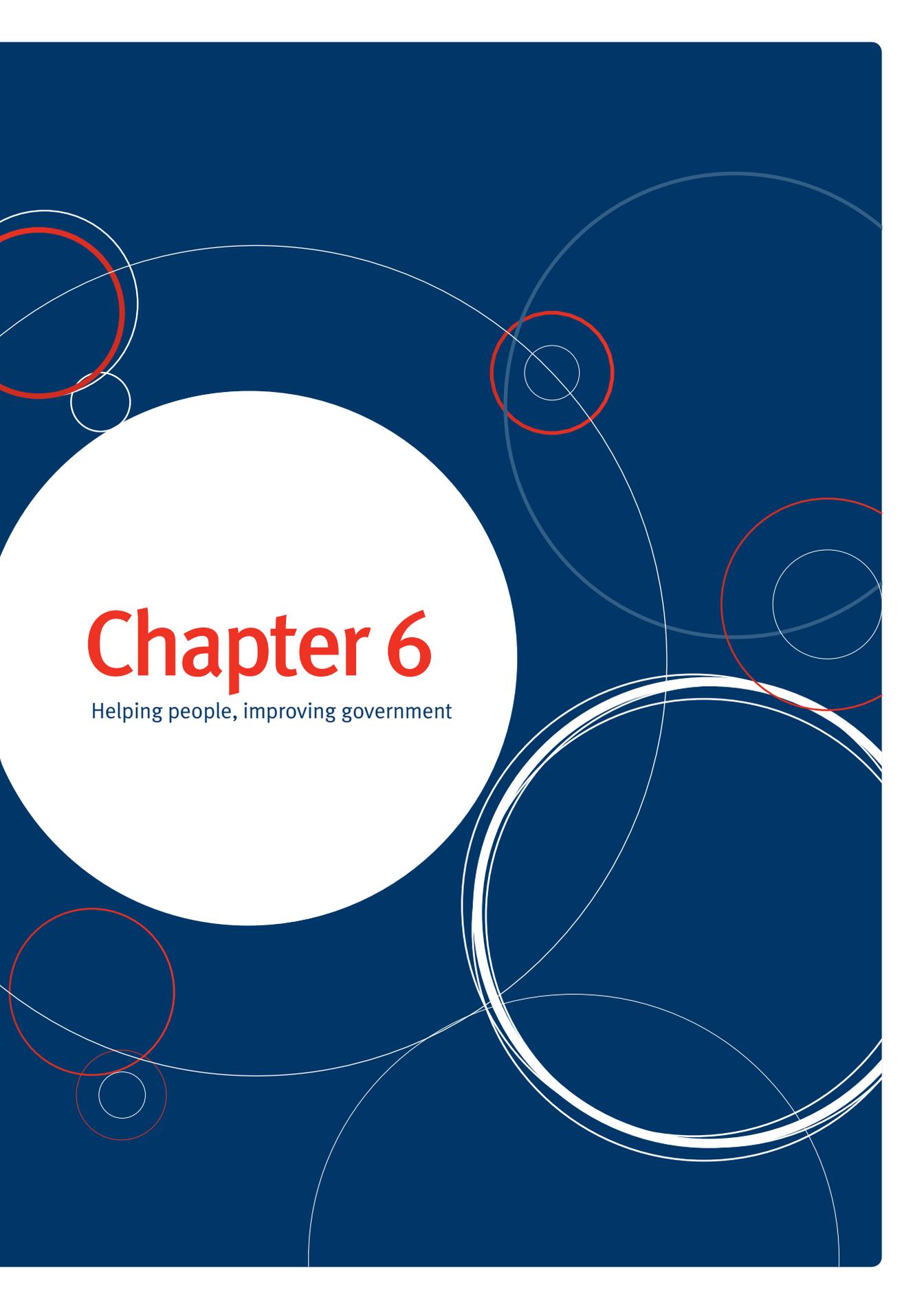
More than 200 conference delegates then participated in an intensive day of workshops, forums and plenary sessions. A recurring theme of the conference was how to safeguard best practice in governance and public administration.

Papers from the conference are available on our website at www.ombudsman.gov.au/pages/about-us/events/good-better-best/.



Photo credit: Steve Keogh

The Hon. John Clarke QC addressed the 2009 Commonwealth Ombudsman national conference



Chapter 6

Helping people, improving government

Helping people, improving government

A large part of our work is resolving individual complaints and, through this process, improving public administration in a more general sense. This chapter outlines our work in obtaining remedies for individuals, and improving public administration in areas such as communication, procedures and better complaint handling.

The chapter concludes with examples of cases where we have identified administrative deficiency in agency operations.

Remedies

When investigating an individual complaint, it is important to seek out a remedy for the complainant. Remedies might include an apology, giving better reasons for a decision, expediting action or finding a financial solution.

For information on possible remedies that are available to Australian Government agencies refer to Fact Sheet 3—*Remedies*, on our website (www.ombudsman.gov.au).

This section gives several examples of remedies we obtained for individuals through our complaint investigations in 2009–10.

Explanations

Providing a clear explanation of a decision is an important remedy. It can reduce a person's concerns, even if the decision cannot be altered. Giving the reasons for a decision can also be of practical assistance. For example, it may help the person to decide whether to make a fresh application, or seek review or reconsideration of the decision.

Explanations

Better explanations

Mr AC complained to this office that his pension had been cancelled without notification. He had made inquiries with Centrelink but had not received an answer. When we investigated, Centrelink told us that a letter had been sent to Mr AC's accountant advising that the payments would cease as Mr AC's income exceeded that permitted by his pension. Our investigation officer informed Mr AC of his review rights. Mr AC was satisfied with this explanation and planned to pursue his review rights.

An early explanation

Mr AD owned an electrical contracting business and was called out on two separate occasions for emergency refrigeration service at two canteens at Defence establishments. When he invoiced the Department of Defence, his invoices were returned unpaid and, despite contacting the department on several occasions, he was told that because he didn't have a purchase order he would not be paid. Mr AD explained that the callouts were emergencies and there were no purchase orders obtained because of their immediate nature. When we investigated, Defence told us that the two canteens were run by a catering contractor to Defence. Therefore, the invoices should have been sent to the contractors. Mr AD thought that he was dealing with Defence, an easy mistake to make given the canteens were for Defence employees and on Defence property. Following our explanation to him, Mr AD advised that the contractor had been invoiced correctly for the work. A better explanation by Defence early on would have helped this small businessman resolve his problems.

Actions and decisions

We receive many complaints about agency decisions. A frequent complaint is that there is delay by an agency in making a decision. Often, a suitable remedy in this situation is to expedite action. Another frequent complaint is that an agency has made a wrong decision.

We respect the right of agencies to decide the merits of a claim, but we do examine whether an agency has made a decision based on wrong or incomplete information, ignored relevant information or not applied the principles of natural justice. The appropriate remedy in these circumstances may be for the agency to reconsider or change a decision.

Discouraging a claim

Ms AE attempted to lodge a claim for sickness allowance with Centrelink. She was advised that she would be ineligible because she owned an investment property, and that she need not lodge a claim, which she did not. Some months later she tried again to lodge a claim for sickness allowance and it was granted. She lodged a compensation claim because she'd been discouraged from submitting the original claim. Centrelink rejected her claim for compensation because there was no record on its system to indicate an earlier claim.

We investigated and found that while there was no record showing the earlier (incorrect) advice being given to Ms AE, her customer record did show that it had been accessed by the person staffing the Centrelink reception on the date that Ms AE said she had received the advice. We suggested that this, coupled with the fact that Ms AE had acted consistently, were grounds for a reconsideration of the compensation decision. Centrelink decided to change the date of grant for Ms AE and paid her arrears from the date she had made initial contact.

Financial remedies

Poor administration can cause financial loss to people. For example, a person may not receive a benefit to which they were entitled, their benefit may be reduced below their real entitlement, they may have a debt raised against them unreasonably, or they may suffer other financial losses. There is a range of remedies that can be

used to provide financial relief or compensation to a person. One remedy is that compensation may be payable under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. In other cases, a debt may be waived or reduced. Other financial remedies might include a refund of fees or charges, or payment of a particular benefit.

Reimbursement made

A complaint was received during an outreach visit to a remote Indigenous community in Western Australia. Mr AF complained that two Family Tax Benefit (FTB) debts had been raised against him by Centrelink, because of a failure to lodge tax returns. Mr AF had told Centrelink that he and his wife were not required to lodge tax returns due to their low income.

Our investigation confirmed Mr AF had given the correct information to Centrelink however, the debt system had not been updated. In response Centrelink did a manual refresh of the system, which led to Mr AF receiving a refund of \$3,340 (money that Centrelink had already recovered from him).

Apologies

An apology can be highly effective in addressing a person's complaint. As a matter of general courtesy and good public administration,

an agency should apologise and provide an explanation to a person when an error has occurred. Complainants often see an apology as the first step in moving forward.

An apology and a change in practice

A complaint was made to the Department of Families, Housing, Community Services and Indigenous Affairs regarding a tendering process for work at a community within a particular Aboriginal corporation's boundaries. FaHCSIA visited the complainant and undertook to keep him informed of progress in the investigation. Mr AG complained that he had not heard back from FaHCSIA for a period of 10 months when he contacted this office. FaHCSIA acknowledged the contact was insufficient from a case management point of view and explained that it was partly attributable to the case officer leaving and not doing a proper handover. FaHCSIA stated that it subsequently implemented a section-wide expectation for all investigators to provide follow-up action on a regular and recorded basis. FaHCSIA apologised to the complainant and made a commitment to follow up regularly.

An apology and a timely response

Mr AH complained that the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Quarantine and Inspection Service (AQIS) had not responded to his complaints about an inspection fee that he had been charged. DAFF acknowledged that there was at least a three-month delay in responding to this type of complaint. Three months had elapsed as well as an investigation by our office before the matter was addressed. DAFF acknowledged that its complaint-handling mechanisms had failed in this instance. It apologised to Mr AH and advised that it had since altered its processes so that such delays should not occur again.

Good administration

An individual complaint can highlight a recurring problem in agency administration. Following and investigation, the Ombudsman's office may recommend broader changes, such as better training of agency staff, a change to agency procedures or policies, a revision of agency publications or public advice, or a review of government policy or legislation that is having harsh or unintended consequences.

These recommendations may be pursued in various ways. We may raise the issues with an agency through regular liaison, propose improvements in the course of an investigation or make a recommendation in a formal report.

During 2009–10 the office published 19 formal reports. Some of these dealt with an individual complaint investigation, some arose from the investigation of numerous similar complaints, and others were own motion investigations dealing with systemic issues. Reports released during 2009–10 were:

- Department of Immigration and Citizenship: Invalid visa applications (Report 10|2009)
- Putting things right: Compensating for defective administration (Report 11|2009)
- Executive schemes (12|2009)
- Department of Agriculture, Fisheries and Forestry: Compliance and investigation activities of the Australian Quarantine Inspection Service (Report 13|2009)
- Australian Federal Police and Child Support Agency (Department of Human Services): Caught between two agencies: the case of Mrs X (Report 14|2009)
- Australian Crime Commission: Review of collection, storage and dissemination of information (Report 15|2009)
- Administration of the Economic Security Strategy Payment (Report 16|2009)
- Australian Federal Police: Investigation of a complaint against a senior officer (Report 17|2009)
- Northern Territory Emergency Response: Department of Families, Housing, Community Services and Indigenous Affairs: asbestos surveys—communication issues (Report 18|2009)
- Department of Agriculture, Fisheries and Forestry: Administration of various grant schemes (Report 19|2009)
- Department of Finance and Deregulation: Processing of a freedom of information application (Report 20|2009)
- Australia Post: Determining levels of compensation for loss or damage of postal items (Report 01|2010)
- Australian Taxation Office: Use of 'access without notice' powers (Report 02|2010)
- Australia Post: 'Safe drop' program—a review of the first year (Report 03|2010)
- Comcare and Department of Finance and Administration: Discretionary payment of compensation (Report 04|2010)
- Department of Innovation, Industry, Science and Research: Administration of the liquefied petroleum gas vehicle scheme (Report 05|2010)
- Indigenous Business Australia: Investigation of a complaint about business loan management (Report 06|2010)
- Centrelink and Commonwealth Director of Public Prosecution: Review of circumstances leading to a fraud conviction (Report 07|2010)
- Australia Post and Department of Foreign Affairs and Trade: Passports lost in the mail (Report 08|2010)

Improving communication and advice to the public

People rely on government agencies for advice and information about the legislation and programs administered by government. They

expect this advice to be accurate and practical. Any qualification or limitation on the general advice provided by an agency should be explained and if appropriate, a person should be cautioned to seek independent advice relevant to their individual circumstances.

A communication/advice problem

Mr AI complained to us about information contained in a Centrelink brochure called ‘Disability and Carer Payment (DSP) Rates’. He said that it contained words—that one must have an ‘inability to work for at least the next two years as a result of impairment’ – that did not accurately represent the qualification criteria for DSP.

After investigating Mr AI’s complaint, we agreed that the brochure did not sufficiently explain that a person could work for 15 hours per week and still claim DSP. Mr AI claimed that this lack of specific information initially dissuaded him from applying for DSP. Centrelink agreed to our suggestion that the brochure be changed to more accurately reflect the DSP qualification criteria. This was an example of where one case resulted in a broader issue being resolved.

Providing adequate information

Another complaint led to an improvement in the information the Child Support Agency (CSA) provides in certain assessment statements. An investigation we conducted noted that when the CSA uses the ‘mixed table’ to calculate child support liability, it does not make this known to payers. This had confused the complainant because, without reference to the mixed table, it was not clear to him why his child support liability was identical for both of his children, despite them being in different age ranges for purposes of assessment.

In response to our investigation, the CSA agreed that the information it provided about the mixed table was inadequate. It said that all future assessment statements would make reference to the mixed table when used to calculate child support.

Having good procedures

Government agencies must have sound procedures in place to administer complex legislation and programs in a manner that is efficient, effective, fair, transparent and accountable. Many complaints to the

Ombudsman's office arise from poor agency procedures.

Many of the reports we published during the year contained recommendations aimed at improving agency procedures. The following two examples illustrate this.

Systems upgrade

Ms AJ's Family Tax Benefit (FTB) was suspended because Centrelink's records indicated she had not lodged tax returns from past years. She had in fact lodged the outstanding tax returns a couple of months prior to the suspension. However, due to a major systems upgrade in the Australian Taxation Office (ATO), the confirmation that she had lodged the tax returns could not be transferred to Centrelink. Centrelink would not restore Ms AJ's FTB until she could provide evidence that she had lodged the tax returns. Ms AJ provided a copy of her lodged tax assessment forms to her local Centrelink Customer Service Centre. She was told this evidence would be forwarded to the ATO liaison section within Centrelink as per a new procedure set up following the ATO systems problems. However this did not happen. It was only when we became involved that the error was rectified and Ms AJ's FTB was restored.

Automatically-generated decisions

The need for good procedures was again under the spotlight in our investigation of the ATO's administration of a superannuation co-contribution. An automatically-generated decision meant that Ms Q was not eligible to receive the superannuation co-contribution because her income was higher than the cut-off. We raised concerns with the ATO about this. The ATO advised that there was an issue involving the system business rule for calculating income that had been under consideration for several months. The ATO estimated it affected 16,000 taxpayers. However, ATO staff dealing with our complaint had not been aware of this. We undertook a review of the ATO's administration of the problem. The ATO accepted our suggestions for recognising the importance of complaints in identifying errors, improving its escalation of systemic issues, and communicating with taxpayers about errors.

Interpreting and applying legislation and guidelines correctly

The public relies on government agencies to act lawfully and make lawful decisions. An agency should always be aware of the danger of staff not correctly interpreting legislation or agency guidelines. To deal with this risk, agencies need to have adequate internal quality controls, look for inconsistencies in the application of legislation or guidelines, and focus on problem cases.

In our report on the Administration of Departure Prohibition Orders (DPOs) we found that the Child Support Agency (CSA) was not providing staff with the guidance they needed to understand the complexity of the legislation. We recommended that the CSA review its procedural instructions to provide a more comprehensive explanation to staff about the tests in the legislation. The CSA agreed with our view and completely revised its procedures.

Good complaint handling

Good complaint handling is a central theme of Ombudsman work. A good complaint-handling process provides a way for problems to be dealt with quickly and effectively. It can also provide an agency with early information about systemic problem areas in administration. Poor complaint handling can exacerbate what may have been a simple error or oversight, potentially giving rise to other complaints from the person concerned and to a loss of public confidence in the agency.

Over the years the Ombudsman's office has put considerable effort into helping agencies improve their complaint-handling processes. We have done this in a variety of ways, including liaison and training, reviews of agency complaint-handling systems, and publishing relevant material.

The Ombudsman publication *Better Practice Guide to Complaint Handling* defines the essential principles for effective complaint handling. It can be used by agencies when developing a complaint-handling system or when evaluating or monitoring an existing system.

Many of the investigation reports published during 2009–10 contained recommendations relating to how complaints can be handled better.

For example, in our report *Australian Federal Police and the Child Support Agency—Caught between two agencies: the case of Mrs X*, we reviewed their joint administration of the Departure Prohibition Program.

We found that navigating between two government agencies to fix a problem can be extremely difficult for customers, and that agencies that work together to deliver programs must also work together to resolve problems arising from those programs.

Record keeping

Many complaints deal with poor record keeping by agencies. A delayed decision will often compound a problem. Poor record keeping can also undermine transparency in agency decision making and lead to allegations of deception, bias, incompetence or corruption.

Sometimes simple errors such as misplacing or losing a file, failing to keep a proper record of an important decision or conversation, or inadvertently confusing people who have similar or identical names, can lead to substantial problems for a person.

The need for improved record keeping was a common theme in reports published during the year. For example, we conducted an investigation where the complainant believed he was entitled to a reduction in arrears for child support payment, based on the income information he supplied to the CSA in 2008. The CSA told the complainant that it had no record of him providing any such information. Upon investigation, the CSA located a letter it had received from the complainant. The CSA accepted that the letter should have been treated as a 'client supplied income notification'. This reduced the complainant's arrears by almost \$4,000.

Administrative deficiency

Section 15 of the Ombudsman Act lists the grounds on which the Ombudsman can formally make a report to an agency, and ultimately to the Prime Minister and the Parliament. A small number of such reports are made each year to agencies, but reports to the Prime Minister or the Parliament are rare. Most complaints to the Ombudsman can be resolved informally, and without the need to reach a firm view on whether an agency's conduct was defective. This reflects the emphasis of our work on achieving remedies for complainants, and on improving agency complaint-handling processes and public administration generally.

Nevertheless cases do arise in which administrative deficiency should be recorded. This helps to draw attention to problems in agency decision making and processes, and feeds into the systemic work of the Ombudsman's office. The purpose of a finding of administrative deficiency is not to reprimand the agency concerned, and the individual findings are not separately published in the same way that reports under s 15 are usually published. The emphasis is on finding solutions and improving administration.

During 2009–10 we recorded 340 cases where there was administrative deficiency (a drop from 533 cases in the previous year). The following three examples are illustrative of the types of administrative deficiencies identified through the work of the Ombudsman.

Human error

An agency miscalculated the period of study that a visa applicant had completed because it did not record the contact made to clarify the studies undertaken on the applicant's record. The error resulted in the visa being refused and a delay of almost two months before the situation was remedied. This was recorded as an administrative deficiency.

Resource deficiency

An agency had to relocate one of its processing centres because of an unforeseen crisis and

the caseload was transferred to another centre. The other centre was under resourced and unable to cope with the additional workload. This resulted in long delays in processing the transferred cases because correspondence was misplaced or lost, and received no responses to and outstanding actions were not followed up. The people whose cases were transferred were also frustrated because they were unable to contact their case officer to make enquiries and neither were they given updates on the progress of their applications. This was recorded as an administrative deficiency.

Garnisheeing entire bank account

We investigated a complaint about the garnisheeing of an individual's entire bank account, which amounted to about \$60,000. The agency had relied on a reference manual to calculate the amount. We recorded an administrative deficiency because the action taken was not consistent with the agency's policy that garnishee action should take into account 'the likely implications of issuing a notice on a debtor's ability to provide for a family or to maintain the viability of the business'. We were critical of the agency in not using its statutory powers to inquire about the balance of the person's bank account, which would have led to a better-informed decision. The agency acknowledged and endorsed our administrative deficiency proposal and agreed to our recommendations. It took action to make sure that staff were aware of the issue and to review its work practices. The agency also undertook to consider changes to legislation that would allow financial institutions to leave a specified amount of funds in garnisheered accounts as a safety net.

Feature

Regional engagement with the Pacific

In March 2010, we hosted the 25th annual Australasian and Pacific Ombudsman Region (APOR) conference. For the first time, it was held jointly with the Pacific Ombudsman Alliance (POA) annual members' meeting.

This allowed ombudsmen from across Australia, Hong Kong, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Taiwan, Tonga, and Vanuatu to talk with POA representatives from Pacific countries that do not have ombudsman offices, but have joined the Alliance with the aim of strengthening complaint handling and government accountability throughout the Pacific.

The presentations and panel discussions allowed the exchange of detailed information between ombudsmen on best practice complaint-handling techniques throughout the region.

An important order of business at the POA members' meeting in Canberra was for delegates to provide individual updates on their organisation and country.

In general business, the members decided to:

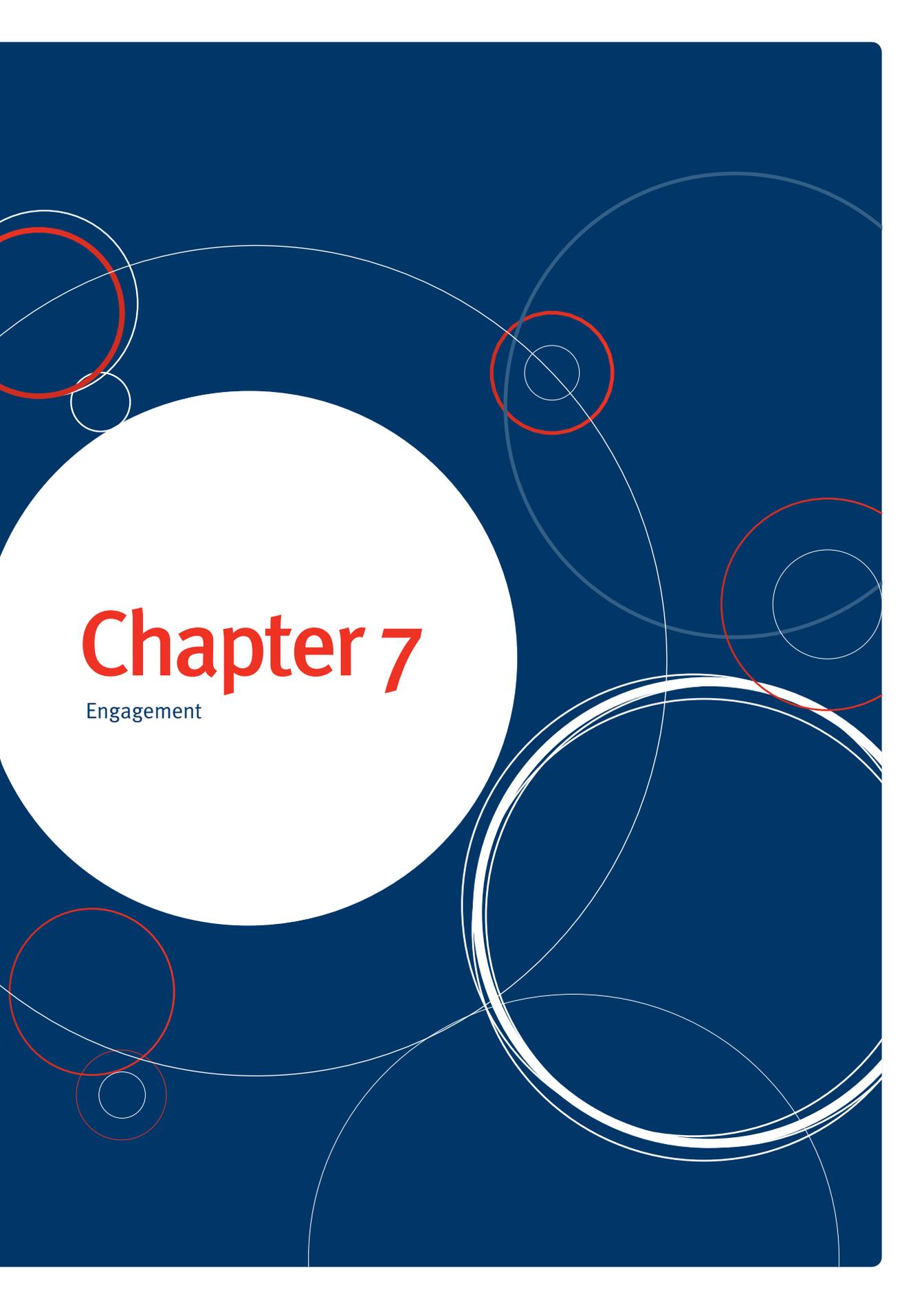
- become an Australia Partner Organisation of the Australian Youth Ambassadors for Development (AYAD) program
- examine the possibility of forming a Pacific Ombudsman Information Sharing Network
- develop a training program for investigations into financial records in the Pacific.

A new POA Board was elected, with the following members:

- Mr Ron Brent, Acting Commonwealth Ombudsman (Chair)
- Ms Beverley Wakem, Chief Ombudsman, New Zealand
- Mr Chronox Manek, Chief Ombudsman, Papua New Guinea
- Ms Wiriki Tooma, Secretary for the Public Service, Kiribati
- Ms Janet Maki, Ombudsman Cook Islands
- Mr Bruce Barbour, NSW Ombudsman—to provide secretariat services to the POA.



Photo credit: Norman Plant
POA and APOR members at the 25th annual Australasian and Pacific Ombudsman Regional (APOR) conference, March 2010



Chapter 7

Engagement

Engagement

It is important that people know who we are and what we do. The Ombudsman's office engages with various stakeholders:

- the community – to raise awareness of the role of the Ombudsman and to seek input on various issues
- agencies – to promote good public administration and improve complaint handling
- review bodies and research organisations – to look at issues related to promoting good public administration and administrative law
- other Australian Government integrity agencies and complaint-handling agencies, and other Australian ombudsmen—to share learning experiences and tackle common problems
- regional and international partners – to promote good ombudsmanship.

This chapter outlines some of these activities and achievements in 2009–10. Further examples of our engagement with both agencies and broader outreach are included in Chapter 5—*Agencies overview* and in feature pages throughout the report.

Community engagement

Engaging with the Australian community is not always easy, especially in rural and remote areas.

We engaged in a diverse variety of outreach activities, including an increased focus on homeless clinics, reaching out to gay and lesbian communities about legislative changes affecting same-sex couples, immersion at multicultural events, orientation week activities at universities, and major rural and agricultural events.

In 2009–10 our staff were involved in 109 outreach activities across all states and territories. These activities involved contact with 34,000 people, a 22% increase on the previous year.

A large part of our outreach work continued to be associated with the Northern Territory Emergency Response (NTER).

Our outreach activities included:

- conducting roundtable discussions with community groups and other special interest groups in all state capital cities
- conducting repeated outreach visits to Indigenous communities and town camps in the Northern Territory, utilising information and outreach items targeted on informing Indigenous people about the role of the office
- visiting Defence Force establishments to highlight the Defence Force Ombudsman role
- participating in joint activities with Australian Government agencies and other ombudsman offices, Child Support Agency Community Information Sessions, NSW Good Service Forum and NAIDOC week
- distributing Commonwealth Ombudsman publications to relevant information outlets.

The feature pages throughout this report highlight the breadth of outreach and engagement activities undertaken around Australia.

Academic prizes

In 2002 the Ombudsman's office established The Australian National University (ANU) 'Jack Richardson Prize in Administrative Law'. The prize recognises the contributions made by the first Commonwealth Ombudsman, who was also a former professor of law at the ANU. The annual prize is for the best essay by an undergraduate student in administrative law. This year's Jack Richardson Prize was awarded in March 2010, jointly to Kyle Hallett and Max Tan.

In 2007–08 the office established the 'Dennis Pearce Top Performance in Administrative Law Prize' at the University of Canberra. The prize is named after the first ACT Ombudsman, Professor Dennis Pearce, and is awarded to

the student who receives the highest grade in the administrative law unit in the University of Canberra's Law School. The 2009 winner was Ivo Basoski.



Ms Anna Clendinning, Senior Assistant Ombudsman presenting Mr Ivo Basoski with the 2009 Denis Pearce Prize

Review and research bodies

Legislative review

During the year the office contributed to the development of new legislation in several areas. As the proposed lead agency in the anticipated new whistleblower legislation, we contributed to consideration of legislation that will support the reforms. This was done both through formal submissions and informal discussions.

Several of the reports produced throughout the year made recommendations that had legislative implications. One of these was report 4/2010—*Comcare and Department of Finance and Deregulation: Discretionary payments of compensation*, which recommended a review of policy and legislation for compensating people adversely affected by poor administration by non-FMA agencies. It looked at complaints made by two people who had suffered due to inaccurate calculations their entitlements.

Administrative Review Council

The Ombudsman is an ex officio member of the Administrative Review Council, established by the *Administrative Appeals Tribunal Act 1975* Part V. The Council provides advice to the government on administrative law issues and reform. During the year the Ombudsman and acting Ombudsman were active members of the committee, but both expressed concern that this important Council, which draws on some exceptional expertise, has not been exploited to its potential, largely through the absence of a full-time secretariat.

Whistleblowing

From 2005 to 2008 the Ombudsman's office was a partner in an Australian Research Council-funded Linkage Project – *Whistling while they work*.

Following an inquiry by the House of Representatives Standing Committee on Legal and Constitutional Affairs, the Government committed to the introduction of new whistleblowing legislation. It would see the Commonwealth Ombudsman as the principal agency to which whistleblowers could turn if they considered that the agency about which they wished to make a disclosure had not respond adequately. The office continued preparations for this role in anticipation of new legislation being introduced.

Human rights in closed environments

The office is participating in another Australian Research Council-funded Linkage Project, awarded to Monash University—*Applying human rights in closed environments: a strategic framework for managing compliance*. The project aims to facilitate the implementation of human rights in 'closed environments' such as prisons, forensic psychiatric institutions, mental health and disability facilities, community residential units and immigration detention centres. The project objectives include:

- assessing the readiness of 'closed environments' in Australia to incorporate

and apply human rights obligations into their daily operations

- evaluating the likely impact of the human rights legislation on the functioning of closed environments
- developing practical strategies to facilitate compliance with human rights obligations in closed environments.

The office also joined an informal committee of agencies concerned with human rights protection for immigration detainees with a view to ensuring that the relevant agencies minimised unnecessary overlap and maximised coverage in this field.

Engaging internationally

The Commonwealth Ombudsman has a dedicated international program and cooperates internationally in a range of activities to improve government administration, complaint handling and ombudsmanship on the international stage.

Our work is funded largely by AusAID. As a result of agreeing to funding agreements for several years into the future, we made a further commitment to this work by recruiting another full-time staff member to our International team at the start of 2010. The international program works in three main areas: Papua New Guinea, the Pacific region and Indonesia.

Papua New Guinea

Our twinning program with the Ombudsman Commission of Papua New Guinea (OCPNG) has continued to benefit both our organisations through a number of activities. This program has now been going for five years, and we are successfully building on work that started several years ago. Although we are still reliant on the work done by individuals over the years, we can now see that the work is outlasting the individuals – and new staff from both organisations are achieving outstanding results by building on the previous work.

In 2009–10 the twinning program continued to support long-term placements from PNG to our office, and from our office to the OCPNG. The

twinning program also had a number of short-term specialist placements to work on specific areas that the OCPNG had identified as needing improvement.

Major activities under the twinning program during 2009–10 included:

- An officer from our office went to OCPNG to assist in identifying areas where the OCPNG's website and network connectivity with its regional offices could be improved using available resources.
- Deputy Ombudsman Ron Brent worked with the OCPNG Director, Leadership to identify areas in which the twinning program could assist within the Leadership Division of the OCPNG.
- An OCPNG officer spent two months with our Law Enforcement and Legal teams to learn about police investigations.
- An OCPNG officer spent two months with our Tax team learning efficient case management, work processes and managing unreasonable complainant conduct.
- The Chief Ombudsman of PNG, Chronox Manek, spent two weeks in Australia talking with a broad variety of government organisations, as well as many areas of our office. A highlight of the visit for Chief Ombudsman Manek was a discussion with the Minister for Trade, the Hon. Simon Crean MP.
- Counsel to the OCPNG, Virgil Narakobi, had a two-week visit focusing on legal practice management within an ombudsman's office. We were pleased to also host a senior lawyer from the Victorian Ombudsman's office, Penelope Ralston, who shared her organisation's experience in providing legal advice and managing litigation.
- The Manager of the OCPNG's Intake and Screening Unit, Laniet Tokiala, spent two months with our Public Contact Team, assessing the different ways that initial

approaches to our office are handled, and tracking the movement of complaints, documents and files through our office to finalisation.

- Deputy Ombudsman Vivienne Thom held two training sessions at the OCPNG on administrative deficiency and remedies for complainants, and on quality assurance and review processes within an ombudsman's office. Dr Thom also co-chaired a general discussion with Ombudsman Phoebe Sangetari on 'Women in Leadership—Challenges and Opportunities' with the OCPNG women's group. There was a lively discussion on gender challenges in PNG and ways that better gender equality may be achieved.

The program continues to be considered a major success by our office, the OCPNG and AusAID. The OCPNG plays a key role in improving accountability and efficacy of administration in PNG and this program has made a significant contribution to the development of the OCPNG.

Pacific

In 2009–10 we continued to provide secretariat and logistical support to the Pacific Ombudsman Alliance (POA). The first annual general members' meeting of the POA was held in Canberra on 18 and 19 March 2010.

Under its charter, the aim of the POA is to provide a service delivery and mutual support organisation for ombudsman and allied institutions of countries that are members of the Pacific Islands Forum. In 2009–10 the following activities were organised under the POA umbrella:

- An officer from the NSW Ombudsman's office spent three months working with the Vanuatu Ombudsman, to finalise a major investigation report and assist Ombudsman Taurakoto to host a one-day forum that brought together a number of leaders and agencies to consider reforms to the Ombudsman Act and Leadership Code Act.
- An officer from our office followed up a previous three-month placement with the Samoan Ombudsman's office with a one-month placement of consolidation work, which reinforced the success and sustainability of the business process improvements implemented during the previous placement.
- A Samoan Ombudsman officer spent two weeks in our Sydney office learning about our work processes and case management.
- POA became an Australian Partner Organisation for an Australian Youth Ambassador for Development. The Ambassador will work with the Vanuatu Ombudsman's office from July 2010, with the POA providing support, access to our networks and back-up advice if needed.
- The Complaint-Handling Ombudsman Backed Scheme (CHOBS) trial started in Niue in February. On behalf of POA, the New Zealand Office of the Ombudsmen gave support and backing to a trial of a non-legislative complaint-handling scheme for Niue, which does not have a formal ombudsman. The trial is ongoing, and next year we hope to be able to support a similar scheme in other non-ombudsman small island states.
- Two members of the International team attended the Pacific Human Resource Managers' Conference in Tonga, and gave a presentation on the role of the Ombudsman and public sector reform. Our officers also scoped future program assistance to the Tongan Commission for Public Relations (the Commission) with the aim of increasing the Commission's effectiveness as an oversight body.
- A website was created for the POA at www.pacificombudsman.org.
- The POA newsletter 'Network News' was sent out each quarter electronically to members, stakeholders and interested colleagues.

- The POA made contact with the Timor Leste ombudsman-equivalent body, and were pleased to host the Deputy Provedor for Good Governance, Amandio de Sa Benevides, at the POA and APOR meetings in March 2010.

The next general members' meeting of the POA will be held in Solomon Islands in June 2011. The meetings will be hosted by Solomon Islands Ombudsman, Mr Joe Poraiwai, to coincide with the 30th anniversary of his office. Throughout the year the Commonwealth Ombudsman and Acting Ombudsman chaired the Board of the POA.

Indonesia

Our office has worked with the Ombudsmen of the Republic of Indonesia (ORI), and its predecessor organisation, the National Ombudsman Commission (NOC), since 2006. The NOC was originally established under presidential decree, but in 2008 the founding legislation for ORI passed the Indonesian Parliament and the organisation now has a legislative basis.

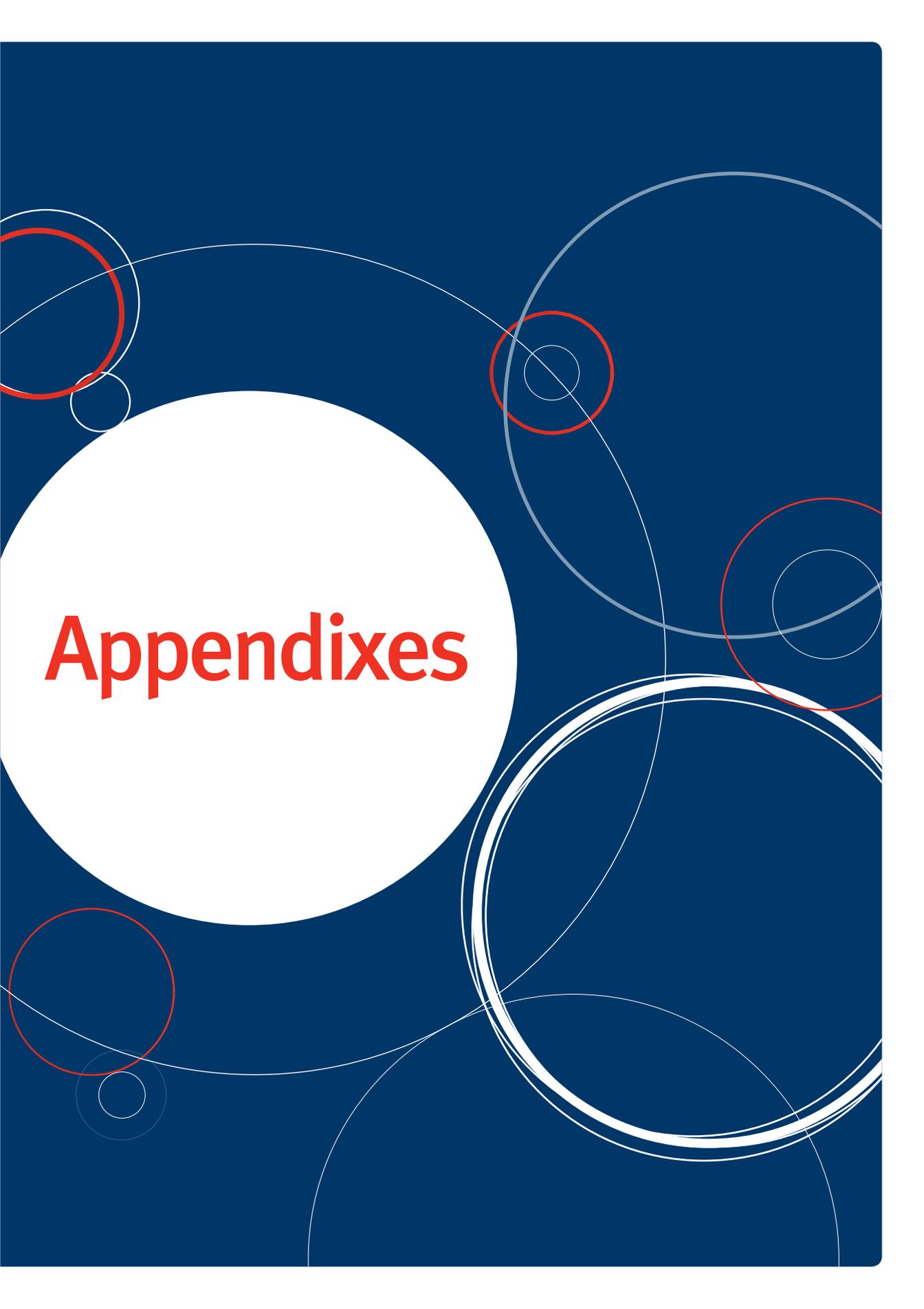
Under the legislation, ORI is to be governed by nine new ombudsmen. The recruitment process is still ongoing. During 2009–10 we undertook several activities with ORI to assist them in forming their new role and structure.

In December 2009 then Deputy Ombudsman, Ron Brent, assisted the Indonesian consultants with human resource management for the new office. Greg Andrews, NSW Deputy Ombudsman, participated in workshops on resolving complaints and disputes in relation to land titles.

In June 2010 three officers from ORI visited Australia for a two-week program covering a range of parliamentary and industry ombudsmen across Australia. The officers – Mr Ignatius Herru Kriswahu, Ms Irma Syarifah and Ms Ani Samudera—learned about the many different models of complaint handling and held discussions on how they could be applied to the broad and varied jurisdiction of ORI.

Cooperative project with other government ombudsman offices

The two Deputy Ombudsmen continued to participate in the forum of Deputy Ombudsmen from the federal, state and New Zealand ombudsmen offices. A key project of the group has been to develop a manual to guide management of difficult complainant behaviour. The manual has been published and has received wide usage across complaint agencies in all spheres. During the year the Deputy Ombudsman forum initiated a further stage of the project to develop additional support materials.

The image features a dark blue background with a large white circle on the left side. The word "Appendixes" is written in a bold, red, sans-serif font inside this white circle. The background is decorated with several overlapping circles and lines in white and red. Some circles are solid, while others are just outlines. The lines are thin and curved, creating a sense of movement and depth. The overall design is clean and modern.

Appendixes

Appendix 1—Freedom of information statement

Section 8 of the *Freedom of Information Act 1982* (FOI Act) requires each Australian Government agency to publish information about the way it is organised, its powers, the kinds of decisions it makes, the documents it holds, the way members of the public can obtain access to these documents and any arrangements for public involvement in the work of the agency.

The body of this annual report explains the organisation and major functions of the Commonwealth Ombudsman. This statement supplements that general information to meet the requirements of s 8 of the FOI Act. It is correct as at 30 June 2009.

Functions and decision-making powers of the Ombudsman

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act). The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman, Postal Industry Ombudsman, Taxation Ombudsman and ACT Ombudsman.

Staff engaged in the work of the Commonwealth Ombudsman, and the work as ACT Ombudsman are jointly located in the national office in Canberra. Other offices are located in Adelaide, Brisbane, Darwin, Melbourne, Perth and Sydney.

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

Investigation of administrative actions

Following a complaint from a member of the public, or using ‘own motion’ powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and private contractors delivering government services.

The Ombudsman cannot investigate:

- the actions of government ministers or judges
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide to not investigate complaints that are ‘stale’ or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where it is considered an investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as considered appropriate. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman’s office is subject to the FOI Act and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, the Ombudsman may report that view to the agency and recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report to the Prime Minister and to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force Ombudsman

Section 19C of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Defence Force Ombudsman (DFO). The DFO can investigate complaints from current or former members of the Australian Defence Force about Defence Force employment matters. The DFO cannot investigate most actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

Taxation Ombudsman

Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the Australian Taxation Office.

Immigration Ombudsman

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing

with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration concerning the circumstances of any person who has been in immigration detention for two years or more.

Law Enforcement Ombudsman

Under s 4(5) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman when investigating complaints about the conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979* (AFP Act). Complaints about the conduct of AFP officers received prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act). This Act was repealed after relevant provisions of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced on 30 December 2006.

The special procedures that applied under the Complaints Act to complaints about the AFP's practices and procedures or the conduct of individual AFP members are explained in previous annual reports.

Complaints about the conduct of AFP officers received after 30 December 2006 are dealt with under the Ombudsman Act. In addition, under the AFP Act the Ombudsman is required to review the administration of the AFP's handling of complaints, through inspection of AFP records, at least annually. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the minister. The results of these reviews must be provided to the Parliament on an annual basis.

The Ombudsman's intercept and surveillance devices audit

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP, Australian Crime Commission (ACC) and Australian Commission for Law Enforcement Integrity (ACLEI), and certain other agencies under specific circumstances, to ascertain whether the agencies have complied with specified record keeping requirements of the Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP, the ACC and ACLEI.

Postal Industry Ombudsman

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman (PIO). The PIO deals with complaints about postal service delivery by Australia Post and those private sector postal operators that elect to be members of the PIO scheme.

Complaints about freedom of information

The FOI Act enables the Ombudsman to investigate complaints about actions and decisions by departments and agencies about requests for access to documents under FOI. Details of these complaints are included in the Ombudsman's annual reports and in any additional reports made to the Parliament under s 19 of the Ombudsman Act. The FOI Act s 57(3) provides that an application cannot be made to the Administrative Appeals Tribunal for review of an FOI decision that is the subject of a complaint to the Ombudsman until the Ombudsman has finalised the investigation.

Australian Capital Territory (ACT) Ombudsman

Under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), the Commonwealth Ombudsman discharges the role of ACT Ombudsman. A services agreement between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT Ombudsman is set out in a separate annual report made to the ACT Legislative Assembly pursuant to the *Ombudsman Act 1989* (ACT).

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

Categories of documents held by the Ombudsman

The Ombudsman holds information related to:

- investigations, including complaints, correspondence and consultations with complainants, agencies and other information sources, background material, records of conversation, analysis and advice, and reports
- oversight functions
- the Ombudsman's role as the chief executive of an Australian Government agency with a particular set of responsibilities, in terms of the development or implementation of administrative processes, policy or legislation
- the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

General enquiries and requests for access to documents or other matters relating to FOI may be made in person, by telephone or in writing at any Commonwealth Ombudsman office. Each office is open between 9 am and 5 pm on weekdays. People can contact the Commonwealth Ombudsman's office by calling 1300 362 072. (See Contacts in the 'References' section of this report.)

Under s 23 of the FOI Act, the Ombudsman has authorised the Deputy Ombudsmen, all Senior Assistant Ombudsmen, and some Executive Level officers to grant or refuse requests for access. Under an arrangement made outside the Act, the Ombudsman has agreed to officers at and above Executive Level 1 providing limited complaint information if requested by, or on behalf of, a complainant as detailed below.

The Ombudsman's office deals with a moderate number of requests every year under the FOI Act (20 in 2009–10 compared to 24 in 2008–09), mostly for documents related to investigations. Following are some observations about how those requests are handled.

- The office tries to set a good standard of compliance. We do not require a complainant to submit an FOI request prior to Ombudsman staff providing certain kinds of documents:
 - › documents previously and lawfully provided by or to the complainant by the Ombudsman's office or someone else
 - › records of telephone conversations involving the complainant
 - › most database entries relating to the complainant.
- In the course of an investigation, we may provide an agency response to a complainant so that they can better understand the agency's position. It is likely that an investigation file could contain information and documents provided by other agencies—typically, the agency about which a complaint was made. Wherever possible, the Ombudsman will seek the other agency's agreement to transfer to it those parts of the request that relate to its functions. This is done because the other agency is usually much better placed to make an informed decision about the content and context of the documents, in light of their experience in dealing with similar requests.

A further consideration is that if the request is not transferred, the other agency would have a legitimate interest in making suggestions about the decisions the Ombudsman should make. The Ombudsman would not be bound to accept those suggestions, but they would have to be given considerable weight. From the point of view of the complainant, if there is a complaint about an FOI process, it is probably better that the Ombudsman's office has been involved as little as possible.

Appendix 2—Presentations by staff

Brent, R. 2009, *Integrity agencies: independence and control*, presentation to Integrity Agencies Workshop, University of Canberra

- 2009, *Minding your own business—policy challenges for decision-makers and strategies for managing risks in the complaint-handling process*, presentation to Ombudsman Conference, Canberra
- 2009, *Parliament and Administrative Law*, presentation to APSC Senior Executive Service Orientation Program, Canberra (multiple presentations)
- 2009, *The ACT Ombudsman: 20 years of service*, ACT Agency Contact Officers Forum
- 2009, *Accountability within the APS framework*, National Archives of Australia's Emerging Leaders program
- 2010, *Perspectives on leadership: issues for APS leaders*, Leadership Development Program for the Commonwealth Director of Public Prosecutions
- 2010, *Inquiries: administrative investigations*, presentation by Defence Force Ombudsman and IGADF to ANU College of Law Workshop, Military Administrative Law course
- 2010, *Listen closely when the public complains*, presentation to Canberra Evaluation Forum
- 2010, *Professionalism and ethics in the National Security community*, presentation to training program for senior officers from national security agencies

Clendinning, A. 2009, *The role of the Commonwealth Ombudsman*, presentation to visiting Cambodian delegation, Canberra

- 2010, *The role of the Commonwealth Ombudsman*, presentation to the Department of Infrastructure, Transport, Regional Development and Local Government

- 2010, *Administrative law and control of Government action*, presentation to APSC Senior Executive Service Orientation Program, Canberra

Masri, G. 2009, *Commonwealth Ombudsman impact on public administration*, presentation as part of Australian Government Solicitor course Excellence in Government Decision-making

- 2009, *Connected Government: Challenges in Indigenous Program Oversight*, presentation to Commonwealth Ombudsman Conference, Canberra
- 2009, *Lessons in Public Administration*, presentation to various oversight agencies, Brisbane
- 2009, *Commonwealth Ombudsman and Indigenous programs in the Northern Territory: roles, engagement and observations*, Government Business Managers conference, Alice Springs
- 2009, *Role and approach to social support oversight*, presentation to *Strengthening Disability Advocacy, Working Together* conference, Melbourne
- 2010, *Role of Commonwealth Ombudsman*, presentation to Centrelink National Managers, *Centrelink National Managers conference*, Sydney
- 2010, *Commonwealth Ombudsman: role and approach to social support oversight*, presentation to Social Security Appeals Tribunal full-time members Conference, Sydney
- 2010, *Improving Public Administration: Role of Commonwealth Ombudsman*, keynote presentation to Law Institute of Victoria Conference, Melbourne

McMillan, J. 2009, *'Off the record'* communications, participation in Expert Panel for the NSW Joint Initiatives Group, Occasional Seminar

- 2009, *Ten lessons for administration*, presentation to the Department of Broadband, Communications and the Digital Economy, *Talking Heads* series
- 2009, *Career progression in times of uncertainty*, presentation to IPAA Young Professional network, National Youth Week
- 2009, *Administrative law and government action*, multiple presentations to APSC, Senior Executive Service Orientation Program, Canberra (multiple presentations)
- 2009, *Administrative law challenges—an Ombudsman perspective*, presentation to AIAL Qld Chapter
- 2009, *Leadership ethics*, multiple presentations to ACT Chief Minister's Department Executive Leadership Program
- 2009, *Principles for good governance—learning from mistakes*, key note address to Liquid Learning 3rd Annual Ethical Leadership and Governance in the Public Sector Conference
- 2009, Opening address, *Leveraging Records and Information Management in your organisation for Better Business Outcomes Seminar*
- 2009, *Proposed reforms to FOI laws and the establishment of an Office of the Information Commissioner*, panel discussions at Privacy Contact Officer Network, Combined FOI Practitioners' Forum/Privacy Contact Officer Network Meeting
- 2009, *Values—formation of the Public Service*, presentation to National Human Rights Consultation Committee, National Human Rights Consultation Public Hearing
- 2009, *Independence and control* (of integrity agencies), presentation to Legal Workshop, University of Canberra
- 2009, *Functions of a 'multi-door' court house*, presentation to Law Council of Australia Standing Committee on Alternative Dispute Resolution Symposium
- 2009, *What do we mean by freedom of information and related concepts such as access to information, rights to information and information disclosure*, Panel discussions, Pacific Ombudsman Alliance, National Accountability, Transparency and Anti-Corruption Consultation with Palau Stakeholders
- 2009, *The 'domino effect' and the importance of being attuned to customer needs and how customer service issues transcend public/private boundaries*, presentation to Australian Communications Alliance and the Australian Communications Consumer Action Network, Customer Service Summit
- 2009, *Listening closely when the public complains*, presentation to ANAO Staff Occasional Seminar
- 2009, Presentation to ANU/ICAC Anti Corruption Course
- 2009, *The role of the Ombudsman and managing complaints*, presentation to ACT Statutory Office Holders Forum
- 2009, *Dealing with the institutions of accountability: anti-corruption agencies, Ombudsman and Audit Office*, Presentation to Parliament, Policy, the Press and the Public: Preparing for the Challenges of being a Minister. A Professional Skills Development Course for Parliamentarians from the Pacific Island region

- 2009, *Role of the Ombudsman in process of public sector reforms towards good governance*, presentation to Asian Ombudsman Association, 11th Asian Ombudsman Association Conference
- 2009, *Ethical decision making and accountability*, presentation to National Security Executive Development Program
- 2009, *The CDDA Scheme: Practical discretionary compensation, moral obligation and lawyers*, presentation to AIAL Lunchtime Seminar
- 2009, *The new integrity agenda in public administration*, presentation to WA Integrity Coordinating Group Forum
- 2009, *Learning from mistakes, presentation to L21*, Public Sector Leadership Series 2009, Building Public Trust in the Public Service
- 2010, *The impact of reform on people who access government-funded community services*, presentation to Catholic Social Services, Catholic Social Services national conference
- 2010, *Role of the Commonwealth Ombudsman*, panel discussion at Department of Foreign Affairs and Trade, NIC Senior Officer Course
- 2010, *Decisions that go wrong*, presentation to ACT Chief Minister's Department, Executive Leadership Program
- 2010, Presentation to 25th Australasian and Pacific Ombudsman Region Conference
- 2010, Presentation to Office of the Inspector-General of Intelligence and Security, Security Intelligence Oversight Conference.

Appendix 3—Statistics

Explanations of terms used in Appendix 3

Approaches/complaints finalised—approaches/complaints finalised in 2009–10, including some complaints carried over from previous years

Approaches/complaints received—approaches/complaints received in 2009–10

Category 1—resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority

Category 2—cannot be resolved at category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency

Category 3—investigation conducted and agency contacted

Category 4—further investigation conducted, as the complaint/approach was not able to be resolved in category 3

Category 5—further investigation conducted, as the complaint/approach was not able to be resolved in category 4; involves formal reporting processes

Issues—approaches/complaints can contain a number of issues, each requiring a separate decision as to whether to investigate; each issue may result in a separate outcome

Remedies—complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2009–10 (continued)

Agency	Received		Finalised					Remedies										Total
	Total	No Investigation	Investigated					Total	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	
			Category 1	Category 2	Category 3	Category 4	Category 5											
Australian Radiation Protection and Nuclear Safety Agency	2	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Australian Sports Commission	6	2	2	1	1	-	6	-	-	-	-	1	-	-	-	-	1	
Australian Sports Anti-Doping Authority	8	4	1	2	-	-	7	-	-	1	-	-	-	1	-	-	2	
Department of Health and Ageing	124	56	38	44	13	-	151	11	1	5	-	37	3	7	3	2	69	
Food Standards Australia New Zealand	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	
National Health and Medical Research Council	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	
Office of the Aged Care Commissioner	5	1	1	6	-	-	7	-	-	-	-	-	-	-	-	-	-	
Professional Services Review	2	-	2	-	-	-	2	-	-	-	-	-	-	-	-	-	-	
Human Services																		
Centrelink	5,199	3,308	817	1,002	150	-	5,278	180	99	142	12	723	178	23	51	61	1,469	
Child Support Agency	2,280	1,176	478	497	145	-	2,297	133	99	72	36	490	65	17	45	46	1,003	
Commonwealth Rehabilitation Service	18	10	6	-	-	-	16	-	-	-	-	-	-	-	-	-	-	
Department of Human Services	2	1	1	-	1	-	3	1	-	-	-	1	-	-	-	-	2	
Health Services Australia	1	-	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	
Medicare Australia	171	90	45	31	4	1	171	4	6	2	-	19	3	2	4	2	42	
Immigration and Citizenship																		
Department of Immigration and Citizenship	1,600	560	512	456	71	-	1,600	48	30	41	-	102	7	9	19	13	269	
Migration Review Tribunal and Refugee Review Tribunal	19	6	10	2	-	-	18	-	-	-	-	1	-	-	-	-	1	
Office of the Migration Agents Registration Authority	16	11	4	1	1	-	17	1	1	-	-	-	-	-	1	-	3	
Infrastructure, Transport, Regional Development and Local Government																		
Airservices Australia	12	2	8	2	1	-	13	-	-	1	-	3	-	1	1	-	6	
Australian Maritime Safety Authority	1	-	1	1	-	-	2	1	1	-	-	-	-	-	-	-	2	
Australian Rail Track Corporation	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Civil Aviation Safety Authority	20	2	8	2	5	-	17	1	2	-	-	5	-	1	-	-	9	
Department of Infrastructure, Transport, Regional Development and Local Government	43	16	14	4	3	-	37	2	1	1	-	5	-	-	1	-	10	
Innovation, Industry, Science and Research																		
AusIndustry	16	6	10	1	-	-	17	1	-	-	-	-	-	-	-	1	2	
Australian Institute of Aboriginal and Torres Strait Islander Studies	1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	
Australian Research Council	3	-	1	1	1	-	3	-	-	-	-	1	-	1	-	-	2	

Table A1: Approaches and complaints about Australian Government agencies, received and finalised, and remedies 2009–10 (continued)

Agency	Received					Finalised					Remedies																
	Total	No Investigation					Investigated					Total	Category 5	Category 4	Category 3	Category 2	Category 1	Action expedited	Apology	Decision changed or reconsidered	Disciplinary action	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total
		Category 1	Category 2	Category 3	Category 4	Category 5	Category 1	Category 2	Category 3	Category 4	Category 5																
Commonwealth Scientific and Industrial Research Organisation	2	2	1	1	-	4	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Department of Innovation, Industry, Science and Research	67	19	39	7	2	68	1	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13
IP Australia	16	6	9	-	-	15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Prime Minister and cabinet																											
Australian Public Service Commission	6	1	4	1	1	7	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
Department of the Prime Minister and Cabinet	15	5	6	4	-	15	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6
Governor-General and Commander-in-Chief	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
National Archives of Australia	8	5	1	-	-	6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Office of the Privacy Commissioner	66	20	40	10	1	71	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7
Resources, Energy and Tourism																											
Department of Resources, Energy and Tourism	1	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Snowy Hydro Limited	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treasury																											
Australian Bureau of Statistics	51	31	11	6	1	49	-	-	-	-	-	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	8
Australian Competition and Consumer Commission	32	8	7	9	4	28	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6
Australian Prudential Regulation Authority	166	56	57	58	3	174	3	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	54
Australian Securities and Investments Commission	158	49	69	35	10	163	1	4	7	-	-	7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	26
Australian Taxation Office	1,810	504	942	114	202	1,762	31	30	9	-	-	9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	280
Department of the Treasury	7	2	1	4	1	8	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4
National Competition Council	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Productivity Commission	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Royal Australian Mint	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Superannuation Complaints Tribunal	67	13	39	16	-	68	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7
Tax Agents Board	6	3	-	-	2	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tax Practitioner's Board	3	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal	17,407	7,741	5,382	3,477	876	17,451	640	408	419	72	2,411	532	136	318	209	5,145											
Australian Federal Police	219	62	68	20	11	162	12	2	2	2	6	1	1	3	1	28											
Private Postal Operators	11	3	6	1	1	11	-	-	-	-	-	-	-	-	-	2											
ACT Government Agencies	676	367	166	109	18	660	11	6	4	-	32	12	2	1	1	70											
Approaches about Out-of-jurisdiction agencies/ requests for information	19,155	18,787	363	-	-	19,150																					
TOTAL	37,468	26,960	5,985	3,547	906	37,434	663	416	425	72	2,450	546	139	322	211	5,245											

Appendix 4—Additional reporting on the Postal Industry Ombudsman

This appendix provides additional reporting on the Postal Industry Ombudsman (PIO) function as required under s 19X of the *Ombudsman Act 1976* (the Act).

Details of the circumstances and number of occasions where the Postal Industry Ombudsman has made a requirement of a person under section 9 (as that section applies because of sections 19R and 19S).

The PIO made no requirements under s 9 during 2009–10.

Details of the circumstances and number of occasions where the holder of the office of Postal Industry Ombudsman has decided under subsection 19N(3) to deal with, or to continue to deal with, a complaint or part of a complaint in his or her capacity as the holder of the office of Commonwealth Ombudsman.

There are no occasions where a complaint or part of a complaint was transferred from the PIO to the Commonwealth Ombudsman under s 19N(3).

Details of recommendations made in reports during the year under section 19V; and statistical information about actions taken during that year as a result of such information.

Australia Post: Determining levels of compensation for loss or damage of postal items (Report No. 1/2010)

The Ombudsman made the following recommendations.

Recommendation 1—Australia Post should as soon as practicable conduct a formal review of the amount of compensation it pays for loss of, and damage to, ordinary post items. The review should address, at least, the following:

- identification of the rationale for the figure being set at \$50 in 1987

- whether that rationale is still valid independent of the compensation levels payable for other services, and if not, why not
- identification, if that rationale is still valid, of the compensation level that would be required to fulfil the same purpose at 2010 values.

Recommendation 2—Australia Post should incorporate information about its compensation arrangements and how they have changed over the relevant period in any future price notification to the Australian Competition and Consumer Commission relating to a proposed increase in the basic postage rate.

Although Australia Post advised that it has no immediate plans to implement the recommendations made in regard to current compensation levels, the corporation nonetheless made an undertaking that it would continue to keep the issue under review as part of its ongoing product/service monitoring.

Australia Post and Department of Foreign Affairs and Trade: Passports lost in the mail (Report No. 8/2010)

The Ombudsman recommended that Australia Post:

- review its data capture and analysis capacity as it relates to lost passports, with a view to reporting separately on passport loss by geographical location and type of postal service used
- use plain English in its public information and refer to passports as passports in its terms and conditions and other publications
- review its terms and conditions and Post Guides to ensure clear and consistent treatment of passports in them

- If passports are to be excluded from compensation when carried by the Express Post and Express Post Platinum services, Australia Post should make specific reference to this on relevant envelopes and satchels
- review the availability of Extra Cover to compensate for the basic cost of replacing a lost passport, and ensure that its published material sets out its position clearly and consistently in its terms and conditions.

Table A2: Statistical information on implementation of PIO recommendations 2009–10

Report	Fully implemented	In progress	Yet to begin	Not agreed	Total
Australia Post: Determining levels of compensation for loss or damage of postal items		5			5
Australia Post and Department of Foreign Affairs and Trade: Passports lost in the mail	11	2		1	

Appendix 5—Consultancy services, advertising and market research

Consultancy services

The office engages consultants when the expertise required is not available within the organisation or when the specialist skills required are not available without diverting resources from other higher priority tasks. In accordance with procurement guidelines,

consultants are selected by open tender, panel arrangements, select tendering or direct sourcing.

Table A3 provides details of consultancy services let by the office during 2009–10 with a contract value (GST inclusive) of \$10,000 or more.

Table A3: Consultancy services, 2009–10

Consultant name	Description	Contract price	Selection process (1)	Justification (2)
Dezignteam	Fitout tender & contract administration for Level 5, 14 Childers Street, Canberra	\$29,700	Direct	B
Mallesons Stephen Jaques	Legal fees for lease negotiation Level 5, 14 Childers Street, Canberra	\$13,772	Panel	B
Total		\$43,472		

Definitions

(1) Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (December 2008):

Open tender—a procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are generally sought from the Australian Government AusTender website.

Select tender—a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. This procurement process may only be used under certain defined circumstances.

Direct sourcing—a form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

Panel—an arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price.

(2) Justification for decision to use consultancy:

A—skills currently unavailable within agency

B—need for specialised or professional skills

C—need for independent research or assessment.

Advertising and market research

Advertising is used to publicise the office's services. No advertising campaigns were undertaken in 2009–10. The office's advertising strategies were designed and conceived in-house. Payment of \$29,669 including GST was made to Adcorp. The vast bulk of this expenditure was on recruitment notices.

Appendix 6—Agency resource statement and resources for outcomes

Table A4: Ombudsman office resource statement, 2009–10

	Actual available appropriations 2009–10 \$'000	Payments made 2009–10 \$'000	Balance remaining \$'000
	(a)	(b)	(a-b)
Ordinary annual services¹ Departmental appropriation			
Prior year departmental appropriation	5,136	5,136	-
Departmental appropriation	18,795	14,617	4,178
S 31 Relevant agency receipts ³	1,638	1,638	-
Total	25,569	21,391	4,178
Total ordinary annual services	25,569	21,391	
Other services² Departmental non-operating			
Equity injections	-	-	-
Previous year's outputs	1,511	1,366	145
Total	1,511	1,366	145
Total other services	1,511	1,366	
Total resourcing and payments	27,080	22,757	

1 Appropriation Bill (No.1) 2009–10

2 Appropriation Bill (No.2) 2009–10

3 Own source income

Table A5: Resources for outcomes

Outcome 1—Fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies

	Budget* 2009–10 \$,000	Actual expenses 2009–10 \$,000	Variation 2009–10 \$,000
	(a)	(b)	(a)-(b)
Program 1: Office of the Commonwealth Ombudsman			
Administered expenses			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	18,795	18,795	-
S 31 Revenues from independent sources	1,720	1,511	209
Expenses not requiring appropriation in the Budget year	623	1,152	(529)
Total for Program 1	21,138	21,458	(320)
Outcome 1 totals by appropriation type			
Administered expenses			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	18,795	18,795	-
S 31 Revenues from independent sources	1,720	1,511	209
Expenses not requiring appropriation in the Budget year	623	1,152	(529)
Total for Outcome 1	21,138	21,458	(320)

	2008–09	2009–10
Average staffing level (number)	151	153

* Full-year budget, including any subsequent adjustment made to the 2009–10 Budget

Appendix 7—Financial statements



INDEPENDENT AUDITOR'S REPORT

To the Cabinet Secretary and Special Minister of State

Scope

I have audited the accompanying financial statements of the Office of the Commonwealth Ombudsman for the year ended 30 June 2010, which comprise: a Statement by the Chief Executive and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Asset Additions and Notes to and Forming Part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Chief Executive for the Financial Statements

The Commonwealth Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards (which include the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office of the Commonwealth Ombudsman's

preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Commonwealth Ombudsman's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commonwealth Ombudsman, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial statements of the Office of the Commonwealth Ombudsman:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Ombudsman's financial position as at 30 June 2010 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



John McCullough
Audit Principal
Delegate of the Auditor-General

Canberra
8 September 2010

Office of the Commonwealth Ombudsman

STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2010 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed.....

Allan Asher
Chief Executive

 September 2010

Signed.....

Adam Stankevicius
Chief Financial Officer

 September 2010

STATEMENT OF COMPREHENSIVE INCOME
for the period ended 30 June 2010

	Notes	2010 \$	2009 \$
EXPENSES			
Employee benefits	3A	15,539,928	14,499,340
Supplier expenses	3B	5,174,863	4,484,606
Depreciation and amortisation	3C	742,437	783,224
Losses from asset sales	3D	837	91,983
Other	3E	-	34,765
Total expenses		21,458,065	19,893,918
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	1,513,903	1,391,538
Total own-source revenue		1,513,903	1,391,538
Gains			
Sale of assets	4B	32	919
Other	4C	29,000	66,810
Total gains		29,032	67,729
Total own-source income		1,542,935	1,459,267
Net cost of (contribution by) services		(19,915,130)	(18,434,651)
Revenue from Government	4D	18,795,000	19,364,000
Surplus (Deficit) attributable to the Australian Government		(1,120,130)	929,349
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		31,155	(74,432)
Total other comprehensive income		31,155	(74,432)
Total comprehensive income (loss)		(1,088,975)	854,917
Total comprehensive income (loss) attributable to the Australian Government		(1,088,975)	854,917

The above statement should be read in conjunction with the accompanying notes.

BALANCE SHEET*as at 30 June 2010*

	Notes	2010 \$	2009 \$
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	368,624	128,080
Trade and other receivables	5B	4,534,569	6,618,520
Other	5C	1,314,714	-
Total financial assets		6,217,907	6,746,600
Non-Financial Assets			
Property, plant and equipment	6A,B	2,921,148	1,364,126
Intangibles	6C,D	482,249	438,009
Other	6E	262,303	323,148
Total non-financial assets		3,665,700	2,125,283
Total Assets		9,883,607	8,871,883
LIABILITIES			
Payables			
Suppliers	7A	544,889	756,476
Operating leases	7B	2,203,642	307,335
Other	7C	1,175,859	761,358
Total payables		3,924,390	1,825,169
Provisions			
Employee provisions	8A	3,259,526	3,371,894
Other	8B	437,047	468,201
Total provisions		3,696,573	3,840,095
Total Liabilities		7,620,963	5,665,264
Net Assets		2,262,644	3,206,619
EQUITY			
Parent Entity Interest			
Contributed equity		2,158,000	2,013,000
Reserves		91,890	60,735
Retained surplus (accumulated deficit)		12,754	1,132,884
Total parent entity interest		2,262,644	3,206,619

The above statement should be read in conjunction with the accompanying notes.

STATEMENT OF CHANGES IN EQUITY
for the period ended 30 June 2010

	Retained earnings		Asset revaluation reserve		Contributed equity/capital		Total equity	
	2010	2009	2010	2009	2010	2009	2010	2009
	\$	\$	\$	\$	\$	\$	\$	\$
Opening balance								
Balance carried forward from previous period	1,132,884	203,535	60,735	135,167	2,013,000	2,145,000	3,206,619	2,483,702
Adjusted opening balance	1,132,884	203,535	60,735	135,167	2,013,000	2,145,000	3,206,619	2,483,702
Comprehensive income								
Other comprehensive income	-	-	31,155	(74,432)	-	-	31,155	(74,432)
Surplus (Deficit) for the period	(1,120,130)	929,349					(1,120,130)	929,349
Total comprehensive income (loss)	(1,120,130)	929,349	31,155	(74,432)			(1,088,975)	854,917
of which:								
Attributable to the Australian Government	(1,120,130)	929,349	-	-	-	-	(1,120,130)	929,349
Transactions with owners								
Distributions to owners								
Contributions by owners					145,000	(132,000)	145,000	(132,000)
Appropriation (equity injection)								
Other - Revaluation adjustment	0							
Sub-total transactions with owners					145,000	(132,000)	145,000	(132,000)
Transfers between equity components								
Closing balance as at 30 June	12,754	1,132,884	91,890	60,735	2,158,000	2,013,000	2,262,644	3,206,619
Less: non-controlling interests*								
Closing balance attributable to the Australian Government	12,754	1,132,884	91,890	60,735	2,158,000	2,013,000	2,262,644	3,206,619

The above statement should be read in conjunction with the accompanying notes.

CASH FLOW STATEMENT*for the period ended 30 June 2010*

	Notes	2010 \$	2009 \$
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,334,990	2,339,153
Appropriations		22,552,000	17,767,445
Net GST received		366,237	297,192
Total cash received		<u>25,253,227</u>	<u>20,403,790</u>
Cash used			
Employees		15,527,408	14,358,450
Suppliers		5,502,902	5,159,257
Returned to the Official Public Account		1,637,868	-
Total cash used		<u>22,668,178</u>	<u>19,517,707</u>
Net cash from (used by) operating activities	9	<u>2,585,049</u>	<u>886,082</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		64	1,200
Total cash received		<u>64</u>	<u>1,200</u>
Cash used			
Purchase of property, plant and equipment		2,121,044	572,874
Purchase of intangibles		223,525	345,918
Total cash used		<u>2,344,569</u>	<u>918,792</u>
Net cash from (used by) investing activities		<u>(2,344,505)</u>	<u>(917,592)</u>
Net increase (decrease) in cash held		<u>240,544</u>	<u>(31,510)</u>
Cash and cash equivalents at the beginning of the reporting period		128,080	159,590
Cash and cash equivalents at the end of the reporting period	5A	<u>368,624</u>	<u>128,080</u>

The above statement should be read in conjunction with the accompanying notes.

SCHEDULE OF COMMITMENTS

as at 30 June 2010

	2010	2009
	\$	\$
BY TYPE		
Commitments receivable		
Sale of services	2,561,588	1,006,055
GST recoverable on commitments	1,628,621	186,781
Total commitments receivable	<u>4,190,209</u>	<u>1,192,836</u>
Commitments payable		
Operating leases	<u>20,476,420</u>	<u>3,060,647</u>
Net commitments by type	<u>16,286,211</u>	<u>1,867,811</u>
BY MATURITY		
Commitments receivable		
Sale of services		
One year or less	1,541,332	1,006,055
From one to five years	1,020,256	-
Total services income	<u>2,561,588</u>	<u>1,006,055</u>
GST recoverable on commitments		
One year or less	(16,898)	16,271
From one to five years	398,062	170,510
Over five years	1,247,457	-
Total other commitments receivable	<u>1,628,621</u>	<u>186,781</u>
Commitments payable		
Operating lease commitments		
One year or less	1,355,455	1,185,040
From one to five years	5,398,938	1,875,607
Over five years	13,722,027	-
Total operating lease commitments	<u>20,476,420</u>	<u>3,060,647</u>
Net commitments by maturity	<u>16,286,211</u>	<u>1,867,811</u>

NB: Commitments are GST inclusive where relevant.

Operating leases included are effectively non-cancellable and comprise leases for office accommodation and motor vehicles for senior executive officers.

This schedule should be read in conjunction with the accompanying notes.

SCHEDULE OF ASSET ADDITIONS

for the period ended 30 June 2010

The following non-financial non-current assets were added in 2009-10:

	Other property, plant & equipment	Intangibles	Total
	\$	\$	\$
By purchase - appropriation equity	-	-	-
By purchase - appropriation ordinary annual services	2,121,044	223,526	2,344,570
By purchase - donated funds	-	-	-
By purchase - other	-	-	-
By finance lease	-	-	-
Assets received as gifts/donations	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-
Total additions	2,121,044	223,526	2,344,570

The following non-financial non-current assets were added in 2008-09:

	Other property, plant & equipment	Intangibles	Total
	\$	\$	\$
By purchase - appropriation equity	17,000	-	17,000
By purchase - appropriation ordinary annual services	584,737	345,918	930,655
By purchase - donated funds	-	-	-
By purchase - other	-	-	-
By finance lease	-	-	-
Assets received as gifts/donations	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-
Total additions	601,737	345,918	947,655

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

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Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 1: Summary of Significant Accounting Policies

1.1 Office of the Commonwealth Ombudsman Objectives

The Office of the Commonwealth Ombudsman is an Australian Government controlled entity. The objective of the Office of the Commonwealth Ombudsman seeks to provide a cost-effective form of independent administrative review, which is timely, informal and involves no direct cost to individuals. Coverage is comprehensive, embracing almost all of the administrative activity of the Commonwealth departments and agencies.

Through the handling of complaints and the conduct of own motion investigations, the Office contributes to continuous improvement in the performance of agencies and their accountability to Government, the Parliament and the community.

The Office is structured to meet one outcome:

Outcome 1: Fair and accountable administrative action by Australian Government agencies by investigating complaints, reviewing administrative action and inspecting statutory compliance by law enforcement agencies.

The continued existence of the Office in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Office's administration and programs.

The Office's activities contributing toward this outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the office in its own right. The Office has no administered activities.

1.2 Basis of Preparation of the Financial Statements

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are general purpose financial statements.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2009; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars.

Unless an alternative treatment is specifically required by an accounting standard or the FMO, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under Agreements Equally Proportionately Unperformed are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments or the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

The Office has had no administered revenues, expenses, assets, liabilities or cash flows in the year ended 30 June 2010 or in the comparative financial year.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates or other judgements have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 New Australian Accounting Standards

Adoption of New Australian Accounting Standard Requirements

No accounting standard has been adopted earlier than the application date as stated in the respective standard.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Future Australian Accounting Standard Requirements

New standards, reissued standards, amendments to standards or interpretations ("the new requirements") applicable to future reporting periods have been issued by the Australian Accounting Standards Board during the year. It is anticipated that the new requirements will have no material financial impact on future reporting periods.

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Office gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Other Types of Revenue

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the Office retains no managerial involvement or effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits associated with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of reporting period. Allowances are made when collectability of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Office or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

Sale of Assets

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

1.7 Transactions with the Government as Owner

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in contributed equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Australian Government Office or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other Distributions to Owners

The FMO require that distributions to owners be debited to contributed equity unless in the nature of a dividend.

1.8 Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of end of reporting period are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Office is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will applied at the time the leave is taken, including the Office's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the estimated future cash flows to be made in respect to all employees as at 30 June 2010. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Office recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the Office are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or some other fund.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and the other funds are defined contribution schemes.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Office makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Office's employees. The Office accounts for the contributions as if they were contributions to defined contribution plans.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.12 Financial Assets

The Office classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss;
- held-to-maturity investments;
- available-for-sale financial assets; and
- loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Financial Assets at Fair Value Through Profit or Loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are a part of an identified portfolio of financial instruments that the Office manages together and has a recent actual pattern of short-term profit-taking; or
- are derivatives that are not designated and effective as a hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Available-for-Sale Financial Assets

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part (or all) of the cumulative gain or loss previously recognised in the reserve is included in profit and loss for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments cost is used. The Office has no such instruments.

Held-to-Maturity Investments

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold to maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting periods.

- *Financial assets held at amortised cost* - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the statement of comprehensive income.
- *Available for sale financial assets* - if there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the statement of comprehensive income.
- *Financial assets held at cost* - If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.13 Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

Financial Liabilities at Fair Value Through Profit or Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.14 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.15 Financial Guarantee Contracts

Financial guarantee contracts are accounted for in accordance with AASB 139 *Financial Instruments: Recognition and Measurement*. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

1.16 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Office's accounts immediately prior to the restructuring.

1.17 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the office where there exists an obligation to restore the property to its original condition. These costs are included in the value of the office's leasehold improvements with a corresponding provision for the 'makegood' recognised.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Revaluations

Fair values for each class of asset are determined as shown below:

<i>Asset Class</i>	<i>Fair value measured at:</i>
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Office using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2010	2009
Leasehold improvements	Lease term	Lease term
Plant and Equipment	3 to 10 years	3 to 9 years

Impairment

All assets were assessed for impairment at 30 June 2010. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Office were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

1.18 Intangibles

The Office's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Office's software are 1 to 8 years (2008-09: 1 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2010.

1.19 Taxation

The Office is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 2: Events After the Reporting Period

On 9 July 2010 the Office entered into a Memorandum of Understanding with the Department of Climate Change for them to assume the Office's property lease at Farrell Place in Canberra. The Department assumed responsibility for the lease including restoration provisions. The value of the restoration provision at 30 June 2010 was \$301,140.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 3: Expenses

	2010	2009
	\$	\$
Note 3A: Employee Benefits		
Wages and salaries	11,382,055	10,687,183
Superannuation:		
Defined contribution plans	641,063	496,356
Defined benefit plans	1,343,833	1,522,145
Leave and other entitlements	1,728,069	1,793,656
Separation and redundancies	444,908	-
Total employee benefits	<u>15,539,928</u>	<u>14,499,340</u>
Note 3B: Suppliers		
Goods and services		
Consultants and contractors	169,579	456,842
Information technology and communications	710,097	676,796
Other	2,234,595	1,984,503
Total goods and services	<u>3,114,271</u>	<u>3,118,141</u>
Goods and services are made up of:		
Provision of goods – external parties	443,286	321,269
Rendering of services – related entities	337,400	214,738
Rendering of services – external parties	2,333,585	2,582,134
Total goods and services	<u>3,114,271</u>	<u>3,118,141</u>
Other supplier expenses		
Operating lease rentals – external parties:		
Minimum lease payments	1,972,552	1,294,052
Workers compensation expenses	88,040	72,413
Total other supplier expenses	<u>2,060,592</u>	<u>1,366,465</u>
Total supplier expenses	<u>5,174,863</u>	<u>4,484,606</u>
Note 3C: Depreciation and Amortisation		
Depreciation:		
Property, plant and equipment	563,151	564,803
Amortisation:		
Intangibles - Computer Software	179,286	218,422
Total depreciation and amortisation	<u>742,437</u>	<u>783,224</u>
Note 3D: Losses from Asset Sales		
Property, plant and equipment:		
Proceeds from sale	-	(350)
Carrying value of assets sold	837	91,509
Selling expense	-	-
Intangibles:		
Proceeds from sale	-	-
Carrying value of assets sold	-	824
Selling expense	-	-
Total losses from asset sales	<u>837</u>	<u>91,983</u>
Note 3E: Other Expenses		
Change in the value of restoration provision	-	34,765
Total other expenses	<u>-</u>	<u>34,765</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 4: Income

REVENUE	2010	2009
	\$	\$
Note 4A: Sale of Goods and Rendering of Services		
Rendering of services - related entities	512,650	384,610
Rendering of services - external parties	<u>1,001,253</u>	<u>1,006,928</u>
Total sale of goods and rendering of services	<u>1,513,903</u>	<u>1,391,538</u>
 Note 4B: Sale of Assets		
Property, plant and equipment:		
Proceeds from sale	64	1,200
Carrying value of assets sold	<u>(32)</u>	<u>(281)</u>
Net gain from sale of assets	<u>32</u>	<u>919</u>
 Note 4C: Other Gains		
Resources received free of charge	29,000	23,000
Reversal of makegood provision	<u>-</u>	<u>43,810</u>
Total other gains	<u>29,000</u>	<u>66,810</u>
 REVENUE FROM GOVERNMENT		
Note 4D: Revenue from Government		
Appropriations:		
Departmental outputs	<u>18,795,000</u>	<u>19,364,000</u>
Total revenue from Government	<u>18,795,000</u>	<u>19,364,000</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 5: Financials Assets

	2010	2009
	\$	\$
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	358,624	128,080
Cash held by outsiders	10,000	-
Total cash and cash equivalents	<u>368,624</u>	<u>128,080</u>
Note 5B: Trade and Other Receivables		
Good and Services:		
Goods and services - related entities	53,032	205,883
Goods and services - external parties	6,276	23,295
Total receivables for goods and services	<u>59,308</u>	<u>229,178</u>
Appropriations receivable:		
For existing outputs	4,322,868	6,297,000
Other receivables:		
GST receivable from the Australian Taxation Office	152,393	92,342
Total trade and other receivables (gross)	<u>4,534,569</u>	<u>6,618,520</u>
Receivables are expected to be recovered in:		
No more than 12 months	-	-
More than 12 months	4,534,569	6,618,520
Total trade and other receivables (net)	<u>4,534,569</u>	<u>6,618,520</u>
Receivables are aged as follows:		
Not overdue	4,517,662	6,440,028
Overdue by:		
0 to 30 days	154	102,317
31 to 60 days	16,528	66,157
61 to 90 days	-	-
More than 90 days	225	10,018
Total receivables (gross)	<u>4,534,569</u>	<u>6,618,520</u>
Note 5C: Other Financial Assets		
Lease incentives	1,314,714	-
Total other financial assets	<u>1,314,714</u>	<u>-</u>
Total other financial assets - are expected to be recovered in:		
No more than 12 months	923,771	-
More than 12 months	390,943	-
Total other financial assets	<u>1,314,714</u>	<u>-</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6: Non-Financial Assets

	2010	2009
	\$	\$
Note 6A: Property, Plant and Equipment		
Leasehold improvements:		
Fair value	2,888,976	1,591,584
Accumulated depreciation	<u>(1,101,718)</u>	<u>(828,972)</u>
Total leasehold improvements	<u>1,787,258</u>	<u>762,612</u>
Other property, plant and equipment:		
Fair value	2,388,739	1,666,459
Accumulated depreciation	<u>(1,254,849)</u>	<u>(1,064,945)</u>
Total other property, plant and equipment	<u>1,133,890</u>	<u>601,514</u>
Total property, plant and equipment	<u>2,921,148</u>	<u>1,364,126</u>

Formal valuations are generally undertaken where management considers there is a material or significant difference between the carrying value of the asset and its fair value. In between formal revaluations the office monitors the assets ensuring the fair value of the assets is materially correct. This is conducted annually.

No indicators of impairment were found for property, plant and equipment.

Within the next 12 months the office expects to dispose of the leasehold improvement restoration asset associated with the relinquishment of office accommodation as mentioned in note 2.

Note 6B: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009–10)

	Leasehold improvements	Other property, plant & equipment	Total
	\$	\$	\$
As at 1 July 2009			
Gross book value	1,591,584	1,666,459	3,258,043
Accumulated depreciation and impairment	<u>(828,972)</u>	<u>(1,064,945)</u>	<u>(1,893,917)</u>
Net book value 1 July 2009	<u>762,612</u>	<u>601,514</u>	<u>1,364,126</u>
Additions:			
By purchase	1,297,366	823,678	2,121,044
Depreciation expense	<u>(272,720)</u>	<u>(290,432)</u>	<u>(563,152)</u>
Disposals:			
Other	-	(870)	(870)
Net book value 30 June 2010	<u>1,787,258</u>	<u>1,133,890</u>	<u>2,921,148</u>
Net book value as of 30 June 2010 represented by:			
Gross book value	2,888,976	2,388,739	5,277,715
Accumulated depreciation	<u>(1,101,718)</u>	<u>(1,254,849)</u>	<u>(2,356,567)</u>
	<u>1,787,258</u>	<u>1,133,890</u>	<u>2,921,148</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6B (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009–10)

	Leasehold improvements \$	Other property, plant & equipment \$	Total \$
As at 1 July 2008			
Gross book value	1,468,624	1,481,867	2,950,491
Accumulated depreciation and impairment	(716,712)	(822,221)	(1,538,933)
Net book value 1 July 2008	<u>751,912</u>	<u>659,646</u>	<u>1,411,558</u>
Additions:			
By purchase	363,219	238,518	601,737
Depreciation expense	(274,656)	(290,147)	(564,803)
Disposals:			
Other	(77,863)	(6,503)	(84,366)
Net book value 30 June 2009	<u>762,612</u>	<u>601,514</u>	<u>1,364,126</u>
Net book value as of 30 June 2009 represented by:			
Gross book value	1,591,584	1,666,459	3,258,043
Accumulated depreciation	(828,972)	(1,064,945)	(1,893,917)
	<u>762,612</u>	<u>601,514</u>	<u>1,364,126</u>

Note 6C: Intangibles

	2010 \$	2009 \$
Computer software:		
Purchased	<u>1,543,280</u>	1,357,739
Total computer software (gross)	<u>1,543,280</u>	1,357,739
Accumulated amortisation	<u>(1,061,031)</u>	(919,730)
Total computer software (net)	<u>482,249</u>	438,009
Total intangibles	<u>482,249</u>	438,009

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6D: Reconciliation of the Opening and Closing Balances of Intangibles (2009–10)

	Computer software purchased \$
As at 1 July 2009	
Gross book value	1,357,739
Accumulated amortisation and impairment	(919,730)
Net book value 1 July 2009	438,009
Additions:	
By purchase	223,526
Amortisation	(179,286)
Net book value 30 June 2010	482,249
Net book value as of 30 June 2010 represented by:	
Gross book value	1,543,280
Accumulated amortisation and impairment	(1,061,031)
	482,249

Note 6D (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2009–10)

	Computer software purchased \$
As at 1 July 2008	
Gross book value	1,061,520
Accumulated amortisation and impairment	(750,183)
Net book value 1 July 2008	311,337
Additions:	
By purchase	345,918
Amortisation	(218,422)
Disposals:	
Other	(824)
Net book value 30 June 2009	438,009
Net book value as of 30 June 2009 represented by:	
Gross book value	1,357,739
Accumulated amortisation and impairment	(919,730)
	438,009

Note 6E: Other Non-Financial Assets

	2010 \$	2009 \$
Prepayments	262,303	323,148
Total other non-financial assets	262,303	323,148

No indicators of impairment were found for other non-financial assets.

Total other non-financial assets - are expected to be recovered in:

	2010 \$	2009 \$
No more than 12 months	262,303	323,148
More than 12 months	-	-
Total other non-financial assets	262,303	323,148

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 7: Payables

	2010 \$	2009 \$
Note 7A: Suppliers		
Trade creditors and accruals	<u>544,889</u>	<u>756,476</u>
Total supplier payables	<u>544,889</u>	<u>756,476</u>

Supplier payables expected to be settled within 12 months:

Related entities	174,059	118,074
External parties	<u>370,830</u>	<u>638,402</u>
Total	<u>544,889</u>	<u>756,476</u>

All supplier payables are expected to be settled in less than 12 months

Settlement is usually made within 30 days.

Note 7B: Operating leases

Operating lease incentives	2,005,693	299,610
Fixed lease increase	<u>197,949</u>	<u>7,725</u>
Total operating lease	<u>2,203,642</u>	<u>307,335</u>

Total operating leases are expected to be settled in:

No more than 12 months	186,820	64,037
More than 12 months	<u>2,016,822</u>	<u>243,298</u>
Total	<u>2,203,642</u>	<u>307,335</u>

Settlement is usually made within 30 days.

Note 7C: Other Payables

Salaries and wages	233,542	197,956
Superannuation	34,542	31,024
Separations and redundancies	71,945	-
Unearned income	<u>835,830</u>	<u>532,378</u>
Total other payables	<u>1,175,859</u>	<u>761,358</u>

Total other payables are expected to be settled in:

No more than 12 months	1,175,859	761,358
More than 12 months	-	-
Total	<u>1,175,859</u>	<u>761,358</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 8: Provisions

	2010	2009
	\$	\$
Note 8A: Employee Provisions		
Leave	<u>3,259,526</u>	<u>3,371,894</u>
Total employee provisions	<u>3,259,526</u>	<u>3,371,894</u>
Employee provisions are expected to be settled in:		
No more than 12 months	<u>1,123,785</u>	1,188,178
More than 12 months	<u>2,135,741</u>	<u>2,183,716</u>
Total employee provisions	<u>3,259,526</u>	<u>3,371,894</u>
Note 8B: Other Provisions		
Provision for restoration obligations	<u>437,047</u>	468,201
Total other provisions	<u>437,047</u>	468,201
Other provisions are expected to be settled in:		
No more than 12 months	<u>361,260</u>	-
More than 12 months	<u>75,787</u>	468,201
Total other provisions	<u>437,047</u>	468,201
	Provision for restoration \$'000	
Carrying amount 1 July 2009	<u>468,201</u>	
Amounts reversed	<u>(31,154)</u>	
Closing balance 2010	<u>437,047</u>	

The Office currently has 6 agreements for the leasing of premises which have provisions requiring the Office to restore the premises to their original condition at the conclusion of the lease. The Office has made a provision to reflect the value of this obligation.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 9: Cash Flow Reconciliation

	2010	2009
	\$	\$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	368,624	128,080
Balance sheet	<u>368,624</u>	<u>128,080</u>
Difference	<u>-</u>	<u>-</u>
 Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(19,915,130)	(18,434,651)
Add revenue from Government	18,795,000	19,364,000
Less income tax expense	-	-
 Adjustments for non-cash items		
Depreciation / amortisation	742,437	783,224
Net write down of non-financial assets		(43,810)
(Gain)/loss on disposal of assets	806	91,064
Other expenses	-	34,765
Deterioration of financial condition of guarantee during period	-	-
 Changes in assets / liabilities		
(Increase) / decrease in net receivables	2,228,953	(1,606,035)
(Increase) / decrease in other financial assets	(1,314,714)	-
(Increase) / decrease in prepayments	60,845	(173,290)
Increase / (decrease) in employee provisions	(112,368)	255,155
Increase / (decrease) in supplier payables	(211,587)	133,125
Increase / (decrease) in operating leases payable	1,896,307	221,203
Increase / (decrease) in other payable	<u>414,501</u>	<u>261,332</u>
Net cash from (used by) operating activities	<u>2,585,049</u>	<u>886,082</u>

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 10: Contingent Liabilities and Assets

The Office has no contingent liabilities.

The Office has identified in its contracts and leases a number of indemnity provisions. None of these are quantifiable and all are considered remote. There are no existing or likely claims of which the office is aware.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 11: Senior Executive Remuneration

Note 11A: Actual Remuneration Paid to Senior Executives

	2010	2009
The number of senior executives who received:		
less than \$145,000*	-	-
\$160,000 to \$174,999	1	-
\$175,000 to \$189,999	-	2
\$190,000 to \$204,999	-	2
\$205,000 to \$219,999	3	2
\$220,000 to \$234,999	2	-
\$265,000 to \$279,999	-	2
\$280,000 to \$294,999	1	-
\$295,000 to \$309,999	1	-
\$340,000 to \$354,999	-	1
Total	8	9

* Senior Executives with acting arrangements or part year service are excluded where remuneration is less than \$145,000.

For the purpose of this note remuneration includes:

- a) Salary (including payment for leave taken)
- b) Movement in leave provisions
- c) Superannuation
- d) Motor vehicle and other allowances
- e) Fringe benefits

Total expense recognised in relation to Senior Executive employment

	\$	\$
Short-term employee benefits:		
Salary (including leave taken)	1,434,104	1,587,393
Changes in annual leave provisions	43,832	(15,928)
Performance bonus	-	-
Other ¹	132,800	148,427
Total Short-term employee benefits	1,610,736	1,719,892
Superannuation (post-employment benefits)	220,005	309,091
Other long-term benefits	8,539	42,936
Total	1,839,280	2,071,919

Notes

1. "Other" includes motor vehicle and other allowances and fringe benefits.

Note 11B: Salary Packages for Senior Executives

Average annualised remuneration packages for substantive Senior Executives

	As at 30 June 2010			As at 30 June 2009		
	No. SES ²	Base salary (including annual leave)	Total remuneration package ¹	No. SES	Base salary (including annual leave)	Total remuneration package ¹
Total remuneration*:						
\$145,000 to \$159,999	-	-	-	1	114,922	152,938
\$160,000 to \$174,999	1	123,418	164,243	-	-	-
\$175,000 to \$189,999	-	-	-	3	145,069	184,486
\$190,000 to \$204,999	1	154,272	203,144	2	152,171	202,508
\$205,000 to \$219,999	3	158,714	210,474	-	-	-
\$220,000 to \$234,999	-	-	-	2	183,230	234,734
\$235,000 to \$249,999	2	188,730	241,700	-	-	-
\$340,000 to \$354,999	-	-	-	1	247,060	345,051
Total	7	-	-	9	-	-

* Excluding acting arrangements and part-year service.

Notes

1. Non-salary elements available to Senior Executives include motor vehicle allowance and superannuation

2. 1 Senior Executive at 30 June 2010 was on secondment to another agency and another Senior Executive had resigned by 30 June 2010

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 12: Remuneration of Auditors

	2010	2009
	\$	\$
Financial statement audit services were provided free of charge to the Agency.		
The fair value of the services provided was:	29,000	23,000
No other services were provided by the Auditor-General.		

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 13: Financial Instruments

Note 13A: Categories of Financial Instruments	Notes	2010 \$	2009 \$
Financial Assets			
Loans and receivables:			
Cash and cash equivalents	5A	368,624	128,080
Trade and other receivables	5B	59,308	229,178
Carrying amount of financial assets		<u>427,932</u>	<u>357,258</u>
Financial Liabilities			
Supplier payables			
Supplier payables	7A	544,889	756,476
Unearned income	7B	835,830	532,378
Carrying amount of financial liabilities		<u>1,380,719</u>	<u>1,288,854</u>

The net fair values of the financial instruments approximate their carrying amounts.

Note 13B: Credit Risk

The Office is exposed to minimal credit risk due to the nature of its financial assets. The maximum exposure to credit risk is the amounts held as trade and other receivables should default occur, the risk of which was assessed to be \$225 as at 30 June 2010 (2009 nil).

The Office manages its credit risk through its policies and procedures issued under the Chief Executive Instructions.

Note 13C: Liquidity Risk

The Office's exposure to liquidity risk is minimal due to the appropriation funding mechanisms available from the Department of Finance and Deregulation. The office manages liquidity risk through its policies and procedures.

Maturities for non-derivative financial liabilities 2010

	On demand \$'000	within 1 year \$'000	1 to 2 years \$'000	2 to 5 years \$'000	> 5 years \$'000	Total \$'000
Supplier payables	544,889	-	-	-	-	544,889
Unearned income	835,830	-	-	-	-	835,830
Total	544,889	-	-	-	-	1,380,719

Maturities for non-derivative financial liabilities 2009

	On demand \$'000	within 1 year \$'000	1 to 2 years \$'000	2 to 5 years \$'000	> 5 years \$'000	Total \$'000
Supplier payables	756,476	-	-	-	-	756,476
Unearned income	532,378	-	-	-	-	532,378
Total	756,476	-	-	-	-	1,288,854

The office has no derivative financial liabilities in both the current and prior year.

Note 13D: Market Risk

The Office holds only basic financial instruments that do not pose any market risk. The Office is not exposed to currency risk or other price risk.

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 14: Appropriations

Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental outputs	
	2010 \$	2009 \$
Balance brought forward from previous period (<i>Appropriation Acts</i>)	5,136,126	4,893,449
<i>Appropriation Act:</i>		
<i>Appropriation Act (No. 1, 3 & 5) 2009-2010 as passed</i>	18,904,000	17,998,000
<i>Appropriations reduced (Appropriation Act 1 section 10)</i>	(109,000)	-
<i>Indigenous Employment Special Account receipts (Appropriation Act section 14)</i>		
<i>FMA Act:</i>		
Repayments to the Commonwealth (<i>FMA Act section 30</i>)	95,559	123,640
*Appropriations to take account of recoverable GST (<i>FMA Act section 30A</i>) ¹	666,988	502,269
Relevant agency receipts (<i>FMA Act s 31</i>)	2,049,299	2,038,267
Total appropriation available for payments	26,742,972	25,555,625
Cash payments made during the year (GST inclusive)	22,044,087	20,419,499
Balance of authority to draw cash from the Consolidated Revenue Fund for ordinary annual services appropriations and as represented by:	4,698,885	5,136,126
Cash at bank and on hand	368,624	128,080
*Departmental appropriations receivable	4,177,868	4,931,000
*Undrawn, unapplied administered appropriations		
*Net GST payable (to)/from ATO	152,393	77,046
Total as at 30 June	4,698,885	5,136,126

1. The amounts in this line item are calculated on an accrual basis to the extent that an expense may have been incurred that includes GST but has not been paid by year end

Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

Particulars	Non Operating					
	Equity		Previous years' outputs		Total	
	2010 \$	2009 \$	2010 \$	2009 \$	2010 \$	2009 \$
Balance brought forward from previous period (<i>Appropriation Acts</i>)	-	149,000	1,366,000	-	1,366,000	149,000
<i>Appropriation Act:</i>						
<i>Appropriation Acts (No. 2) as passed</i>	-	-	145,000	1,366,000	145,000	1,366,000
<i>Other Appropriation Act:</i>						
Repayments to the Commonwealth (<i>NTER Appropriation Act (No. 2) 2008-09 s11(1)</i>)	-	(132,000)	-	-	-	(132,000)
Total appropriations available for payments	-	17,000	1,511,000	1,366,000	1,511,000	1,383,000
Cash payments made during the year (GST inclusive)	-	17,000	1,366,000	-	1,366,000	17,000
Appropriations credited to special accounts (GST exclusive)	-	-	-	-	-	-
Balance of authority to draw cash from the consolidated revenue fund for other than ordinary annual services appropriations and as represented by:	-	-	145,000	1,366,000	145,000	1,366,000
*Departmental appropriation receivable	-	-	145,000	1,366,000		
Total as at 30 June	-	-	145,000	1,366,000	145,000	1,366,000

1. The amounts in this line item are calculated on an accrual basis to the extent that an expense may have been incurred that includes GST but has not been paid by year end

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 15: Compensation and Debt Relief

No Act of Grace payments were made during the reporting period (2009: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (2009: nil).

No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2009: nil).

No ex-gratia payments were provided for during the reporting period. (2009: nil).

No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period. (2009: nil).

Office of the Commonwealth Ombudsman
Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 16: Reporting of Outcomes

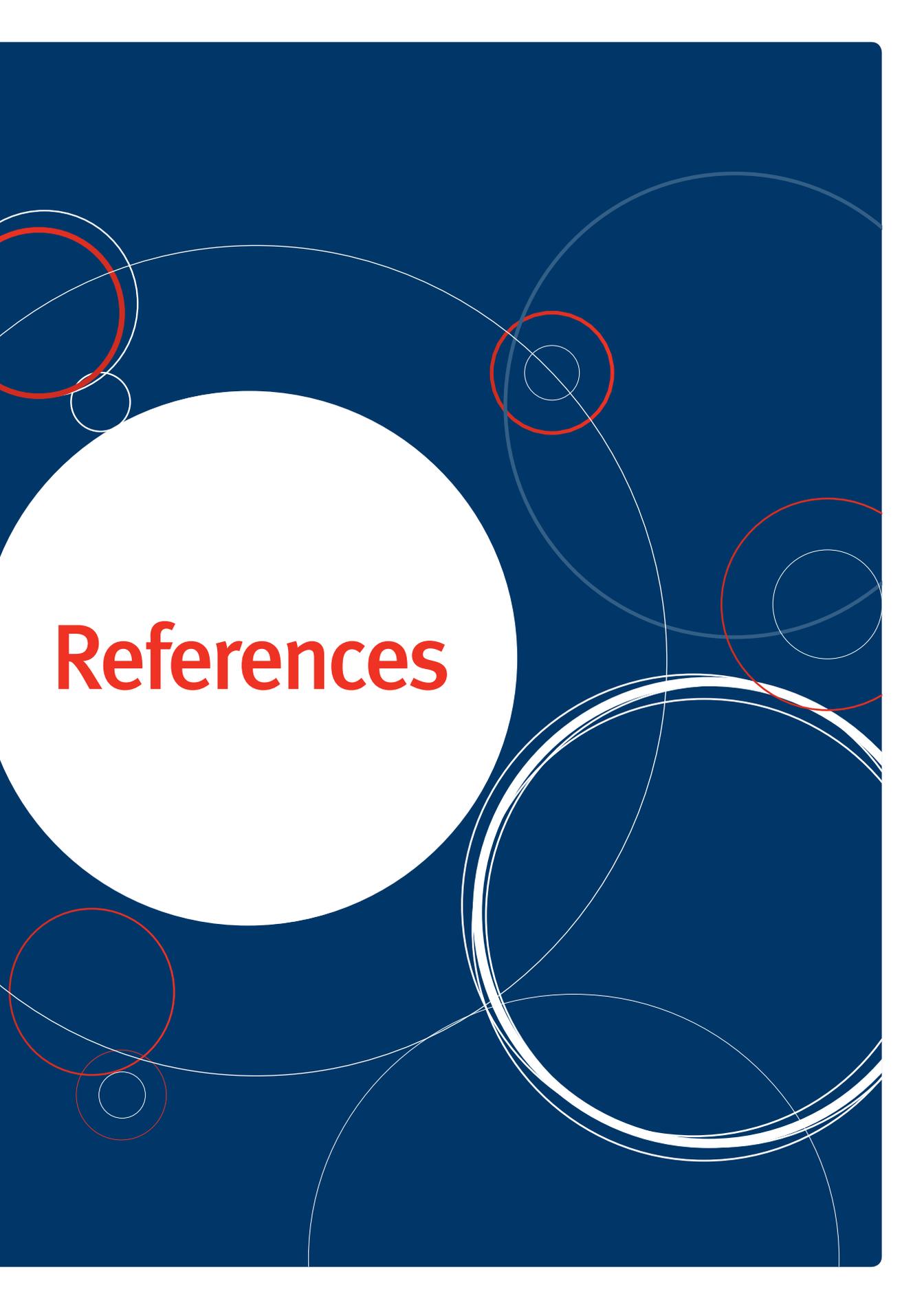
Note 16A: Net Cost of Outcomes Delivery

	Outcome 1		Total	
	2010	2009	2010	2009
	\$	\$	\$	\$
Expenses				
Departmental	21,458,065	19,893,918	21,458,065	19,893,918
Total	21,458,065	19,893,918	21,458,065	19,893,918
Income from non-government sector				
Departmental				
Activities subject to cost recovery	-	-	-	-
Interest on cash deposits	-	-	-	-
Gain from disposal of asset	32	919	32	919
Reversal of previous asset write-downs	-	-	-	-
Goods and services income	512,650	384,610	512,650	384,610
Other	-	-	-	-
Total departmental	512,682	385,529	512,682	385,529
Total	512,682	385,529	512,682	385,529
Other own-source income				
Departmental	1,030,253	1,073,738	1,030,253	1,073,738
Total	1,030,253	1,073,738	1,030,253	1,073,738
Net cost of outcome delivery	19,915,130	18,434,651	19,915,130	18,434,651

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome.

The office has one outcome, therefore the Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcomes table has not been prepared.



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Abbreviations and acronyms

ACCr	Aged Care Commissioner	AYAD	Australian Youth Ambassadors for Development
ACC	Australian Crime Commission	BAS	Business Activity Statement
ACCC	Australian Competition and Consumer Commission	CCC	Corruption and Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity	CCMS	Child Care Management System
ACT	Australian Capital Territory	CCTR	child care tax rebate
ADF	Australian Defence Force	CDDA	Compensation for Detriment Caused by Defective Administration
AFP	Australian Federal Police	CDPP	Commonwealth Director of Public Prosecutions
AGD	Attorney-General's Department	CHOBS	Complaint-Handling Ombudsman Backed Scheme
ANAO	Australian National Audit Office	CHU	Complaint Handling Unit
ANU	Australian National University	CIS	(Aged Care) Complaints Investigation Scheme
ANZOA	Australian and New Zealand Ombudsman Association	CMA	Career Management Agency
AP	age pension	CO	Commanding Officer
APOR	Australasian and Pacific Ombudsman Regional (conference)	CoA	Change of Assessment
APRA	Australian Prudential Regulation Authority	COAG	Council of Australian Governments
APS	Australian Public Service	Complaints Act	Complaints (Australian Federal Police) Act 1981
AQIS	Australian Quarantine and Inspection Service	Crimes Act	Crimes Act 1914
ARC	Australian Review Council	CSA	Child Support Agency
ARIA	Accessibility Remoteness Index of Australia	Cth	Commonwealth
ASIC	Australian Securities and Investments Commission	DAFF	Department of Agriculture, Fisheries and Forestry
ATO	Australian Taxation Office	DCCEE	Department of Climate Change and Energy Efficiency
AusAID	Australian Agency for International Development	DEEWR	Department of Education, Employment and Workplace Relations
AUSTRAC	Australian Transaction Reports and Analysis Centre		

DEWHA	Department of Environment, Water, Heritage and the Arts	IT	information technology
DFAT	Department of Foreign Affairs and Trade	JOIN	Joint Outreach Initiative Network
DFR	Defence Force Recruiting	JSA	Job Services Australia
DHA	Defence Housing Authority	LGBTI	lesbian, gay, bisexual, transgender and intersex (people)
DHLGRS	Department of Housing, Local Government and Regional Services (NT)	Migration Act	Migration Act 1958
DIAC	Department of Immigration and Citizenship	MOU	memorandum of understanding
DPO	Departure Prohibition Order	MRC	Mail Redistribution Centre
DVA	Department of Veterans' Affairs	MRCA	Military Rehabilitation and Compensation Act 2004
ESOS	Education Services for Overseas Students	MRT	Migration Review Tribunal
ESSP	Economic Security Strategy Payment	NOC	National Ombudsman Commission
EU	European Union	NSW	New South Wales
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs	NT	Northern Territory
FAO	Family Assistance Office	NTER	Northern Territory Emergency Response
FOI	freedom of information	OCPNG	Ombudsman Commission of Papua New Guinea
FTB	Family Tax Benefit	OH&S	Occupational Health and Safety Ombudsman Act
GEERS	General Employee Entitlements and Redundancy Scheme		Ombudsman Act 1976
GFU	Global Feedback Unit	ORI	Ombudsmen of the Republic of Indonesia
GSM	General Skilled Migration	ORRP	Outer Regional and Remote Payment
GST	Goods and Services Tax	PIO	Postal Industry Ombudsman
HCWA	Helping Children with Autism	POA	Pacific Ombudsman Alliance
Hon.	Honourable	PPOs	Private Postal Operators
IDCs	Immigration Detention Centres	PRC	People's Republic of China
IGT	Inspector-General of Taxation	Prof.	Professor
IMAs	irregular maritime arrivals	QLD	Queensland
IU	Indigenous Unit	RAAF	Royal Australian Air Force
		RBA	Reserve Bank of Australia
		ROG	Redress of Grievance

RSA	refugee status assessment
RSL	Returned and Services League
s	section
SA	South Australia
SD	Surveillance Devices Act 2004
SES	Senior Executive Service
SIHIP	Strategic Indigenous Housing and Infrastructure Program
STARTTS	Service for Treatment and Rehabilitation of Torture and Trauma Survivors
TAS	Tasmania
TFN	tax file number
TIA Act	Telecommunications (Interception and Access) Act 1979
TRA	Trades Recognition Australia
TTMRA	Trans-Tasman Mutual Recognition Agreement
UAC	Uniform Assessment Criteria
VIC	Victoria
WA	Western Australia
WISH	Woolloomooloo Integrated Services Hub

List of requirements

This is a guide to the report's compliance with the Requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the Public Service Act 1999.

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