

OMBUDSMAN

TASMANIA



ANNUAL REPORT
2009–2010

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LETTER TO PARLIAMENT

To

The Honourable President of the Legislative Council

and

The Speaker of the House of Assembly

Pursuant to section 30 of the *Ombudsman Act 1978*, I present to the Parliament the annual report of the Ombudsman for 2009-2010.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Simon Allston'. The signature is fluid and cursive, with a long, sweeping underline.

Simon Allston
Ombudsman

November 2010

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HIGHLIGHTS

- Completion of two major own motion investigations
- Increase of 14% in the number of cases closed, in the Ombudsman jurisdiction
- Increase of 48% in the number of complaints received, in the Energy Ombudsman jurisdiction
- Increase of 30% in the number of FOI reviews undertaken
- Increase of 100% in the number of FOI cases closed
- Preparation for the commencement of the *Right to Information Act 2009*
- Successful transition of Mental Health Official Visitor Scheme to the office
- Development of four new websites – Ombudsman, Health Complaints, Energy Ombudsman and Official Visitors

FROM THE OMBUDSMAN

TASMANIAN OMBUDSMAN · SIMON ALLSTON

This annual report looks back on an extraordinarily full year, in which the Office of the Ombudsman and Health Complaints Commissioner has grown in size, complexity and maturity.

As in previous years, I use this report to present the work of the Office as a whole, including our work in the Health Complaints jurisdiction, although I publish a separate report on that work in accordance with the *Health Complaints Act 1995*.

The Office has six sections, five of which deal with distinct jurisdictions and the sixth of which provides administrative support to the Office as a whole. The six sections are – Ombudsman, Health Complaints, Energy Ombudsman, Freedom of Information, Official Visitors and Administration. Each of the sections has its own dedicated staff, but some officers work across jurisdictions.



The main highlights of the year, with reference to each of these sections, have been –

OMBUDSMAN

- The completion of two major own motion investigations, one of which was tabled in the Parliament on 24 June. Both of these investigations related to Risdon Prison. One concerned the management of the Tamar high risk management unit at the prison; the other related to a decision by the Director of Prisons to refuse to allow a prisoner to keep her newborn child with her in the prison.
- The completion of a number of other major investigations.
- An increase of 14% in the number of cases closed during the year.

HEALTH COMPLAINTS

- Preparation for the transition to the national registration scheme for health professionals, including the negotiation and drafting of protocols between the health complaints entities and the Australian Health Practitioners Regulation Agency (AHPRA).
- An increase in the number of complaints assessed within 90 days of receipt from 76% to 99%.



ENERGY OMBUDSMAN

- The development of a new budget model, which no longer requires contributions from energy entities which do not generate work for the Office.
- The conduct of extensive negotiations with Aurora Energy to address issues relating to access for meter readers to electricity meters, particularly when there is an unrestrained dog on the premises.
- The successful handling of a 48% increase in complaints in this jurisdiction.

FREEDOM OF INFORMATION

- Participation in the review by the Department of Justice of the *Freedom of Information Act 1991*.
- Preparation for the commencement of the *Right to Information Act 2009*, including the development of a Manual and Guidelines for users.
- An increase of 30% in the number of reviews undertaken during the year.
- An increase of 100% in the number of cases closed during the year.
- The publication on our Ombudsman website of a number of significant review decisions.

OFFICIAL VISITORS

- The successful transition of the Mental Health Official Visitor Scheme to the Office, with the appointment of permanent staff and steps taken to appoint new Official Visitors
- The amalgamation of the Mental Health and Prison Official Visitor Schemes under the same management.
- Receipt of funding to enable the Office to pay similar allowances to both types of Visitor.

ADMINISTRATION

- The development of four new websites, one for each of the Ombudsman, Health Complaints, Energy Ombudsman and Official Visitor jurisdictions.
- Receipt of two increases in funding – an increase of \$160,900 for 2009/10, notified to us in December 2009, which then became an increase of \$1.2m in our allocation in the State budget, spread over the period 2010/11 to 2014/15. This will enable us to properly resource the Right to Information jurisdiction,

to recruit additional investigation staff, to rent extra office accommodation to house these staff, and to pay the Prison Official Visitors the allowances already mentioned.

- The handling of extensive HR activity, as the office has grown from 19 to 23 staff and as we have dealt with retirements, appointments, temporary placements and a temporary transfer. Importantly, 11 of our staff work part-time.
- The handling of an increase in the number of enquiries made to the Office, the increases in the several jurisdictions being Ombudsman (91%), Health Complaints (19%) and Energy (44%).

More detail on many of these highlights will be found in this report, which has a chapter on each of the Office's main areas of operation.

The productivity of the Office which is reflected in the list of highlights is sustained by a high level of professionalism, within a very congenial work environment. This was well captured by one of my staff recently in a performance management discussion, with the comment – *“good people, great place to work”*.

I thank each of these good people for their contribution to the work that is reflected in these pages.



Simon Allston
Ombudsman

November 2010



ROLE OF THE OMBUDSMAN

In addition to the very broad jurisdiction of the Ombudsman under the *Ombudsman Act 1978* to investigate administrative actions by State Government departments, local government bodies, Government Business Enterprises and other public authorities, the Ombudsman has a wide range of other functions and responsibilities.

All the services offered by our Office are free, and all of our functions are carried out, and our responsibilities met, fairly and impartially.

OMBUDSMAN

Anybody who is aggrieved by the administrative action of a Tasmanian public authority and who has tried unsuccessfully to resolve their concerns with the authority itself can complain to my office. If the complaint is within jurisdiction and the circumstances warrant it, it will be investigated. I can also investigate such action – particularly where systemic issues are involved – on my own motion, and as I have indicated, two major own motion investigations were completed in the reporting year. Our primary objectives are to improve public administration and promote good administrative practice.

At the conclusion of an investigation, whether it be the investigation of a complaint or an own motion investigation, a report is prepared for delivery to the authority concerned, which will include recommendations for addressing and rectifying any action which:

- a) appears to have been taken contrary to law;
- b) was unreasonable, unjust, oppressive, or improperly discriminatory;
- c) was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- d) was taken in the exercise of a power or discretion and was so taken for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations;
- e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- f) was based wholly or partly on a mistake of law or fact; or
- g) was wrong.

- see *Ombudsman Act*, s 28(1).

A report can also be delivered to the relevant Minister and/or Parliament. My office has no coercive power in relation to the adoption of recommendations but is dependent on constructive negotiation and persuasive argument. It is extremely uncommon for an agency not to accept recommendations we make.

FREEDOM OF INFORMATION REVIEWS

During the reporting year my office received numerous requests for the review of decisions taken by public authorities not to release information sought under the *Freedom of Information Act 1991* (FOI Act). If at the conclusion of a review I am of the view that the authority's decision was incorrect I can make a fresh determination, which the authority is obliged to implement. The FOI Act has been repealed and replaced by the *Right to Information Act 2009*, with effect from 1 July 2010.

PUBLIC INTEREST DISCLOSURES

My office has a significant role under the *Public Interest Disclosures Act 2002* to receive and investigate public interest (or "whistleblower") disclosures and oversee the manner in which public authorities deal with such disclosures.

PERSONAL INFORMATION PROTECTION

My office provides an avenue of redress for people who believe that their personal information has been misused by a public authority in breach of the *Personal Information Protection Act 2004*.

HEALTH COMPLAINTS

I am also the Health Complaints Commissioner under the *Health Complaints Act 1995*, and in that capacity receive complaints relating to the provision of any health service by a health service provider in either the public or the private sector. The Commissioner's functions are outlined in s 6 of the Act and include:

- preparing and regularly reviewing a Charter of Health Rights
- identifying and reviewing issues arising out of complaints and suggesting ways of improving health services and preserving and increasing health rights
- providing information, education and advice in relation to the Charter, health rights and responsibilities, and the procedures for resolving complaints
- receiving, assessing and resolving complaints
- inquiring into and reporting on any matter relating to health services at his or her own discretion or on the direction of the Health Minister.

ENERGY COMPLAINTS

Consumers are able to lodge complaints against energy entities with the Ombudsman for investigation and resolution under the *Energy Ombudsman Act 1998*. I have the power under the Act to make an award against an entity, where appropriate.



WATER AND SEWERAGE

Pursuant to the *Water and Sewerage Industry Act 2009*, a customer of a water and sewerage corporation who has made a complaint to the corporation under its customer complaints process and is not satisfied with the outcome of the complaint may make a complaint about that outcome to the Ombudsman. It is a condition of a corporation's licence that it will be bound by the Ombudsman's determination in relation to the complaint. The broader administrative actions of the corporations come within the general Ombudsman jurisdiction.

POLICE COMPLIANCE AUDITS

My office has responsibility for ensuring compliance by Tasmania Police with the procedural requirements of the *Telecommunications (Interception) Tasmania Act 1999*, the *Police Powers (Controlled Operations) Act 2006* and the *Police Powers (Surveillance Devices) Act 2008*.

OTHER STATUTORY FUNCTIONS

I am also able to review certain decisions of the Commissioner of Police under the *Witness Protection Act 2000* and decisions about the release of information under the *Adoption Act 1998*.

REFERRAL SERVICE

The office plays an important role in referring members of the public to the body best able to address their concerns when those concerns relate to matters that are out of our jurisdiction. In most cases, we are able to advise a complainant of the body they need to speak to. We regularly refer people to the Commonwealth Ombudsman, the Telecommunications Industry Ombudsman, the Financial Ombudsman Service, the Office of the Anti-Discrimination Commissioner and the Office of Consumer Affairs and Fair Trading.

OFFICIAL VISITORS

My office also provides administrative support for the Mental Health and Prison Official Visitor Schemes.

OMBUDSMAN ACT 1978

REVIEW OF COMPLAINTS

BACKGROUND

In last year's annual report I noted that a new data management system for the office had been commissioned in October 2008 and this reporting year was its first full year in operation. The new Resolve system has allowed us to more accurately record approaches to the office, and in particular to more precisely identify and distinguish between enquiries and complaints. It also allows us to capture all enquiries, whether they are in jurisdiction or out of jurisdiction.

Table 1 records the number of enquiries we received in the reporting year and indicates an overall increase of 91% over last year. The number of in jurisdiction enquiries increased by 34% and the number of out of jurisdiction enquiries increased by 63%.

The number of out of jurisdiction enquiries was substantial at 2,828, with a significant number of those enquiries coming from prisoners in the State's various prison facilities using the free call number to my Office on the prisons' Arunta telephone system. In the reporting year, 1,039 or 37% of all out of jurisdiction enquiries were received from prisoners. There are a number of explanations for this. Prisoners sometimes make a call on the Arunta system using their own PIN, then call the line to my Office using another prisoner's PIN. Having made the connection they then hang up in order that they might make another call using their own PIN rather than relinquish the phone to the next in line, as they are required to do after each call. Prisoners have also reported technical faults in the system. Another explanation lies in the fact that the line to my Office is often the only contact prisoners are able to have with an outside agency and many see my office as a sounding board and referral point as well as somewhere they can lodge a complaint.

Even without the Arunta calls referred to, the number of out of jurisdiction enquiries remains significant. I am hopeful that the changes that we have made to our web sites, especially the inclusion of more detailed information as to the sorts of complaints we can and cannot investigate, and as to the alternative agencies and bodies that people can refer their concerns to if my Office is unable to assist them, will reduce the number of these enquiries in the future.

Unlike enquiries, the number of complaints received by my Office did not vary significantly between this reporting year and the last; there was a slight decrease from 552 in 2008/09 to 549 in 2009/10. However, as I have already noted in the introduction to this report, the number of cases we have been able to close has increased by 14%. The number of cases we have been able to close in 90 days or less (77% of all closed cases) has remained much the same as in the last reporting year, but at the same time, several major investigations have been completed.



As in previous reporting years, complaints were spread broadly over all areas of government. Complaints were divided as follows:

➤ General Agency	68%
➤ Local Government	15%
➤ Public Authorities	16%
➤ Government Business Enterprises	1%

As in previous years, most complaints were either declined or discontinued (53%) or a finding was made that there had been no defective administration (38%). In only 9% of cases was the complaint found to be substantiated, either partly or fully.

GENERAL AGENCY

As I have noted above, general agency complaints, or complaints against government departments, accounted for more than two thirds of all complaints received. Most departments were represented to a greater or lesser extent, with the Department of Economic Development and Tourism and the Department of Environment, Parks, Heritage and the Arts being the only departments against which no complaints were made. As has historically been the case, the Departments of Justice, Health and Human Services, and Police and Emergency Management accounted for the majority of complaints (see Fig 2).

The Department of Justice

As previously, more complaints were received against the Department of Justice than any other agency. This is primarily due to the fact that Corrective Services is under the Justice umbrella, and prisoner complaints continue to constitute a large part of our work. Complaints relating to the Department rose by 28% in the reporting year and the number of prisoner complaints increased by 24%, making up 72% of all complaints against the Department.

My office remained the only source of independent and external review for prisoners and detainees in the State's various correctional facilities during the reporting year. The ease with which prisoners and detainees can now access our services means that issues can be brought to our attention as they occur, and the continued cooperation of Corrective Services means that most complaints are resolved in a timely way. In line with the figures for complaints in general, most prisoner complaints were declined or discontinued (56%) or a finding of no defective administration was made (37%). In the reporting year, 7% of prisoner complaints were found to have been substantiated in whole or in part.

Matters complained of included:

- missing property and uncredited funds
- the punishments imposed for prison offences

- security classification and place of accommodation
- improper/unfair treatment by correctional officers
- problems with incoming and outgoing mail
- food and dietary requirements

As I noted at the beginning of this report, the reporting year also saw the publication of two significant reports related to prison management, and these are discussed in more detail in the Own Motion Investigation section of this report.

My staff and I remain pleased with the way in which complaints are responded to by the General Compliance Unit, established by the Director of Prisons in the last reporting year. Responses are detailed and fulsome, and the readiness with which relevant information is supplied to my staff has made the resolution of complaints more efficient and enables us to better satisfy prisoners that their complaints are being dealt with appropriately.

Department of Health and Human Services

Complaints against the Department of Health and Human Services also increased in the reporting year, with complaints about Human Services accounting for more than half the total complaints received. Again, only a small number of those complaints (10%) were found to be substantiated.

Complaints were spread across nearly all divisions of the Department, and included complaints relating to:

- delays in processing applications for compensation by people abused as children while in State care
- parenting plans, the conduct of carers and other issues involving children currently in State care
- confidentiality and privacy issues
- access to Forensic Mental Health assessments for court purposes
- eligibility for and delays in providing assisted housing.

The Ashley Youth Detention Centre comes under the auspices of the Department, and my office once again received a number of complaints from young people accommodated there during the reporting year.

As in previous years, most of those complaints were objectively comparatively minor, though clearly of importance to the complainants. These included complaints about: specific instances of alleged inappropriate conduct on the part of staff; access to privileges; and the imposition of disciplinary measures.

Instead of directing complaints such as these through the Secretary, which is the usual practice with complaints against the Department, our arrangement with the Department and the Centre's management continues whereby the complaints are referred directly to management for prompt attention and resolution where possible. Once a complaint has been addressed by management, the outcome is reported to us to ensure we are satisfied that the complaint has been dealt with appropriately.



Most complaints are resolved in this way, and I remain confident that staff at the Centre are aware of their statutory obligations and their own internal guidelines and conduct themselves accordingly, and that complaints have been dealt with fairly.

Department of Police and Emergency Management

Until the new Tasmanian Integrity Commission began operation on 1 October 2010, my office was the only independent body with jurisdiction to review the activities of Tasmania Police and its officers, albeit that my jurisdiction is confined to the administrative actions of Police. As has historically been the case, a large number of complaints received in the reporting year related to the manner in which individual officers had performed their duties, or operational matters, rather than matters of administration and were therefore out of jurisdiction.

In my last annual report, I noted a not insubstantial increase in the number of Police complaints after several years of steady decline in this regard, with no obvious explanation for why this should be so. In this reporting year, the number of complaints has remained essentially the same, with only a marginal decrease of 4%. Complaints received included complaints about:

- the adequacy of Police investigations and procedures
- traffic offences and infringement notices
- inappropriate arrest and/or detention
- alleged misconduct on the part of individual officers
- customer service issues

The longstanding Guidelines developed by my office and the Commissioner of Police continued to be applied to within jurisdiction complaints. We refer complaints either to the Commissioner's office or Police Internal Investigations in the first instance. Enquiries are made by either Internal Investigations or the Commander of the relevant Police District and we monitor the process. The outcome of enquiries is reported to us, and where complaints have been substantiated, the action proposed to be taken is indicated.

It is only rarely that these internal enquiries have not resolved the complaint promptly, fairly and thoroughly and in those rare cases, Tasmania Police has been cooperative and constructive. Any outstanding matters have been responded to, Police files have been made available to us and the complainant's concerns have been ultimately addressed. Though it has happened in the past, none of the complaints received in the reporting year warranted any departure from the Guidelines and direct investigation by my office. As with other agencies, of Police complaint files closed during the reporting year, most complaints were either declined or discontinued (64%) or a finding of no defective administration was made (27%), with only 9% being either partly or wholly substantiated.

I am also pleased to again report that Tasmania Police has shown itself willing to accept out of jurisdiction complaints on referral from us - with the authorisation of the complainant - to investigate them and to report to us the outcome of the investigation. In all such instances, we have been satisfied that the complaint has been taken seriously by Police and suitably responded to.

Local Government

The reporting year saw a slight overall decrease in the number of complaints received against local councils and only 8% of complaints closed were found to be partly or wholly substantiated. Complaints were spread between councils, although complaints were highest in relation to councils in the south of the State and in municipal districts with large population centres. Glenorchy City Council was the subject of most complaints, followed by Hobart City Council and Clarence Council.

Complaints ranged across a variety of issues including;

- road construction and maintenance
- planning and development decisions
- rates and charges
- the provision of, or failure to provide, any or adequate services
- alleged failure to act on complaints of nuisance
- the fairness or otherwise of ordinances and by-laws

PUBLIC AUTHORITIES

Complaints against public authorities increased by a third in the reporting year, largely because it was the first full year of operation of the water and sewerage corporations established under the *Water and Sewerage Corporations Act 2009*, pursuant to which the responsibility for water and sewerage was transferred from local councils to the corporations. Ben Lomond Water, Cradle Mountain Water and Southern Water accounted for more than half the total complaints received against public authorities (52 out of 96), and Southern Water attracted 75% of the complaints against the corporations (39 out of 52).

Water and Sewerage Complaints

My office has specific jurisdiction under s 76 of the *Water and Sewerage Industry Act 2009* to review the outcome of customer complaints made to the corporations but, because the corporations are public authorities within the meaning of that phrase in the *Ombudsman Act 1978*, we are also able to look at all the corporations' administrative actions.

Initial complaints related to the charges levied by the corporations, particularly complaints from people who had received a bill for water and sewerage services to land not connected to water or sewerage infrastructure. The corporations are entitled, as indeed were the councils, to levy a charge against a property which can be connected to such infrastructure even though it is not actually connected. This was not clearly communicated to customers, who might not have noticed the charge in the past as it was often included in their general rates notices from the council.



However, most complaints were received from customers of Southern Water who had not received an account for water and sewerage services, with the majority of these relating to properties that had changed hands within the last two years. When responses to these complaints were sought, we were advised by Southern Water that Onstream, the service corporation for the other corporations responsible for billing, had experienced some delays in processing accounts. These delays had been occasioned by delays on the part of councils in forwarding change of ownership details to Onstream, and in Southern Water obtaining this information.

The root cause of the problem appears to have been that the corporations were established and commenced operation without an adequate billing process in place, and without there being any mechanism to ensure that the corporations were promptly notified when a property changed hands. The concern of people complaining to us was that they would receive their accounts for services provided in the 2009 rating year at the same time as their accounts for services provided in 2010 were delivered, and this would in many cases cause significant financial hardship.

I and members of my staff met with representatives of Southern Water and were satisfied that the delays were beyond its immediate control. We were also satisfied that Southern Water – which, while not the billing corporation, is nonetheless responsible for setting terms of payment – had set in place processes to allow flexibility in relation to, and extra time for, account payments. Southern Water has also established a hardship team for customers experiencing severe financial strain, members of which meet with those customers to discuss how best to proceed.

An appropriate billing system should be in place in the near future and we are satisfied that the problems that arose in the reporting year will not be repeated.

OWN MOTION INVESTIGATIONS

We view own motion work as one of our core functions. Own motion investigations are not confined to the circumstances of a particular complaint or complainant, but are rather a means of considering and reviewing administrative systems and practices more broadly and comprehensively. However, staffing levels have hitherto made it difficult to complete own motion investigations as expeditiously as we would have liked. Such matters require concentrated attention and it is necessary to take officers off-line in order that they receive such attention. This creates obvious problems.

Nonetheless, as I have already indicated, two major own motion investigations were completed in the reporting year, both related to prison management.

Review of the Tamar Unit

On 24 June 2009, the report of my review of the Tamar Unit and the Behaviour Management Program at the Risdon Prison Complex was tabled in Parliament. That report was the culmination of a long and complex investigation involving the assessment and analysis of a large amount of information.

Tamar is a high risk management unit used to house prisoners who are considered to pose a particularly high risk to correctional staff, to other prisoners or detainees, or to the maintenance of good order and security in the

prison. Prisoners in the unit are subject to the Behaviour Management Program (BMP). This is a strict regime which, put simply, is comprised of a three stage program based on sanctions and earned privileges. Prisoners are required to work their way through from the lowest to the highest stage and to demonstrate consistently appropriate behaviours before being returned to the mainstream prison population.

In late 2008, my office began to receive complaints from prisoners in the unit and reports from Official Visitors concerning the manner in which the BMP was being managed and administered. The complaints and reports my office received led me to believe that prisoners in the unit were being held under unduly restrictive conditions, with too much time in solitary confinement, and insufficient access to exercise, sunlight and fresh air. It also appeared that some prisoners were being held in the unit without any hope of release from such conditions.

I determined to undertake the investigation on my own motion. The terms of reference which I established for the investigation required that the management of the unit and the BMP be assessed against the requirements of the Tasmanian *Corrections Act 1997* and *Corrections Regulations 2008*, international human rights standards, and best practice standards of prison management. The investigation involved considerable research, and the conduct of many interviews. It led me to visit comparable units at the Goulburn Correctional Centre in NSW, at Barwon Prison in Victoria, and at Casuarina Prison in WA, and was also informed by advice from the former Inspector of Custodial Services in Western Australia, Professor Richard Harding.

My investigation found that, while the prison system needs a high risk management unit, the physical environment of Tamar is not suited to that purpose. When planning was underway for the new Risdon Prison Complex, it was intended that Tamar would serve as a unit for prisoners with special needs, and no specific provision was made for a high risk management unit. When it became apparent that such a unit was needed, Tamar was chosen from the plan. The lack of physical facilities in the unit directly contributes to the harsh conditions to which prisoners who are housed there are subjected, as does the manner in which the BMP has been administered to date.

Of particular concern to me is the amount of time prisoners housed in the unit are locked in their cells. Those on the lowest stage of the BMP are only allowed one hour out of cell each day and, depending on what time of day they are allowed that hour, can spend upwards of 26 hours in "lock down". The lack of programs, educational opportunities and meaningful activities for prisoners in the unit, and the lack of any formal notice being given to them about the reasons for their placement on the BMP and the duration of that placement were also issues of concern. I also noted that prisoners were not afforded procedural fairness when decisions were made to either put them down a stage or not advance them.

I made no findings of wrongdoing by any person but concluded that:

the deficiencies in the operation and management of Tamar have not arisen from bad intentions. I believe instead that they have resulted from a combination of factors, chief amongst which are poor planning, inadequate funding, and outmoded correctional attitudes.

I made 15 recommendations in the report, principal amongst which was that consideration be given to including a purpose-built high risk and behavioural management unit as part of Stage D of the Prisons Infrastructure Redevelopment Project, with the unit being designed to provide the flexibility needed for adequate out of cell time, adequate exposure to sunlight and fresh air, access to programs and education and an appropriate level of association between prisoners.



The Department has agreed to implement most of my recommendations, and my discussions with the Director of Corrective Services and the Minister for Corrections in relation to the balance are ongoing.

The full report is available on my Ombudsman website under the Publications tab.

Investigation Into a Decision by the Director of Prisons Not to Allow an Inmate to Keep her Newborn Baby With Her in Prison

This was an investigation into a decision by the Director of Prisons in August 2008 not to allow a female prisoner in the Mary Hutchinson Prison at Risdon to allow her to keep her newborn baby with her in the prison. The decision generated public controversy at the time, and I formed the view that it should be independently scrutinised. I had received a complaint from the prisoner concerned, but this was limited to specific issues and I decided to investigate on my own motion.

The investigation resulted in recommendations which included –

- a recommendation that an Interim Standing Order dealing with the issue of the accommodation of children in prison be reviewed, to address a number of specific issues, and
- a recommendation that protocols be developed between the Tasmanian Prison Service and Child and Family Services in the Department of Health and Human Services with a view to improving the way in which similar cases are handled in future.

For privacy reasons, I only made public a summary of the investigation report. This summary can be seen on my Ombudsman website, under the Publications tab.

CASE STUDIES

Complaint against the Retirement Benefits Fund (RBF) – Administrative Error

In May 2001, the RBF wrote to the complainant to advise that as a consequence of legal advice received in relation to the legislative requirements of RBF Contributory Scheme members who were seconded from a substantive position with a Tasmanian State Service employer, RBF members should have continued to contribute directly to the RBF Contributory Scheme during their period of secondment. As a consequence of this, the complainant was in arrears. Arrangements were then made for the complainant to pay the arrears from his Investment Account into the Contributory Scheme. The employer contributions that were paid into the complainant's Investment Account should have been transferred to his State Service employer (in this case, Forestry Tasmania). To have done otherwise would have constituted 'double dipping'.

The complainant was not aware that the employer contributions had been incorrectly left in his Investment Account. As a consequence, the statements he continued to receive from RBF overstated the true account balance. It was not until late 2007, when the complainant advised RBF that he was planning his retirement that his accounts were scrutinised. In February 2008, the complainant was advised by the RBF that more than \$43,000 had been removed and paid to Forestry Tasmania as a consequence of the administrative error. This figure comprised employer contributions and investment returns.

The RBF apologised for the error and any distress it may have caused. The complainant wrote to the RBF advising that he had made several financial decisions, on the basis of the ongoing advice from the RBF of the account total, now deemed incorrect. He sought compensation by requesting the account balance be restored to the amount as at February 2008. The complainant also claimed that he had suffered direct financial losses as a result of misinformation provided to him by the RBF.

The RBF declined his claim to reinstate his account balance and provided a comprehensive written explanation as to what had occurred and why. Another apology was provided. The RBF also indicated it may be prepared to consider some form of appropriate remedial action but it would be necessary for the complainant to identify and establish precisely what, if any, actual financial loss he had suffered as a consequence of the Board's error and submit this evidence to allow the Board to properly consider the claim for compensation. Further correspondence ensued between the complainant and the RBF but the complaint remained unresolved.

The complainant lodged a complaint with my Office and provided a detailed explanation of the history of the complaint as well as copies of correspondence between the two parties. After assessing the information provided, we wrote to the complainant advising that the complaint would not be accepted for investigation. Reasons were provided, including but not limited to the fact that the complainant was not entitled to the money in the first place and it did not follow that because of an unintentional administrative error, he automatically had an entitlement to the amount in dispute. It was also pointed out that the RBF had left the door open for the complainant to submit evidence that would be considered for possible financial compensation. At the time of lodging the complaint with me, the complainant had not submitted any evidence of the previously claimed financial loss.

The complainant was afforded an opportunity to make a submission as to why the complaint should be accepted. However, nothing was received in the time allocated and the file was closed.



Complaint against Launceston City Council (LCC) – Parking fine

The complainant's wife was issued a parking infringement notice by the LCC. It was not paid by the due date and this was admitted by the complainant. A reminder notice was issued by the LCC and the complainant claimed that a cheque for \$20 had been posted. LCC later advised that there was no record of this cheque ever being received.

The Monetary Penalties Enforcement Service (MPES) then issued a notice and the complainant claimed it was not received until 10 days after it was posted. He also claimed that there was insufficient detail on the notice to match it to the infringement notice.

The complainant claimed to have tried to contact MPES to discuss the notice but was unable to get through. MPES advised my Office that the complainant had been contacted by a staff member, and that the complainant had disputed the debt. The complainant was advised at this time to contact the Launceston Registry of the Magistrates Court to make application to set aside the conviction and penalty.

MPES also recorded that his wife had made telephone contact to argue about payment of the final \$60.00. MPES provided a copy of the account note to my Office and also explained the entry about the sum of \$116.00 on the Debtor Statement.

A further notice was sent to the complainant, as the penalty had still not been paid. A payment was made but not the full amount. The fine had increased because the previous notice had not been adhered to. The full amount was then finally paid.

MPES advised my Office that the complainant still had legal recourse to dispute the original infringement. This information was passed to the complainant and it was suggested he seek legal advice in the first instance. The complainant was also notified by my Office that the complaint was not substantiated and reasons were provided. The complainant did not respond within the timeframe allocated and the file was closed.

Complaint against the Break O'Day Council – Liability for Rates

A complaint was received from B in relation to his inadvertent placement on Council's records as the owner of a property in High Street, Mathinna, and the charges for rates imposed on him by Council in relation to the property.

The substance of B's complaint was that he does not own the piece of land in question, but does own other property in Mathinna, but following what he claims was Council's error in listing him as the ratepayer he has mistakenly been paying rates on the subject land for years. When he realised the error, B asked for a refund of the moneys paid, but Council refused that request.

The owner of the property was clearly denoted on the title documents, and it is not B.

After my office had notified Council of the complaint, its General Manager was given authority to negotiate a settlement with B, and forwarded an offer for his consideration. In light of the fact that Council was now responding to B's concerns, my Office took no further action but ensured that an acceptable resolution was reached before closing the file.

Complaint against the Department of Justice, Director of Building Control – Failure to act

The complainants entered into a contract with a builder for the construction of their new home at Lauderdale. Subject to some flexibility, the contract required the house to be completed by April 2006. By December 2006, so dissatisfied were the complainants with the progress of the building works and the builder's standard of workmanship that they terminated the contract. They withheld the final progress payment due under the contract pending the independent assessment of what they considered to be defective and unfinished works.

Six months after terminating the contract, and having failed in their attempts to resolve outstanding issues with the builder, the complainants submitted a detailed complaint to the Director of Building Control in accordance with s 32(1) of the *Building Control Act 2000* (the Act) in June 2007. The Director sought a response from the builder who through his lawyer advised that there was a dispute over the contract and forecast legal action. In light of that, the Director took no further action, but did not communicate his decision in this regard to the complainants. When they contacted Workplace Standards Tasmania twice in the ensuing six months, they were not provided with any information about their complaint.

In March 2008 the builder took action against the complainants in the Supreme Court to recover amounts he alleged to be outstanding under the building contract. In June 2008 the Director sought further input from the builder, and in this way discovered that the Supreme Court action was under way. A site inspection was conducted in August 2008, but the Director decided not to further investigate the complainants' complaint pending the outcome of the court action. The complainants then approached my office.

Having made enquiries and considered the relevant provisions of the Act, my officers and I concluded that the Director:

- did not conduct an investigation as soon as practicable after receiving the complaint as he was required to do by s 35(1) of the Act;
- by either not considering the complaint further after receiving the response from the builder's solicitor, or deciding to take no action to investigate it as legal action had been foreshadowed, abrogated his responsibilities under both the Act and the Code;
- adopted a policy in choosing to take no action pending the outcome of the Supreme Court action which had no legislative or logical basis, and which was inconsistent with his statutory obligations;
- failed to properly communicate with the complainants and to keep them informed as to the progress of their complaint; and
- did not inform the complainants of his apparent decision to take no action on the complaint after receiving the response from builder's solicitor.



In light of these conclusions, I recommended that the Director:

1. complete an investigation of the complaint lodged by the complainants in accordance with S 35(1) of the Act as soon as practicable;
2. abandon any policy of not acting on a complaint when other action is in train; and
3. review all complaint files held by him to ensure that no other complaint file is stalled by reason of the application of such a policy.

These recommendations were accepted and implemented immediately by the Department.

Complaint against the Department of Primary Industries Parks Water and the Environment (Shack Sites Project) – Changing valuations

A complaint was referred to my office by the Honourable Greg Hall MLC in relation to Mr and Mrs C, who had been leasing a shack site for over 20 years. In 2006 they were offered freehold title to the property as part of the Shack Sites Project; the sale price was accepted, contracts were drawn up and a deposit paid. As pensioners, Mr and Mrs C were able to apply for an extension of time to arrange finance, and did so.

As the time for completion of the sale approached, Mr C contacted the Department and advised that there would be some further delay in obtaining finance. He was advised that the matter would be referred to the Department's solicitor and if there were any concerns, the solicitor would contact him. There was no further communication.

Mr and Mrs C proceeded to arrange the finance and forwarded a bank cheque in settlement of the purchase price some two months later. The Department acknowledged receipt of the funds, but there was a delay in processing the contracts, and Mr and Mrs C heard nothing further for some months. After six months had passed since the payment of the purchase price, the Department contacted the Cs and advised that the purchase was not proceeding as the property had been re-valued and the shack site was now considered to be worth more than double the original price.

Mr and Mrs C could not arrange the additional finance immediately, so entered into a further lease arrangement with the Department to enable them to attempt to raise the additional capital, and were told that the value of the property would not change during the currency of the lease. The necessary additional finance was arranged, and Mr and Mrs C were ready to proceed with the purchase. However, after the termination of the lease, and prior to the purchase being agreed, the valuation was again reviewed and increased by an additional 50%.

It was after this that the matter was referred to my office, and the Department contacted. As a result, the Department sought and received advice from the Solicitor-General, which indicated that it had wrongly cancelled the 2006 sale agreement following the failure of Mr and Mrs C to pay the balance of the purchase price by the first agreed extension date.

We took the view that if the cancellation of the original contract had not been valid, then the site should be offered to Mr and Mrs C on the same basis as provided in that contract, at the original price. In the circumstances, the Department agreed with that view, and the sale was finally completed on those terms.

Complaint against the Department of Infrastructure, Energy and Resources (DIER) - Accidents to Driving School cars during student licence tests

The proprietor of a driving school complained in relation to three cars which were damaged (one in October 2007, one in October 2008, and another during the course of the investigation in December 2008) while students were undertaking licence tests with testing officers from DIER. The complaint was that DIER asserted that it did not owe a duty of care to the driving school and denied any liability for the cost of repairs to the damaged cars.

In the usual course, only the testing officer and the student are allowed to be present in a car during the licence test. The cars are provided by the driving school and owned by the driving instructors. The complainant stated that there had never been an accident during the course of ordinary lessons at the driving school.

There is an excess of \$1200 on the insurance taken out by driving instructors and this, and the fact that their income stream is interrupted while their cars are off the road being repaired, means that they can ill afford to have their cars damaged. The complainant also complained that some testing officers were new and had had only a short period of training, and that some would take their eyes off the road in order to write their test reports. It was claimed that these two factors contributed to the damage sustained.

In response to the complaint, the Registrar of Motor Vehicles said that the testing officers' foremost duty was to ascertain whether or not an acceptable standard of driving had been attained by the learner driver, and that they were not acting as supervisory drivers during the course of the test. In the specific instances raised by the complainant, the Registrar advised that the testing officers concerned had taken all reasonable steps to avoid the accidents.

We considered that the Registrar's position was not on the face of it unreasonable, but we thought that there could be some benefit in attempting to conciliate the complaint, particularly in relation to ongoing issues of dispute between the two parties. Both sides agreed to attempt conciliation, but despite the best endeavours of all concerned, there remained unresolved issues. In the absence of a conciliated resolution of the matter, my office was unable to take the complaint further, given that whether or not a duty of care existed was a question of law, rather than a matter of administration.

Subsequently the complainant took the matter to the Magistrates Court and was successful, being awarded all losses including loss of earnings on the basis that the Department had a duty of care to instructors' vehicles. Subsequently, the Supreme Court overturned the decision on appeal, finding that although the Department did have a duty of care, that duty was not breached on the particular occasion in question.



Complaint against Launceston City Council, Crown Lands and the Recorder of Titles - Disclaimed land

This complaint concerned a block of land in a suburb of Launceston. Despite rocketing suburban land prices, this particular block was almost completely worthless. Among its less appealing characteristics is a large Transend pylon over the fence and major powerlines running diagonally across the block. The regulations covering such powerline corridors mean that the height of trees and structures on the land are severely restricted.

The complaint was against Launceston City Council, which was pursuing the complainants for unpaid rates on the land. The matter was complicated by the fact that the complainants were made bankrupt in 1982 and the land formed part of their estate. Accordingly, their interest in the land had vested in their trustee in bankruptcy (the Official Trustee) pursuant to s 58(1)(a) of the *Bankruptcy Act 1966* and any interest they had in it had thereby been expunged. The trustee did not transfer the property into its name however left it in the name of the complainants.

The trustee tried unsuccessfully over many years to sell the land but could not do so. Finally, in January 1997, the trustee disclaimed any interest in the land pursuant to s 133 of the *Bankruptcy Act 1966*. The trustee gave notice of the disclaimer to Council and to the Recorder of Titles, and the Recorder lodged a Recorder's caveat on the title to the land to prevent any further dealings with it. In the meantime, the complainants had been discharged from their bankruptcy, but they remained on the title as the registered proprietors of the land, and on the Valuation Roll as the owners of the land even though their interest in the land had long since been lost.

In June 2006, Council issued a demand to the complainants, seeking to recover from them an amount of \$16,494.00 in outstanding rates. This was the first notice seeking payment of rates received by the complainants from Council in over 24 years, and Council's refusal to withdraw the demand prompted the complaint to us. A trustee in bankruptcy is not personally liable for any rates accruing against land that forms part of a bankrupt estate, and Council relied on s 86 of the *Local Government Act 1993* which provides that the persons who appear as owners of land on the Valuation Roll are liable for rates to maintain its claim against the complainants.

Following preliminary enquiries, my officers and I came to the initial view that the land had reverted to the Crown once it had been disclaimed by the trustee, but Crown Land Services had no knowledge of the disclaimer and denied any interest in the land. The Crown is not exempt from liability for rates if it is the owner of land, but it is not the owner of land for the purposes of the Local Government Act until such time as it appears as such on the Valuation Roll. The only persons Council could take action against remained the complainants. Crown Land was not going to act to address the situation, the trustee had done all that was required of it by notifying the Recorder, and there was little that the complainants could do. It became clear to us that there was an anomaly in the law and not only did the complainants' concerns need to be addressed but systems needed to be put in place which would prevent the situation they faced from happening again.

I sought advice from the Solicitor-General and that advice confirmed that the land had indeed reverted to the Crown upon the trustee's disclaimer, but also confirmed that the complainants remained liable for outstanding rates by virtue of their names remaining on the Valuation Roll. The situation had arisen because in Tasmanian law there is no requirement that the Valuer-General be notified of a disclaimer. To rectify the situation, the Solicitor-General suggested that there would need to be either legislative change or some procedure adopted

whereby upon receipt of a disclaimer, the Recorder is to notify the Crown and any interested parties of her intention to register the Crown as owner of the land.

Following receipt of the above advice, one of my officers met with the Recorder of Titles, the Valuer-General and a representative of Crown Lands to discuss possible resolution of the matter. The Recorder was able to identify a process by which the land could be transferred to the Crown under the *Land Titles Act 1980* with notices being sent to the Valuer-General, the State Revenue Office and Council, notifying each of the change of ownership. It was proposed that the process be included in the Land Titles Office's Knowledge Management System for use in the case of any future disclaimers of land under the *Bankruptcy Act 1966*. The process was applied to the land in question and the complainants names were removed from the title and the roll. Ultimately, Council agreed to remit the outstanding rates in order to resolve all outstanding issues.

The complaint highlighted an unusual situation that had apparently not arisen in Tasmania before, and I am pleased that my office was not only able to bring the issues to the fore and resolve the complaint, but also contributed to the adoption of an administrative process which should prevent the same situation from occurring again.

Own motion investigation - Canteen prices at Risdon Prison

A number of complaints were received in the reporting year from prisoners about canteen prices and canteen supplies at Risdon. A number were made verbally to Official Visitors and visiting Ombudsman staff, and there were two formal complaints.

REVIEW OF PRICES

In late August 2009, a copy of the latest canteen price list was obtained. During the first two weeks of September one of my officers conducted a survey, comparing prices at the prison canteen with those at a Coles supermarket and three small grocery outlets in the community. The three smaller shops chosen were a medium-sized grocery outlet, a fruit and vegetable outlet with a small grocery line and a smallish corner shop selling high end delicatessen items and prepared food, as well as some ordinary groceries.

The canteen list was first compared against prices at Coles to get an idea of the cheapest price for the various items. It was difficult to check more than a limited number of items because Coles did not carry the full range of the items on the canteen list, and some items on the canteen list were not identified by brand or quantity or both. Because of this and also because of time constraints, 30 items were chosen for the purposes of the survey. However none of the smaller shops had all of the items. Of the items that were able to be matched, the medium-sized grocery outlet tended to have the lowest prices. There was very little difference between the canteen prices and the prices found at the medium-sized grocery outlet, but the canteen was slightly cheaper overall.

Coles was of course the cheapest over the whole range, because of its greater buying power and large turnover. It would not be possible for the prison canteen to offer items as cheaply as a large supermarket, because the buying power of the canteen is only that of a small corner shop and wholesale prices often reflect the volume of goods being bought. It was therefore surprising that the prices offered by the canteen for small confectionery items and chips were in fact often cheaper than those obtainable at the supermarket.



The results of the survey were provided to Risdon prison management for comment. They responded in part as follows: --

Canteen items are not made available to supplement the daily meals provided by the TPS. These items are there as a privilege not as a right and are provided at basically cost price.

While inmates may see some items "on special" from time to time, the TPS does not have the capacity to source "specials" from different suppliers, however every attempt is made to obtain canteen items at the cheapest possible price. The prison's mark-up is 13.5% on top of the wholesale price. The TPS itself does not make any profit from the canteen and any small profit that is generated from the sale of canteen items is used to subsidise the prisoner Quit Smoking Program.

VARIETY/HEALTHY OPTIONS

Some prisoners had also voiced concern about the lack of variety and the lack of healthy options available through the canteen.

A survey was conducted in this regard also and canteen lists were obtained from similar-sized prisons at Darwin (NT), Barwon (Vic) and Port Augusta (SA).

Overall, Risdon prison offers much greater variety than Darwin even though the two facilities are of comparable size and are more isolated than the two other prisons. Darwin puts smiley face signs beside their healthy options such as fruit and nuts and muesli bars on their canteen list, but generally it provides a much more limited range of food items than Risdon. Barwon and Port Augusta offer a greater variety of foodstuffs than both Darwin and Risdon, but some of these foods would only be appropriate where kitchen facilities and refrigeration are available to individual prisoners, which is not the case at Risdon.

Risdon offered greater variety in hobby materials through its canteen than any of the other prisons.

It was clear from the comments provided by the other prisons that what was provided by each canteen was what they had storage for, what they could obtain from local suppliers and what the prisoners wanted to buy.

In relation to this survey, the Director of Prisons said:

I support your suggestion to include a variety of healthy options on the canteen in principle, and can advise that requests to include items in the canteen are assessed on a case-by-case basis against a range of relevant factors. That said, there is a limit to the overall range of items which we can offer and invariably the inclusion of additional item(s) will result in the removal of others to make room for them. Therefore, overall inmate demand for a product, or range of products, is a relevant consideration.

CONCLUSION

Rising prices in the prison canteen at Risdon reflect rising prices in the general community, and the survey we conducted indicates that the prices being charged in the canteen are no higher than those obtainable in a similar small shop in the community.

Prison Services advised us that there is a very small mark up on canteen items and the small profit generated from the sale of canteen items is used to subsidise the prisoner Quit Smoking Program. Prisoners had complained that there was a large mark up on tobacco products, but tobacco products were no more expensive than they would be in a corner shop in the community.

In relation to healthy options, the prisons surveyed in South Australia and Victoria offer a much wider range of foodstuffs than Risdon, including dairy and delicatessen items and a limited range of fresh vegetables. Because the canteen does not have the facility for refrigerated storage, and prisoners at Risdon do not have access to individual refrigerators, the range of foods available is limited. For instance, eggs are only available to inmates in low security areas with cooking facilities. The prison has indicated that it does not want prisoners preparing cooked meals on sandwich makers for hygiene reasons, or cooking eggs in a microwave because of the potential for eggs to explode.

Overall, we were satisfied that the prices charged in the canteen are reasonable and the variety on offer is also reasonable given the facilities available.

Own motion investigation - Royal Hobart Hospital - employment and supervision of overseas-trained Surgeon

During December 2008, articles in *The Age* and *The Mercury* newspapers drew attention to the case of an overseas-trained surgeon who had been employed at the Royal Hobart Hospital (RHH), and who had been found to lack the necessary surgical ability after only a couple of months in the job. The surgeon had been employed as a staff-specialist urologist. It was claimed in the articles that he had been incapable of performing even the most basic of operations.

The case raised questions deserving of consideration under both the *Ombudsman Act* and the *Health Complaints Act*. It gave cause to question the adequacy of administrative processes at the RHH which could have allowed this situation to arise, but also raised a significant issue of public safety.

My office conducted preliminary enquiries into the matter, to determine whether it warranted investigation. I subsequently issued a notice of investigation under the *Ombudsman Act* to the Secretary of the Department of Health and Human Services on 22 May 2009, indicating my intention to investigate the following aspects of the case -

- the selection and appointment processes followed by the RHH
- the adequacy of the supervision of the surgeon's clinical and surgical performance.

For various reasons, it became difficult to resource this investigation.

In January 2010, I met with senior managers at the RHH to discuss the case, to determine whether the investigation should continue. I was satisfied by those discussions and by subsequent correspondence that administrative systems at the hospital had changed significantly since the case arose, with the result that it was unlikely that similar circumstances would arise again.



The RHH admitted that there had previously been undue reliance upon the screening of candidates by the Australian Medical Council, by specialist Colleges and by the Medical Council of Tasmania. It was also admitted that the relevant credentialing committee within the hospital had not been exercising sufficient independent judgement in relation to the validity of such external assessments, and in relation to the reliability of referee reports.

I was told that a number of changes had been made to relevant processes at the RHH, including -

- face-to-face interviews in all cases
- direct contact by the hospital with all referees
- independent research into the credentials of all candidates and referees
- the requirement that every candidate must provide their current “Head of Department” as one of their referees
- the use of employment consultants to identify suitable candidates, instead of relying upon advertisements
- more stringent review by the credentialing committee of the training and fitness to practise of prospective appointees
- active intervention by the Chief Medical Officer to make sure that service delivery was maintained by new appointees.

As to the second-last of these points, I was informed that supervision reports for new appointees now go back to the credentialing committee, so that it carries continuing responsibility for making sure that the appointee should be allowed to continue to practise within the hospital. If the supervision reports were not satisfactory, the person’s credentialing would be terminated.

In the face of these improvements to the hospital’s processes, I was satisfied that continuation of the investigation was unnecessary, and I terminated it in February 2010.

Complaint against Royal Tasmanian Botanical Gardens

The complainant had attended the Royal Tasmanian Botanical Gardens in company with others to serve a document on an employee in relation to a restraint order pertaining to a private dispute. The Director considered this was inappropriate and purported to ban the complainant from the Gardens indefinitely.

The restraint order had been negotiated through court mandated mediation, and provided that neither party was to approach the other in any circumstances.

The complainant complained to my office about the ban, and in response to the complaint, the Director cited a duty of care to employees and her authority as an “authorised officer” under the *Royal Tasmanian Botanical Gardens Act 2002* (the Act) to justify the ban.

I was concerned that natural justice had not been afforded to the complainant as the ban had been put in place without him being given the opportunity to comment on the decision to impose it, and his requests for

reconsideration had been refused. I also had reservations as to the Director's authority to impose such a ban in any event, rather it seemed to me that the provisions of the Act relied on were intended to remove trouble-makers on a particular day. In any event, the restraint order was the appropriate mechanism to ensure proper behaviour.

After my office raised these concerns with the Board of the Royal Tasmanian Botanical Gardens, it sought advice from the Solicitor-General before reconsidering the situation. The Solicitor-General agreed with our view of the matter and the ban was lifted.

Miscellaneous complaints - noise, pollution and flies

We received a number of complaints in the reporting year from people who had moved to the country or were living in rural areas on non-farming properties who were concerned by the failure of their councils to regulate the farming practices of their neighbours. On the other hand, complaints were also received from farmers and producers about the way their activities were being regulated in order to address the concerns of their non-farming neighbours.

CASE A

A resident of a small rural township complained about the noise, smell and flies caused by sheep agisted on land adjacent to his home, which was within the town's urban zone. He stated that when he purchased the property there was no stock on the adjacent land, but by October 2009, over a hundred sheep and lambs were moved on to it. Because the adjoining land (and therefore the sheep) came within four metres of his house, the complainant said that he was forced to close doors and windows in order to block out some of the noise, particularly the bleating which kept him awake until after midnight. He complained that the Council seem to imply that because he was a newcomer to the town he had to put up with traditional practices.

Council's response was that the land had been used for the purposes of grazing livestock for a considerable period before the planning scheme which created the urban zone came into force, and therefore that the owner of the land enjoyed 'existing use right'. Existing use rights arise by operation of s 20(3) of the *Land Use Planning and Approvals Act 1993*, which provides that nothing in any planning scheme is to prevent the continued use of any land for the purposes for which it was lawfully being used before the coming into operation of the scheme. The grazing of stock was lawful on the land before the scheme came in, so it could continue despite the change to the land's zoning. It was not that the complainant was new to the area, it was that the use was old.

Council is however, able to exert some control under s 199 of the *Local Government Act 1993* over activities which might amount to a nuisance such as anything that causes or is likely to cause danger or harm to the health, welfare or safety of the public, or which gives rise to excessive or unreasonable levels of noise or pollution. As a result of the complaint, Council dispatched its Environmental Health Officer to the property. An inspection was made and photographs were taken, and it was concluded that there was nothing, particularly no accumulation of faeces, in close proximity to the complainant's property which would create odour or fly problems or pose a risk to public health. The officer also concluded that in the circumstances, the bleating of sheep would not constitute a noise nuisance.

We were of the view that Council had acted appropriately and according to law, and that the decisions of the Environmental Health Officer were not on their face unreasonable.



CASE B

The complainants live in a small but growing coastal township, where they keep chickens. The complainants have their chicken sheds in the centre of a three-quarter acre block zoned for primary production, and take the view that they are primary producers.

They objected to the restrictions placed upon them by Council with regard to noise from their roosters. The restrictions had been imposed as a result of complaints from neighbouring residents. Council required that the roosters be kept quiet before 7:00 am on weekdays, before 9:00 am on Saturdays and before 10:00 am on Sundays and public holidays. The complainants complained that Council had included their roosters in the same classification as chainsaws and lawnmowers when determining the noise restrictions, and they objected on the basis that the roosters were livestock not machines. The roosters were kept in soundproof boxes within the chicken sheds and they wanted to let them out at 8:30 a.m. on weekends.

Council advised my office that there was nothing in the Council bylaws referring specifically to roosters crowing, so the same hours of operation for machinery were applied. We concluded that Council's decision had not been unreasonable, given the number of complaints from neighbours, the fact that the area around the complainants' property is now fairly densely populated and the noise of the roosters was disturbing to many over a large area.

CASE C

Another complaint involved complainants who had recently purchased coastal land and built a house overlooking the water. On the water was a fish farm which operated on an area of water leased from the Crown, through the Department of Primary Industries, Parks, Water and Environment

The complainants contacted the Department, seeking to have the marine farm zone reduced in size so that it did not extend in front of their property. They cited as the reason for this the noise caused by generators powering lights all night and the effects of those lights. They also complained about the noise from other operations during the day and about the visual effects of unused pens in front of their house which they described as *an unsightly mess* used by hundreds of seagulls whose screeching was keeping them awake.

The lease had been entered into before the complainants moved to the area and the response from the Department to the complainants and to my office was that it was reasonable to expect that there would be some noise associated with the operations of a marine farm, but acknowledged that its operations needed to comply with the guidelines for noise emissions contained in the *Environmental Management and Pollution Control Act 1994*. The Department noted that the leased area would not be stocked for some months, and in the interim it agreed to conduct preliminary background ambient noise measurements to be used as data for future monitoring of the farm's operations to ensure compliance with regulatory requirements.

My office indicated to the complainant that it considered the response of the Department to be reasonable and that any farming practice could at times produce annoyance for neighbours. The Department acknowledged that some of the annoyances complained of might need to be addressed, but said that the noise survey would need to be completed in order to establish this, and any modification might take some time to achieve. In the

circumstances, I took the view that there was nothing in the conduct of the Department that warranted the intervention of my office, but suggested to it and the complainants that the situation could be reviewed after the results of the noise survey had been obtained and when any decision in relation to compliance by the marine farm with noise emission guidelines had been made.

CASE D

Another complaint was against a Council over its refusal to prevent or control spray drift from the complainant's neighbour's orchard onto his own property. The complaint had a long history and the complainant had already taken action in the Resource Management and Planning Appeal Tribunal (RMPAT) under the *Environmental Management and Pollution Control Act 1994* (EMPC). His application was dismissed by the Tribunal and the Chairman of RMPAT pointed out that the definition of environmental harm was very specific under the Act and the object was not to prevent any spray drift but to prevent serious or material environmental harm. There was no evidence of either serious environmental harm or material environmental harm. There was nothing unlawful about spraying, but whether the spraying unreasonably interfered with a person's enjoyment of the environment was a matter which had to be decided upon. RMPAT had decided there was no evidence at all of unreasonable interference.

My office advised the complainant that in refusing to entertain his complaints RMPAT had clearly indicated to him that no complaints in relation to his neighbour's spraying would be entertained unless he could provide actual evidence of harm or actual evidence of unreasonable interference of his enjoyment of the environment. Action under section 199 of the *Local Government Act 1993* (LGA) required the same level of evidence with respect to the definition of nuisance. Evidence of actual or likely danger or harm to health was required. Evidence that his neighbour was spraying did not fulfil these requirements and it therefore seemed likely that the courts would also reject his complaint under the LGA. We considered the decision of the Council to refuse to take any action under the LGA or the EMPC Act was therefore reasonable.



FREEDOM OF INFORMATION ACT 1991/ RIGHT TO INFORMATION ACT 2009

INTRODUCTION

The role of the Ombudsman under the *Freedom of Information Act 1991* (FOI Act) is to review decisions made by agencies and Ministers under the Act where access to requested information has been refused.

The Act was repealed on 1 July 2010, and replaced by the *Right to Information Act 2009* (RTI Act)

This year has been an extraordinarily active year in this jurisdiction.

The major features have been –

- substantially increased demand
- involvement in the development of the *Right to Information Act 2009*, and the preparation of a Manual and Guidelines for publication upon the commencement of the Act on 1 July 2010
- the publication of a number of major decisions on our Ombudsman website
- the commencement of two actions against me in the Supreme Court of Tasmania, seeking the review under the *Judicial Review Act 2000* of decisions that I had made.

DEMAND

The statistics for this jurisdiction show the following –

- an increase of 30% in the number of reviews undertaken during the year (from 33 in 2008/09 to 43 in the reporting year)
- an increase of 100% in the number of cases closed during the year (from 59 to 120)
- fewer decisions affirmed (from 14 to 9)
- slightly more decisions varied (from 17 to 20)
- many more decisions set aside (from 2 to 14)
- an increase in applications for review against the Department of Education (from 1 to 11, with 10 reviews closed during the year)

- an increase in those against the Department of Justice (from 2 to 13, with 11 reviews closed during the year)
- a significant drop in those against the Department of Police and Emergency Management (from 11 to 4)
- a huge number of applications against Aurora Energy (a rise from 6 to 54, with 37 reviews closed during the year)

As often happens in this jurisdiction, one individual can be responsible for multiple applications. This occurred with the three agencies listed here as being involved with increased demand – the Departments of Education and Justice, and Aurora Energy.

The applications against Aurora Energy resulted from extraordinarily intensive use of the FOI Act by the individual concerned. This resulted in one of the two officers dedicated to this jurisdiction having at one time 55 open files, as opposed to a usual caseload of approximately 20.

Most of the applications came to me because of “deemed refusal” under s 50(1) of the Act, because Aurora Energy had not made decisions on the requests within the 30-day time limit imposed by s 16. Dealing with them was delayed by Aurora failing to expeditiously provide us with the information needed to carry out the reviews. This led to me meeting with the CEO of the company, and to some assertive correspondence on my part.

Aurora Energy responded well, in part by employing an additional staff member, and by year’s end we had made substantial progress in dealing with these matters – hence the 37 files closed during the reporting year, with only 4 reviews required.

JUDICIAL REVIEW

As mentioned, two applications for judicial review were made against me to the Supreme Court in the reporting year.

The first application was made by the Department of Premier and Cabinet in October 2009, and related to a decision that I had made in relation to certain information requested by a journalist, Peter Wels. The information at issue related to a complaint by the Director of Public Prosecutions to the Premier against the former Commissioner for Police, Jack Johnston. The Department sought review of my decision that some of this information was not exempt under s 28 of the Act (the law enforcement exemption) or s 30 of the FOI Act (the exemption relating to personal affairs information).

The proceedings were dropped by the Department just prior to the State election, in March.

The second application to the Court was made by Forestry Tasmania, in April 2010. This case arose from a request by Kim Booth MP to Forestry Tasmania for information about the commissioning and production of a television program entitled “Going Bush”. The company argued that the information at issue was exempt under either s 31(1)(b) (the exemption for information likely to expose a business, commercial or financial undertaking to competitive disadvantage) or s 32(a)(ii) (the exemption for information likely to expose an agency to competitive disadvantage). I held that neither exemption applied.



This application was heard by Porter J of the Supreme Court in June. The decision was handed down on 27 August 2010 and is reported as *Forestry Tasmania v Ombudsman* (2010) TASSC 39. My decision was set aside, and the case was remitted to me for decision in accordance with the Court's ruling.

RIGHT TO INFORMATION ACT 2009

As detailed in the foreword to my 2008/09 report, I was closely involved in the review of the FOI Act which commenced in 2008. During the reporting year, this involvement extended to commenting on drafts of the *Right to Information Bill* as they came forward.

The Bill was passed by the Parliament in November 2009, and during 2010 I began work on the Manual and Guidelines which, under s 49 of the RTI Act, the Ombudsman is required to issue and maintain. I was greatly assisted in this by the review team in the Department of Justice, headed by Dale Webster, for whose work I express my appreciation. The team provided me with drafts of each of the chapters of the Manual which I then reworked. The Guidelines were produced by me, but with useful input from Mr Webster, who consulted about them with an advisory group of agency representatives which had assisted his team in their work.

I issued two Guidelines at the time of the commencement of the Act, on 1 July 2010, placing these on my Ombudsman website. One of these dealt with the Ombudsman's review processes, and the other was a Guideline addressing the factors which are to be considered when determining to refuse an application for assessed disclosure under s 20 of the RTI Act. The latter Guideline is required by s 49(1)(b) of the Act.

I also published a draft Guideline at the same time, dealing with the process of disclosing information under the four types of information disclosure referred to under s 12 of the Act. This Guideline is required by s 49(1)(a) of the Act. I sought submissions before finalising this Guideline.

The Manual also went on my website at the same time, with two chapters not yet completed.

In the last months of the reporting year, I recruited a senior officer to assist with the fulfilment of the requirements of the RTI Act. This officer started work after the end of the year. This extra resource will enable the Office to provide greater support to public authorities and Ministers in working with the Act, including through the development of more Guidelines and educational resources, and the provision of workshops.

SIGNIFICANT DECISIONS

Six decisions were published on our Ombudsman website during the year. My decision to publish depends on a couple of factors. The main one is whether the publication of the decision may help users of the Act. The other one is whether the matter at hand is one of public interest.

Set out below are summaries of some of my more significant or interesting decisions in this jurisdiction during the year.

CASE STUDIES

Wels and the Department of Premier and Cabinet

The applicant applied to the Department of Premier and Cabinet for information “*relating to the Director of Public Prosecutions Tim Ellis, Police Commissioner Jack Johnson and former Police Commissioner Richard McCreadie*”. At the time of the request Mr Johnston was facing charges in the Supreme Court under the *Criminal Code*.

The Department released some documents. The critical document at issue consisted of a letter of complaint from the DPP to the Premier, making various complaints against Mr Johnston under the *Police Service Act 2003*. The Department claimed that the letter was exempt under ss 28(1) (a) (i) to (iii) (the exemption for law enforcement information) and 30 (the exemption for information affecting personal privacy) of the Act.

During the external review process I sought submissions from the applicant, the Secretary of the Department, the DPP and Mr Johnston’s solicitors. I also sought information from Daryl Coates SC, Assistant DPP (Criminal).

I was not satisfied that information which at the time of the review was already in the public domain was exempt under s 28 or s 30 of the Act.

Next, I considered the potential for the disclosure of certain information to prejudice the investigation of the complaints made against Mr Johnston. I could not see that disclosure would or would be reasonably likely to prejudice the investigation. The real problem with disclosure was the possibility of damage to Mr Johnston’s public standing. I was not satisfied that the information at issue was exempt under s 28(1)(a)(i).

Section 28(1)(a)(ii) of the Act deals with actual or potential prejudice to the enforcement or proper administration of the law. I could not see any basis for concluding that the disclosure of the information at issue would, or would be reasonably likely to, prejudice the administration of the *Police Service Act* in so far as that consisted of the investigation of the complaints. I was not satisfied that the information at issue was exempt under s 28(1)(a)(ii).

Section 28(1)(a)(iii) deals with actual or potential prejudice to the fair trial of a person. Mr Johnston had obtained an order staying the criminal proceedings, and the DPP had applied to the High Court for special leave to appeal that order. Given the likely delay before any trial took place, and the fact that any prejudice that might possibly flow from public disclosure of the allegations ought to be able to be adequately addressed by direction to the jury from the trial judge, I did not accept that disclosure of the information at issue now would, or would be reasonably likely to, prejudice a fair trial for Mr Johnston.

Finally, I considered whether the disclosure of the information would involve the unreasonable disclosure of information relating to the personal affairs of Mr Johnston. In my view, the information related to the employment affairs of Mr Johnston and could not be exempt under s 30.

The full decision can be read on my Ombudsman website.



Prismall and the Department of Economic Development

The applicant applied to the Department of Economic Development and Tourism for “*The Gemba Consultancy Report on Tasmanian Government submission to field a team in the national AFL competition*”.

The Department claimed that the report was exempt under s 31 (the exemption for information relating to trade secrets, competitive disadvantage of business undertakings) and s 33 (the exemption for information obtained in confidence) of the Act. Gemba also claimed exemption under s 31.

When the report was passed by Gemba to the Department, it was communicated in confidence. This was obvious from the subject matter of the consultancy contract. However, I did not accept that disclosure of the report would impair the ability of the Department to obtain a similar report in the future from another consultant.

The application of s 33(1)(a) to the report presented me with some early difficulty. It appeared to be possible that, if the report had been generated by officers in the Department, all or part of it might have been exempt under s 27 of the Act. The problem for me was working out whether the report was designed for the AFL, or for deliberative processes within the Department itself.

I was satisfied that the report was deliberative. It represented the bid document provided by Gemba for acceptance by Government. The report thus represented advice from Gemba, of a kind that the Department’s own officers might provide. However, s 27 would not have protected the whole document. A significant proportion of the report was purely factual information, and so excluded from exemption by s 27(2). There was then the overriding question of whether or not the release of the surviving information would be contrary to the public interest: s 27(1)(b). I addressed this issue subsequently, in dealing with s 31.

I was not persuaded that the report contained any trade secrets. The next question was whether the disclosure of information in the report would be likely to expose Gemba unreasonably to competitive disadvantage. The notion of unreasonableness in this context raised public interest considerations, and s 31(2) specifically required that I take into account considerations in the public interest in favour of disclosure that outweigh considerations of any competitive disadvantage to the undertaking.

After weighing a number of factors, my end conclusion was that the public interest favoured the release of an edited version of the report.

The full decision can be read on my Ombudsman website. It should be read in light of the decision of the Supreme Court of Tasmania in *Forestry Tasmania v Ombudsman* (2010) TASSC 39, mentioned above.

Neasey and the Departments of Premier and Cabinet

Mr Neasey, a legal practitioner with the Department of Justice, made a request for information about the decision by the Tasmanian Government to retire from the *Legal Practitioner’s Agreement 2005*. An amount of information was released by the Department and an exemption was claimed under ss 24 (cabinet information) and 27 (internal working information) of the FOI Act. I delegated the handling of this review to my Principal Officer (Ombudsman), by reason of my acquaintance with the applicant.

The information at issue was an email exchange between the Department of Justice and the Public Sector Management Office and a briefing note prepared for the Public Sector Industrial Relations Committee. My Principal Officer determined that the briefing note was not an official record of a deliberation or decision of Cabinet, nor a record proposed by a Minister. It was therefore not eligible for exemption under s 24. It was also not eligible for exemption under s 27, as the recommendations contained in the briefing note were final recommendations subsequently adopted by the government and in the public domain. In the circumstances, my Principal Officer determined that it would not be contrary to the public interest to release the briefing note.

A portion of the email exchange was determined by my Principal Officer to be eligible for exemption under s 27 as it contained opinion and advice relating to the direction in which the matter (ie the dispute between the legal practitioners and the state) should proceed. He determined that release of this information would be harmful to good public administration and therefore contrary to the public interest. He also held that the State should not be put in a position of disadvantage in future proceedings, considering that the dispute between the legal practitioners and the State was ongoing.

Stott and Forestry Tasmania (FT)

Mr Stott applied for the review of a decision as to the charge set by FT for information requested by Mr Stott. Mr Stott provided evidence to me of his reliance on a disability support pension. I wrote to FT quoting what I said in a previous decision:

In exercising the discretion I have to waive charges under s 17, I have regard to s 3 (4) (b) of the FOI Act. This provision states that it is the intention of Parliament that any discretion which is conferred by the FOI Act be exercised 'so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information'. In my opinion, I should exercise my discretion in favour of an applicant who is reliant on a Commonwealth pension and I therefore determine that the charges set by FT should be waived.

I invited FT to provide submissions as to why the same decision should not be made in this review. FT responded by stating that the fee would be waived.



PUBLIC INTEREST DISCLOSURES ACT 2002

INTRODUCTION

My office plays a significant role in receiving and investigating disclosures under the *Public Interest Disclosures Act 2002*. The primary objectives of the Act are to:

- encourage and facilitate disclosures of improper conduct by public officers and public bodies
- protect persons making those disclosures and others from reprisals
- provide for the matters disclosed to be properly investigated and dealt with.

State Service Agencies, local councils, Government Owned Businesses and State owned companies are included in the definition of “public body” contained in s 3 of the Act, and members of Parliament, employees of a public body, councilors and council employees and some statutory office holders are public officers for the purposes of the Act.

A public officer who believes that another public officer or a public body has engaged in improper conduct can disclose that improper conduct to:

- in all cases other than disclosures that relate to a member of Tasmania Police other than the Commissioner of Police, or members of Parliament, or the Auditor-General or State Service Commissioner, the Ombudsman
- in the case of disclosures that relate to an officer or member of a State Service Agency - in any case other than disclosures which relate to a police officer, the Commissioner of Police, a member of Parliament, a councillor, the Auditor-General, the State Service Commissioner, the Ombudsman, or a person employed in an office of a minister, Parliamentary Secretary or other Member of Parliament - the Integrity Commissioner
- in the case of disclosures that relate to a member of Tasmania Police other than the Commissioner to - the Commissioner
- in the case of disclosures that relate to a member of Parliament – the President of the Legislative Council or the Speaker of the House of Assembly.

A disclosure can also be made by a contractor to a public body.

A person who makes a disclosure under the Act is afforded protection against reprisals and is not subject to any criminal, civil or administrative liability (such as disciplinary action) as a result of making the disclosure.

If a disclosure is made to me, I am required to determine whether or not it is a public interest disclosure that comes under the Act. If I determine that it is, then my office is required to investigate it. The powers available to me, should an investigation be undertaken, are very broad.

My office is also required to monitor investigations of disclosures by public bodies (which in this context includes the Commissioner of Police) and to publish guidelines for:

- the procedures to be followed by public bodies in relation to disclosures and the investigation of disclosures; and
- the protection of persons making disclosures from reprisals by public bodies, their members, officers or employees

We have produced guidelines which set out in detail the operation of the Act and the responsibilities of public bodies. These guidelines and model procedures for the use of public bodies are available on our web site at: <http://www.ombudsman.tas.gov.au>. The guidelines will be reviewed during 2010/11, in the light of amendments to the Act which commenced on 1 October 2010.

THE YEAR UNDER REVIEW

There have been no disclosures to me under the Act during the reporting year (or other activity under the Act), and consequently there are no statistics to be provided under s 84 of the Act.



PERSONAL INFORMATION PROTECTION ACT 2004

Schedule 1 of the *Personal Information Protection Act 2004* creates a set of personal information protection principles by which all public authorities holding the personal information of members of the community are bound. The principles and the provisions of the Act regulate the manner in which an authority can collect, maintain and use personal information and specify the limited circumstances in which such information can be disclosed.

If someone believes that the principles or the Act have been breached by a public authority, and he or she has raised the matter with the agency and is not satisfied with the response, then a complaint can be made to my office. If it is decided that the complaint should be dealt with, any investigation conducted by my office is conducted in accordance with the powers conferred by the *Ombudsman Act 1998*.

The *Personal Information Protection Act 2004* has now been in operation for nearly five years but we have not to date received any complaints alleging a breach of its provisions or the principles.

INSPECTIONS UNDER POLICE LEGISLATION

The *Police Powers (Surveillance Devices) Act 2006* governs the use that a law enforcement agency makes of surveillance devices and also the records that it is obliged to keep in respect of each warrant for which it applies. The Act requires the appointment of an inspection entity and the Ombudsman has been that entity since May 2008. Tasmania Police and the Australian Crime Commission are law enforcement agencies for the purposes of the Act, but to date the Commission has not applied for any warrants.

My office is required by s 41 of the Act to inspect the records of a law enforcement agency at least once every 12 months in order to determine the extent of compliance with the Act by the agency and its officers. Following the inspection, I am obliged by s 42 to report to the Minister on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating my inspection. The Act came into force in January 2009 and my office first inspected Tasmania Police's relevant records on 25 June 2009.

I have authorised a number of my officers to undertake inspections under the Act on my behalf, and two of those officers conducted an inspection of the relevant records of Tasmania Police on 2 June 2010. My staff inform me that the officer responsible for Investigation Support Services with Tasmania Police offered assistance during the actual inspection process and cooperated fully at all times.

Considerably more warrants or extensions of warrants had been granted since the 2009 inspection. The most recent inspection identified some comparatively minor omissions in procedure, but in general I am satisfied with the efforts made by Tasmania Police to comply with the record keeping requirements of the Act and am confident that any problems identified by my staff are addressed and resolved in a timely manner. To some extent, it is a matter of fine tuning processes by way of consultation between my officers and Tasmania Police, and this consultation is ongoing and is taking place effectively and cooperatively.

The Ombudsman also has inspectoral responsibilities under the *Telecommunications (Interception) Act 1999*, and has been inspecting the records required by the Act to be kept by Tasmania Police relating to telecommunications intercepts since December 2006. Those records must be inspected at least once every six months to ensure compliance by Police with the obligations in relation to record keeping and advice to the Minister contained in Part 2 of the Act. Regular inspections have been made in June and December of each year, and in the reporting year, those inspections took place on 16 December 2009 and 15 June 2010.

I am pleased to report that my officers continue to be impressed by the processes put in place by Tasmania Police to ensure compliance with the record keeping requirements of the Act and to facilitate the inspection of records. No issues of non compliance arose that had not been identified and addressed in previous inspections. All aspects of the inspection indicated compliance by Police with the requirements of Part 2 of the Act.

The only issue that did arise related to the records of the use and communication of lawfully obtained information required to be kept by ss.5(1)(d)(e) and (f) of the Act. In order to be satisfied of compliance in this regard, my officers need to inspect the Use and Communication Register for a warrant, and in the case of expired warrants, they need to do so before the destruction of records. The records for some expired warrants had been destroyed without my officers sighting the Registers and it has now been agreed that all Registers will be retained until



such time as they have been inspected.

The Ombudsman has also been appointed as the inspection entity under the *Police Powers (Controlled Operations) Act 2006*, but there was no activity under that act during the reporting year, and hence there were no records for us to inspect.

ENERGY OMBUDSMAN ACT 1998

INTRODUCTION

As Ombudsman, I administer the *Energy Ombudsman Act 1998*. Two staff apart from myself work directly in the jurisdiction, a Principal Officer and an Investigation Officer. They are supported by the Office's Administration team.

The *Energy Ombudsman Act* does not require the publication of an annual report, presumably expecting that the Ombudsman will report on the discharge of functions under that Act as part of the annual report published under the *Ombudsman Act*. We do produce an annual report under the *Energy Ombudsman Act* as a matter of good practice, but this is only circulated to energy entities which have funded the work of the office during the reporting year. The report can be seen at the Energy Ombudsman website, www.energyombudsman.tas.gov.au.

DEMAND

During the reporting year, we have seen unprecedented demand in this jurisdiction. There have also been a number of significant developments, aside from normal complaint management.

The statistics are telling –

- a 48% increase in complaint files opened during the year (279 to 414)
- a 38% increase in complaint files closed (305 to 422)
- a 44% increase in enquiries opened and closed during the period (146 to 210)
- a 53% increase in out-of-jurisdiction enquiries (34 to 52)
- a 46% increase in enquiries generally

More detailed statistics, with some analysis, can be found in Appendix B: Energy Ombudsman Complaint Activity on page 66.

There is no obvious reason for the increased demand, but increased energy prices is likely to be a factor.

The demand has been sustained all year, but was particularly pronounced between September and November 2009, at which time we reached the point where we had more than 100 open complaints. This boom seems to have coincided with the advertisement of our services on electricity bills. This advertisement appears on one quarterly bill a year.

I am very pleased that we have managed to address the increased demand without increasing staffing levels.



ENERGY BUDGET

The manner in which we allocate the Energy Ombudsman budget between the energy entities was altered during the reporting year. The result is much fairer than before.

Historically, the budget had been met through membership fees charged to most of the energy entities, together with a levy based on the demand for our services generated by the various entities during the previous calendar year. This method of allocation resulted in Aurora Energy only paying 80% of the budget for 2009/10, even though it had been the respondent to 96.5% of complaints in this jurisdiction during the previous calendar year.

I circulated a discussion paper in September 2009 which proposed a change to this model, and received general support (other than from Aurora Energy) for changing to a “user pays” system.

We then prepared a budget in which the membership fees were reduced to a \$10 membership fee for each energy entity, if demanded, with the greater part of the budget being raised from the levy. We consulted on this budget, as required by the Act, and the budget which was eventually published reflected this approach.

The budget figure for 2010/11 is \$478,816, with Aurora Energy paying 99.14% of this, and TasGas paying 0.8%.

ACCESS TO METERS

In late 2009 we started to receive a significant number of complaints about the failure by Aurora Energy to read electricity meters where the customer had a dog on the premises. This issue has been a matter of some media controversy since that time.

The complaints arose because Aurora Energy had adopted a policy, understandably based on worker safety, under which a meter reader was not expected to enter a property where they had reason to believe that there might be an unrestrained dog. Under these circumstances, customers were receiving electricity accounts which were based on estimates of their demand, in turn based on the historical use of electricity on the property.

Customers who wished to make sure that their meter was read were being told by the Aurora Energy call centre staff that they would have to restrain their dog for a period of seven working days – the anticipated day of the read, as indicated on the last bill, and three working days each side of that date. Understandably, many dog owners found this requirement to be very onerous, and were concerned for the welfare of their animals when restrained over such a long period.

We met with senior Aurora Energy staff about this for the first time in February 2010, and had a further 6 meetings during the reporting year. I participated in these meetings myself, and also discussed the problem personally with the CEO of the company on two occasions.

The matter has proved difficult to resolve, principally because of the significant effect for the company of changing its systems. We had not achieved a resolution by year's end, but Aurora Energy then appeared to be on the threshold of making some significant changes to its systems.

Subsequent developments on this issue will be dealt with in my annual report for 2010/11.

OTHER MATTERS

During the reporting year we managed to reduce the average age of open files from a high of 138 days at the end of July 2009 to 69 days at the end of June 2010. At year's end, only one file was more than 300 days old, and for some months we had no files of that age. A file should not of course reach that age unless the matter is especially difficult to resolve.

We have also seen a significant reduction in the types of complaint which we refer directly to Aurora Energy on receipt, for resolution with the company. (We call these RHL, or "refer to higher level", cases.) Whereas the percentage of complaints referred in this way between July 2009 and November 2009 ranged between 61% and 45%, it only ranged between 8% and 23% for the last four months of the year. This suggests that Aurora Energy is perhaps becoming much better at resolving complaints in-house.

I continue to attend meetings of the Australia and New Zealand Energy Ombudsman Network (ANZEWO) twice a year, and obtain great benefit from exposure to what is happening in the offices of my mainland counterparts in this jurisdiction.



HEALTH COMPLAINTS ACT 1995

INTRODUCTION

I hold appointments both as Ombudsman and Health Complaints Commissioner, and the full title of our Office is “Office of the Ombudsman and Health Complaints Commissioner”.

This Chapter is included so that this annual report gives a full picture of the work of the Office, and covers material that is outside the necessary scope of my report under the *Ombudsman Act*. It is deliberately brief.

My annual report under the *Health Complaints Act 1995* has been published at the same time as this report, and can be seen at www.healthcomplaints.tas.gov.au.

STATISTICS

There are some significant statistics to report –

- Only 1% of cases took more than 90 days to assess, compared to 23.5% in 2008/09. (Assessment represents an early determination as to how a case is best handled – referral to another agency, conciliation, investigation, dismissal, or a combination of any of those.)
- Only 20 cases closed were more than 1 year old, as opposed to 40 in 2008/09.
- There was a 77% increase in the number of grievances notified to us by health registration boards. The workload associated with these more than offset the slight (3%) decrease in complaints direct to our Office that we experienced during the year.
- We experienced a 19% increase in health-related enquiries.

INVESTIGATIONS AND CONCILIATION

I have continued with the policy of preferring conciliation to investigation, even for the purpose of pursuing system change. I will normally only submit a case to investigation if there is a good public interest reason for doing so.

This policy led to seven more cases being referred to conciliation than in 2008/09 – 12 more than in 2007/08. Only three cases were referred to investigation, compared to 7 in 2008/09.

A total of 53 complaints was closed in conciliation. This is two more than in the previous year, and 12 more than in 2007/08.

We have continued to achieve systemic improvements in conciliation, and have also facilitated some significant payments of compensation. The cases where such payments have been made demonstrate the value of the health complaints process in avoiding litigation.

NATIONAL REGISTRATION

During the reporting year we had considerable involvement in preparations both within Tasmania and nationally for the commencement of the proposed scheme for the national registration and accreditation of ten health professions from 1 July 2010. This included discussions between Health Complaints Commissioners at their biannual meetings, at a further special meeting in Melbourne in May, and by teleconference. We also consulted with the new State staff of the Australian Health Practitioner Regulation Agency (AHPRA), and with staff of the Department of Health and Human Services (DHHS) as the relevant State legislation was prepared.

With input from mainland colleagues, I drafted a Memorandum of Understanding to assist with the consultation which will take place between AHPRA and the various health complaints entities under section 150 of the new *National Law*. This is expected to be signed by all parties at a meeting of the Health Complaints Commissioners and AHPRA in Canberra in October.

We can expect some teething problems as the new system gets going, but my belief is that the protection which it provides for the public is superior to that provided in Tasmania previously. The transition to the new system in this State will be eased for my office by the fact that we already have a good professional relationship with many of the members of staff in the local AHPRA office, which were developed when these staff worked for State health registration boards.

OTHER

As mentioned, the Australasian Health Complaints Commissioners meet twice a year. The meeting in October 2009 was held in Hobart, and the Governor of Tasmania kindly hosted a reception to mark the event.

We also hosted a national meeting of complaints managers in Hobart in May 2010.

The Health Complaints team has experienced considerable pressure during the reporting year, coping with a high workload, necessary projects which have taken energy away from the core complaint management work, and reduced staffing levels. Staffing changes within the Office have effectively left the Health Complaints unit operating with 1.3 FTE less than in early 2008 – a situation to be remedied in the forthcoming financial year.



OFFICIAL VISITORS

OVERVIEW

I noted in my 2008/09 annual report that the administration of the Mental Health Official Visitors Scheme was transferred to my office on 1 July 2009. Since the transfer, two permanent part time staff have been appointed to assist in the administration of the Scheme – a Manager and an Administrative Assistant. I am currently the Coordinating Official Visitor of the Scheme.

The transfer has provided the opportunity to use the same staff to administer both the Prison Official Visitors Scheme and the Mental Health Official Visitor Scheme, and this transition was made towards the end of the reporting year.

PRISON OFFICIAL VISITORS SCHEME

The Prison Official Visitors continue to play a vital role in monitoring and reporting on the treatment and conditions of prisoners and detainees in the State's prisons. They also assist prisoners and detainees to raise and resolve concerns and complaints.

Visitors are appointed by the Minister under the *Corrections Act 1997* for a fixed term of two years. Up until June 2010, Visitors received a small annual honorarium and a contribution to their expenses. I am pleased to report that the government has provided funding from 1 July 2010 to remunerate the Prison Official Visitors at the same rate as the Mental Health Official Visitors.

One Visitor resigned during the year, and at the end of the reporting period there were 6 Visitors who between them visited all the correctional facilities in the State.

Visitors come from diverse backgrounds, with a range of experience, expertise and skills. They each bring their own perspective to the role. Their combined observations provide a detailed picture of the prison environment, its management and the prevailing concerns of prisoners and detainees.

Corrective Services and Correctional Officers recognise and respect the role of the Official Visitors, who regularly report a high level of cooperation from management and staff during their visits. Official Visitors are allowed free access to prisoners and detainees, who are able to raise matters of concern to them in an informal and confidential way. If these concerns relate to matters of routine or day to day management, the Visitors are often able to resolve them on the spot. The Visitors regularly debrief with custodial managers at the conclusion of their visits and are able to convey to management directly what they have seen or had brought to their attention, that needs to be addressed. Matters raised by prisoners and detainees with the Visitors during the reporting year included:

- access to medication and medical and dental treatment particularly specialist treatment at the Royal Hobart Hospital

- the cost of telephone calls and access to telephones
- the cost of canteen items and the variety of items available
- dietary issues
- access to art and craft materials and programs
- access to personal property held by the prison, and lost property
- concerns about outside issues, such as Centrelink benefits, utility bills, etc.

The Official Visitors regularly report their observations and concerns to me, and I refer more serious or systemic issues to Prison Management for its response, which is generally positive and constructive. The Visitors' reports keep me informed about the state of the prison system, which is otherwise a largely closed environment. For example, the Official Visitors played a role in bringing to my attention the condition of inmates in the Behaviour Management Programme housed in the maximum security Tamar Unit, which was the subject of the report which I tabled in Parliament on 24 June 2010 under the *Ombudsman Act 1978*, referred to earlier in this annual report.

Official Visitors also facilitate more formal complaints to me by providing inmates with Ombudsman complaint forms. These are provided to prisoners and detainees by prison officers and management upon request, but many prisoners are not comfortable asking for them and often need the process to be explained to them. Visitors also act as conduits for the small number of inmates who wish to communicate with my Office but who still distrust the Arunta telephone system and are not convinced that their letters are forwarded unopened.

Because Visitors visit each facility and unit on a regular basis, they are able to monitor change and the manner in which prisoners' concerns are being dealt with.

MENTAL HEALTH OFFICIAL VISITORS SCHEME

INTRODUCTION

Mental Health Official Visitors are appointed under the provisions of part 11 of the *Mental Health Act 1996* (the Act).

Official Visitors have an oversight role in respect of the accommodation, assessment, treatment and care of persons with mental illness in approved hospitals and the secure mental health unit (the Wilfred Lopes Centre). Visitors also examine the opportunities for recreation, education and training for persons with mental illness who are patients in approved hospitals.

Official Visitors have responsibility for investigating suspected contraventions of the Act in the care or treatment of persons with mental illness, for visiting patients, and for investigating complaints made by persons receiving care or treatment for mental illness.



Official Visitors visit approved hospitals and the Wilfred Lopes Centre in accordance with s 77 of the Act, which requires visits to be made at least once a month. Visits are usually made by a panel of two visitors.

Visits were made each month to the Wilfred Lopes Centre and the following approved hospitals during the reporting year:

- the Royal Hobart Hospital, including the Department of Psychological Medicine, the Psychiatric Intensive Care Unit and the Emergency Department.
- the Roy Fagan Centre
- the Millbrook Rise Centre
- the Launceston General Hospital, including Northside Clinic and the Emergency Department
- the North West Regional Hospital, including the Spencer Clinic and the Emergency Department.

Additional visits were also made to these facilities to visit patients who had made complaints.

In accordance with s 81 of the Act, I provide a report to the Secretary of the Department of Health and Human Services on or before 31 August each year on the visits and investigations made by the Official Visitors in the course of the previous financial year, and on the results of those visits and investigations.

During the course of the year, I also provide a report to Mental Health and Statewide Services following the routine monthly visits to approved hospitals. This report outlines issues of interest and concern that have been raised by patients with Official Visitors and other issues which Official Visitors have brought to my attention.

COMPLAINTS

Under s 75 (f) of the Act, Official Visitors investigate complaints made by persons receiving care or treatment for mental illness.

During 2009/10, a total of 98 complaints were received from patients in approved hospitals or the secure mental health unit during routine monthly visits. The majority of these complaints were resolved following discussion with relevant clinical staff.

In addition a total of 151 complaints were received from patients outside of the routine monthly visits. Once again, the majority of these complaints were resolved following discussion with relevant clinical staff.

Eleven complaints required further investigation and I requested written explanations from Mental Health and Statewide Services on these occasions. I reported six of these complaints to the Mental Health Tribunal as suspected contraventions of the Act, as required by s 79 of the Act.

I note that my oversight of the Scheme intersects well with my role as Health Complaints Commissioner. There have been occasions when I have considered taking on matters as Commissioner which have become known to me through my work with the Scheme; there have also been occasions when complaints which have come to me as Commissioner have been addressed through referral to Official Visitors

STAFFING ISSUES

During 2009/10, two Visitors resigned, and one did not request reappointment. Two Visitors have been reappointed for a further term.

As at 30 June 2010, and excluding the Manager Official Visitors and myself, there were nine Visitors. Four of these were in the North of the state, and five in the South. I advertised for expressions of interest in all regional newspapers and, following an interview process, five persons were recommended for appointment.

In the reporting year, I hosted a Statewide meeting of Visitors, and also a two-day Statewide training exercise. Short training exercises were also held with Visitors from both the North and South of the State when they met for their regular regional meetings.

CONCLUSION

The Mental Health Official Visitors Scheme has operated very effectively during the year under review, and the transfer of the Scheme to my Office has proven to be very satisfactory. The staff of the Scheme obtain the benefit of collocation with an integrity agency which has professional staff who can give them peer support and advice, and the work of the Scheme has considerable relevance to my work as Health Complaints Commissioner.

The amalgamation of the administration of the Mental Health and Prison Official Visitor Schemes under a single manager has also provided administrative efficiencies and other benefits including training opportunities, with no detriment to either Scheme.

I am also pleased to report that both of the Schemes operated within the budget allocation for the year, with no deficit or surplus.

I record my appreciation to all the Official Visitors in both Schemes who have given their time and effort over the last year of what is an important and challenging role. They have become an important part of the overall oversight responsibilities of my office.

I also particularly thank the Mental Health Official Visitors for their assistance in achieving a smooth transition of their scheme to my office.



APPENDIX A: STATISTICS – OMBUDSMAN ACT

TABLE 1. ENQUIRY ACTIVITY FOR 2008/9

	2008/09	2009/10
Enquiries opened and closed in the period	510	682
Out of Jurisdiction Enquiries	1,738	2,828
Total Enquiries	2,248	3,510

TABLE 2. COMPLAINT ACTIVITY FOR 2008/9

	2008/09	2009/10
Carried forward from previous period	130	162
Opened in Period	552	549
Closed in Period	520	592
Carried Forward (still open)	162	119

TABLE 3. COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS

Department	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly/Fully substantiated
ECONOMIC DEVELOPMENT AND TOURISM (DEPT OF)							
Business and Community Development	1	0	0	0	0	0	0
Industry Development Division	1	0	1	0	0	1	0
Sport and Recreation	1	0	0	0	0	0	0
Departmental/Not specified	1	0	0	0	0	0	0
Subtotal	4	0	1	0	0	1	0
EDUCATION (DEPT OF)							
Office of the Secretary	1	0	1	0	0	0	1
Schools	0	1	1	0	0	1	0
TAFE (Tasmania)	1	0	0	0	0	0	0
Tasmanian Polytechnic	1	1	0	0	0	0	0
Departmental/Not specified	9	6	9	3	0	6	0
Subtotal	12	8	11	3	0	7	1
ENVIRONMENT, PARKS, HERITAGE AND THE ARTS (DEPT OF)							
Tasmanian Heritage Council	1	0	0	0	0	0	0
Departmental/Not specified	1	0	0	0	0	0	0
Subtotal	2	0	0	0	0	0	0
HEALTH AND HUMAN SERVICES (DEPT OF)							
Ashley Youth Detention Centre	12	10	10	1	1	7	1
Children & Families Division	4	1	1	1	0	0	0
Community Health Services	0	1	1	0	0	1	0
Correctional Health Services	0	2	2	0	2	0	0
Health Services	3	3	4	3	1	0	0
Hospitals and Ambulance Service	1	0	1	0	0	1	0
Housing Tasmania	18	0	0	0	0	0	0
Human Services	47	63	67	27	3	27	10



Department	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly/Fully substantiated
Mental Health Services	0	2	1	1	0	0	0
Population Health	4	13	24	16	6	2	0
Statewide Systems Development	1	2	3	1	1	1	0
Departmental/Not specified	6	8	9	8	0	0	1
Subtotal	96	105	123	58	14	39	12

INFRASTRUCTURE, ENERGY & RESOURCES (DEPT OF)

Driver Licensing Unit	3	0	0	0	0	0	0
Land Transport Safety	14	18	18	5	3	6	4
Mineral Resources Tasmania	0	1	0	0	0	0	0
Passenger Transport	0	7	7	0	0	7	0
Racing Services Tasmania	0	1	1	0	0	1	0
Registrar of Motor Vehicles	1	0	0	0	0	0	0
Roads and Traffic	2	2	2	0	0	1	1
Sullivans Cove Waterfront Authority	0	1	1	0	1	0	0
Transport	1	0	1	0	1	0	0
Departmental/Not specified	5	0	3	1	0	1	1
Subtotal	26	30	33	6	5	16	6

JUSTICE (DEPT OF)

Anti-Discrimination Tribunal	1	0	0	0	0	0	0
Community Corrections	0	1	1	3	0	3	1
Consumer Affairs and Fair Trading	4	7	7	0	0	0	3
Corrective Services	19	0	3	1	0	0	0
Crown Law	0	1	1	1	0	0	0
Guardianship and Administration Board	1	5	4	4	0	0	0
Magistrates Courts	1	2	2	2	0	0	0
Monetary Penalties Enforcement Project	0	1	1	0	0	1	0
Monetary Penalties Enforcement Service	15	12	9	2	0	7	0
Office of the Anti-Discrimination Commissioner	2	0	0	0	0	0	0
Parole Board	0	3	3	2	0	1	0

Department	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly/Fully substantiated
Prison Services	55	98	99	32	24	38	5
Resources Planning	1	0	0	0	0	0	0
Tasmanian Electoral Commission	0	1	1	0	0	1	0
Victims Support Services	1	1	2	1	0	1	0
Workplace Standards Tasmania	7	3	6	2	2	1	1
Departmental/Not specified	1	3	3	3	0	0	0
Subtotal	108	138	142	53	26	53	10

POLICE AND EMERGENCY MANAGEMENT (DEPT OF)

Internal Investigations	1	0	0	0	0	0	0
Minister for Police and Emergency Management	1	1	1	0	0	0	0
Tas Police	0	44	5	3	1	1	0
Departmental/Not specified	46		47	27	2	13	5
Subtotal	47	45	53	31	3	14	5

PREMIER AND CABINET (DEPT OF)

Office of the State Service Commissioner	1	0	1	0	0	0	1
Policy Divison	1	0	0	0	0	0	0
Service Tasmania Unit	1	2	2	1	1	0	0
Departmental/Not specified	0	1	1	1	0	0	0
Subtotal	3	3	4	2	1	0	1

PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT (DEPT OF)

Biosecurity and Product Integrity	0	1	1	0	0	1	0
Food, Agriculture and Fisheries	1	0	0	0	0	0	0
Heritage Tasmania	0	1	1	0	1	0	0
Information and Land Services	6	11	10	5	1	4	0
Inland Fisheries Services	0	1	0	0	0	0	0
Marine Farming Planning Review Panel	0	1	1	0	0	1	0
Marine Resources	0	1	1	0	0	1	0
Minister for Primary Industries and Water	0	1	1	1	0	0	0



Department	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly/Fully substantiated
Parks and Wildlife Service	0	1	1	1	0	0	0
Resource Management and Conservation	0	1	0	0	0	0	0
Royal Tasmania Botanical Gardens	0	1	1	0	0	0	1
Shack Sites Project Manager	4	1	2	0	0	1	1
Water Resources	0	3	3	3	0	0	0
Departmental/Not specified	3	2	3	0	2	1	0
Subtotal	14	26	25	10	4	9	2

TREASURY AND FINANCE (DEPT OF)

Office of the Tasmanian Energy Regulator	1	0	0	0	0	0	0
Revenue, Gaming and Licensing Division	0	2	2	1	0	1	0
State Revenue Office	5	5	5	4	0	1	0
Departmental/Not specified	0	3	2	2	0	0	0
Subtotal	6	10	9	7	0	2	0

Grand Total	318	365	401	170	53	141	37
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TABLE 4. COMPLAINTS AGAINST LOCAL GOVERNMENT

Council	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly / Fully substantiated
Break O'Day Council	6	4	7	5	0	1	1
Brighton Council	1	2	2	1	0	1	0
Burnie City Council	0	2	1	1	0	0	0
Central Coast Council	0	1	2	1	1	0	0
Central Highlands Council	1	1	1	0	0	1	0
Circular Head Council	0	1	0	0	0	0	0
Clarence City Council	5	11	10	5	0	5	0
Derwent Valley Council	3	0	1	0	0	1	0
Devonport City Council	2	2	2	1	0	1	0
Dorset Council	4	0	2	0	1	1	0
Flinders Island Council	0	1	0	0	0	0	0
George Town Council	2	3	4	1	1	1	1
Glamorgan/Spring Bay Council	1	3	2	0	1	1	0
Glenorchy City Council	5	15	15	5	1	9	0
Hobart City Council	9	11	13	5	2	4	2
Huon Valley Council	4	3	2	2	0	0	0
Kentish Council	5	1	1	1	0	0	0
Kingborough Council	6	2	0	0	0	0	0
Latrobe Council	3	1	1	1	0	0	0
Launceston City Council	9	2	4	2	0	1	1
Meander Valley Council	0	1	1	0	1	0	0
Northern Midlands Council	1	1	1	0	0	1	0
Sorell Council	7	5	6	4	0	2	0
Southern Midlands Council	2	1	1	1	0	0	0
Tasman Council	4	1	5	3	0	0	2
Waratah/Wynard Council	2	2	1	1	0	0	0
West Coast Council	1	2	2	2	0	0	0
West Tamar Council	3	1	1	1	0	0	0
Total	86	80	88	43	8	30	7

TABLE 5. COMPLAINTS AGAINST PUBLIC AUTHORITIES



Public Authorities	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly / Fully substantiated
Ben Lomond Water	0	6	5	2	0	3	0
Chiropractors and Osteopaths Registration Board	0	1	1	1	0	0	0
Cradle Mountain Water	0	7	7	0	0	6	1
Director of Public Prosecutions	0	0	0	0	0	0	0
FOI Advisory Officer	0	0	0	0	0	0	0
Government Prices Oversight Commission	0	0	0	0	0	0	0
Guardianship and Administration Board	2	2	1	1	0	0	0
Health Complaints Commissioner	0	1	0	0	0	1	0
Law Society of Tasmania	1	1	1	1	0	2	0
Legal Aid Commission	10	3	5	4	2	1	2
Marine and Safety Tasmania	1	0	0	0	0	0	0
Medical Council of Tasmania	25	3	7	1	0	0	0
Mental Health at Peacock Centre North Hobart	0	1	1	0	0	1	0
Metro Tasmania	0	1	1	1	0	0	0
Nursing Board of Tasmania	0	2	1	1	0	1	0
Office of the Tasmanian Energy Regulator	1	1	2	1	0	0	0
Property Agents Board	1	1	1	0	0	1	0
Psychologists Registration Board of Tasmania	1	0	1	0	0	0	0
Public Guardian	0	0	1	0	0	0	0
Retirement Benefits Fund Board	7	4	7	1	1	0	0
Rivers and Water Supply Commission	0	0	1	0	0	0	0
Southern Water	0	39	33	5	1	0	1
Tasmanian Fire Service	0	0	0	0	0	0	0
Tasmanian Ports Corporation Pty Ltd	2	1	1	0	1	0	0
The Public Trustee	8	9	11	6	0	22	5
Tote Tasmania	0	1	1	0	1	0	0
University of Tasmania	13	11	7	1	0	8	2
Wellington Park Management Trust	0	1	0	1	2	4	0
Total	72	96	96	27	8	50	11

TABLE 6. COMPLAINTS AGAINST GOVERNMENT BUSINESS ENTERPRISES AND OTHER AUTHORITIES

GBEs and Other Authorities	Received 2008/09	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly / Fully substantiated
Aurora Energy	3	0	1	0	0	1	0
Forest Practices Authority	1	1	1	0	0	1	0
Forestry Tasmania	0	2	2	1	1	0	0
Hydro Tasmania	1	0	0	0	0	0	0
Motor Accidents Insurance Board	3	1	0	0	0	0	0
Transend Networks	1	0	0	0	0	0	0
TT Line	2	3	2	0	0	1	1
Total	11	7	6	1	1	3	1

TABLE 7. TOTAL CASES OPENED, CLOSED AND SUBSTANTIATED

	Received 2008/9	Received 2009/10	Closed 2009/10	Declined	Discontinued	No defective administration	Partly / Fully substantiated
Out of Jurisdiction Total	1	1	1	1	0	0	0
Grand Total	488	549	592	242	70	224	56



FIGURE 1. WHO IS BEING COMPLAINED ABOUT?

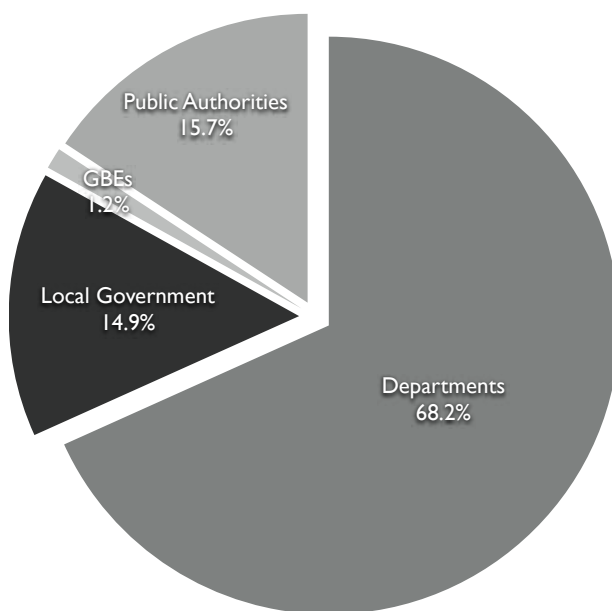


FIGURE 2. WHAT IS THE BREAKDOWN OF COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS?

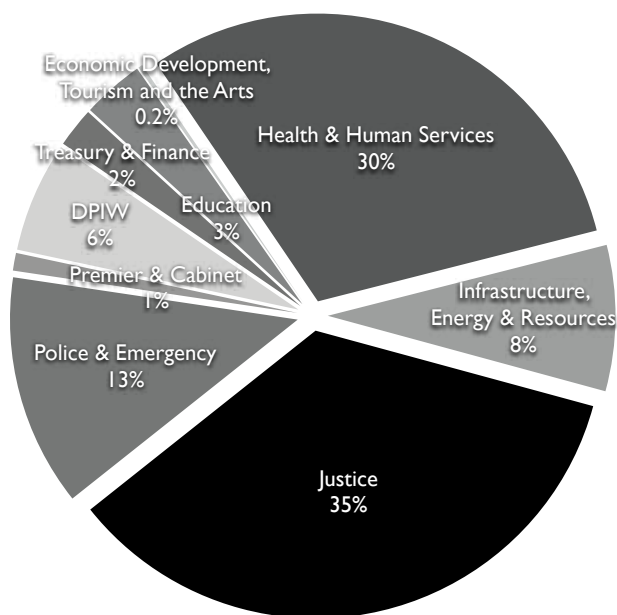


FIGURE 3. REASONS FOR CLOSURE (EXCLUDING FOI)

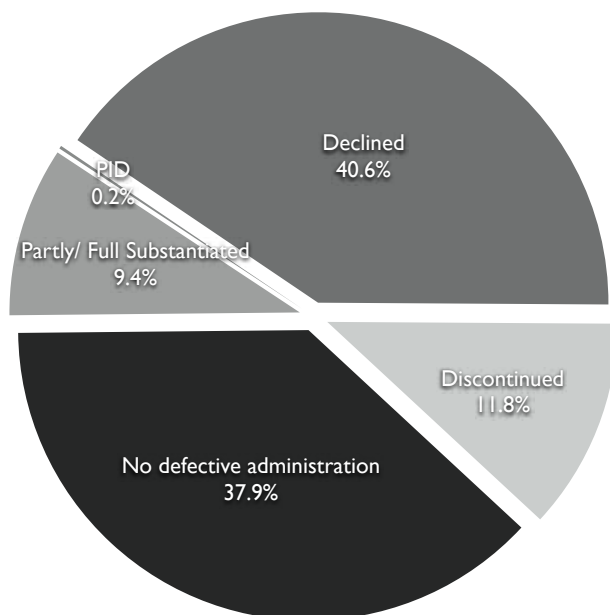


FIGURE 4. WHAT WERE COMPLAINANTS' OBJECTIVES?

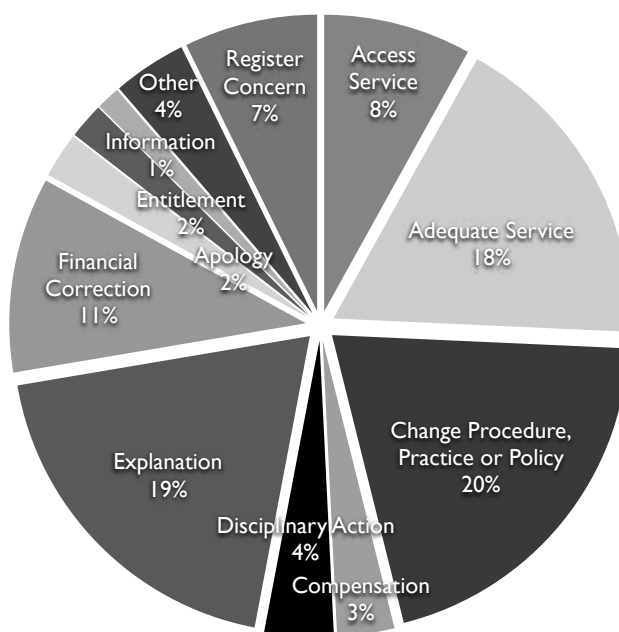




FIGURE 5. TIME TAKEN TO RESOLVE COMPLAINTS (EXCLUDING FOI)

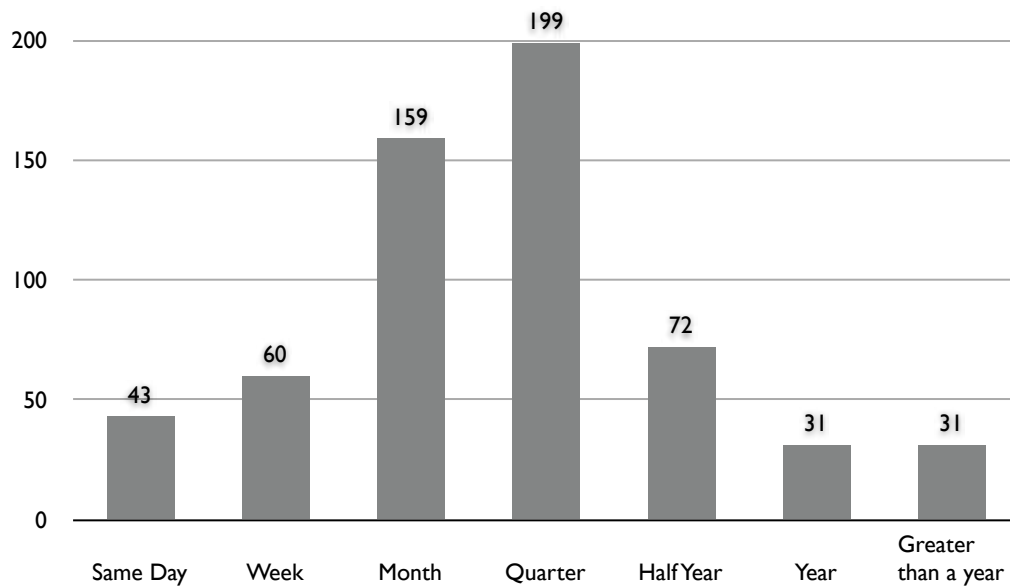
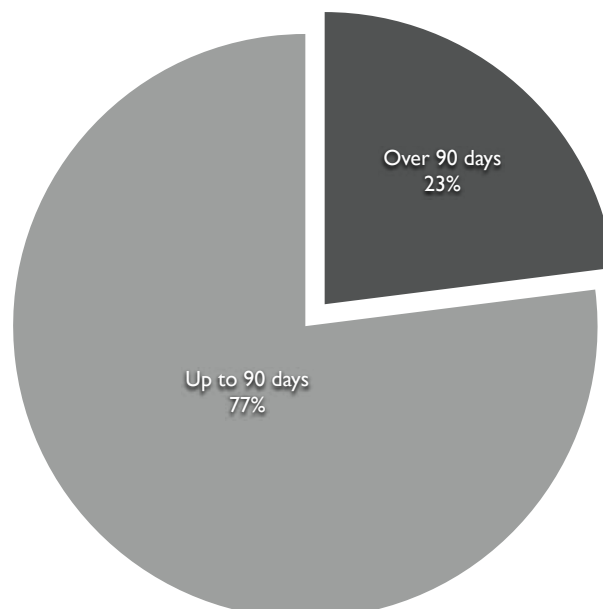


FIGURE 5A. COMPLAINTS RESOLVED WITHIN 90 DAYS



COMPLAINT ISSUES

FIGURE 6. WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST POLICE AND EMERGENCY MANAGEMENT?

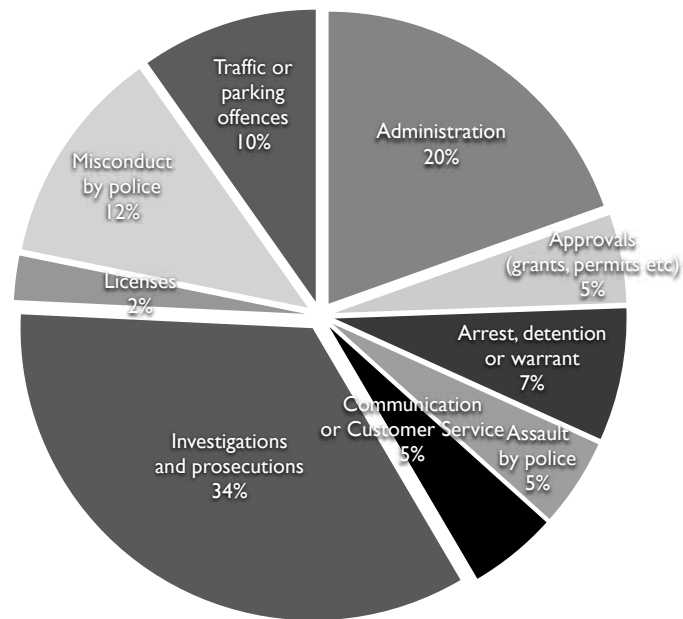


FIGURE 7. WHAT WERE THE MAIN ISSUES AGAINST STATE GOVERNMENT DEPARTMENTS?

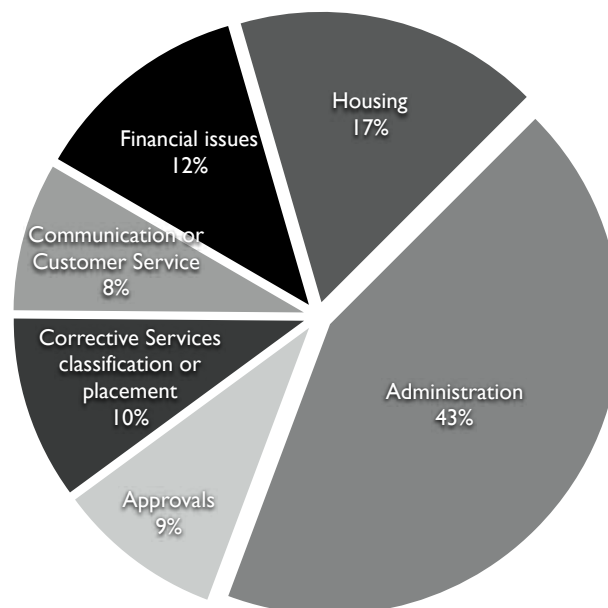




FIGURE 8. WHAT WERE THE MAIN ISSUES AGAINST CORRECTIVE SERVICES?

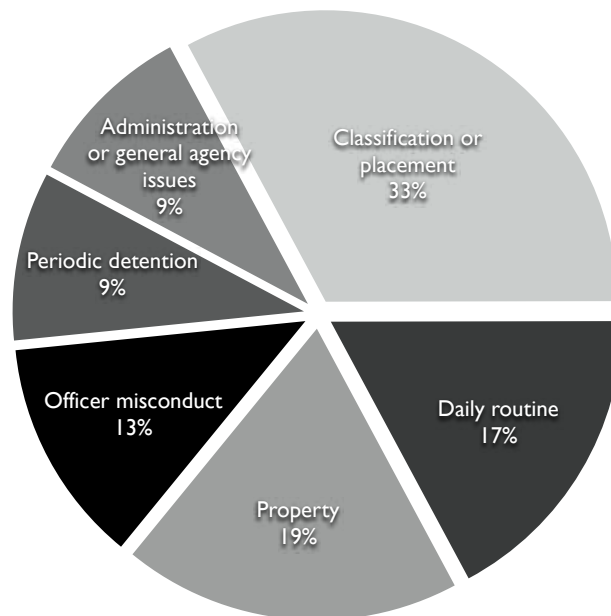


FIGURE 9. WHAT WERE THE MAIN ISSUES AGAINST LOCAL GOVERNMENT?

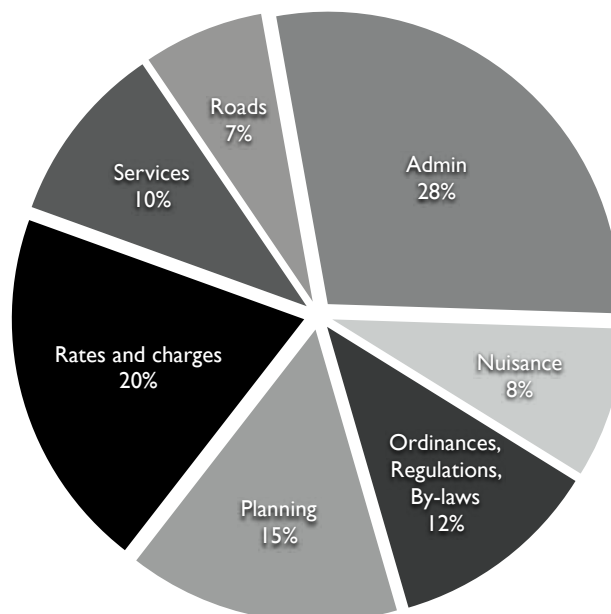
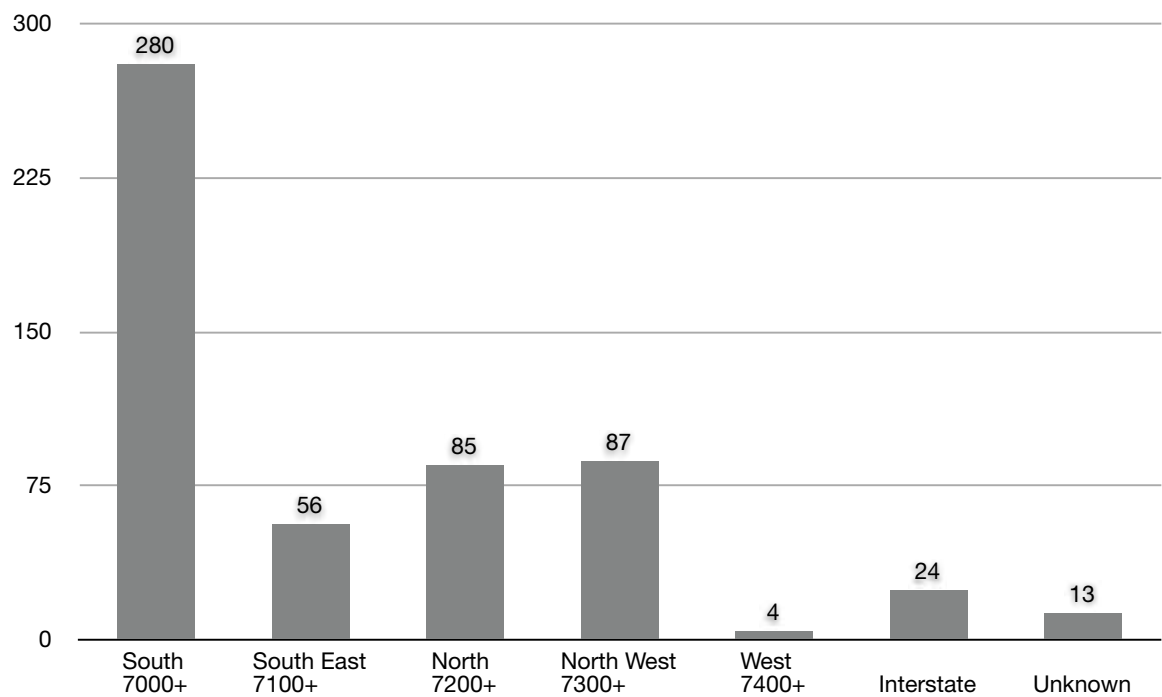


FIGURE 10. GEOGRAPHICAL LOCATION OF COMPLAINANTS



APPENDIX B: STATISTICS – ENERGY OMBUDSMAN ACT

ENERGY TABLE 1. ENQUIRY ACTIVITY

	2008/09	2009/10
Enquiries opened and closed in the period	146	210
OOJ Enquiries	34	52
Total Enquiries	180	262

ENERGY TABLE 2. COMPLAINT ACTIVITY

	2008/09	2009/10
Carried forward from previous period	69	43
Opened in Period	279	414
Closed in Period	305	422
Carried Forward (still open)	43	35

ENERGY TABLE 3. CLOSURE REASONS BY ENTITY

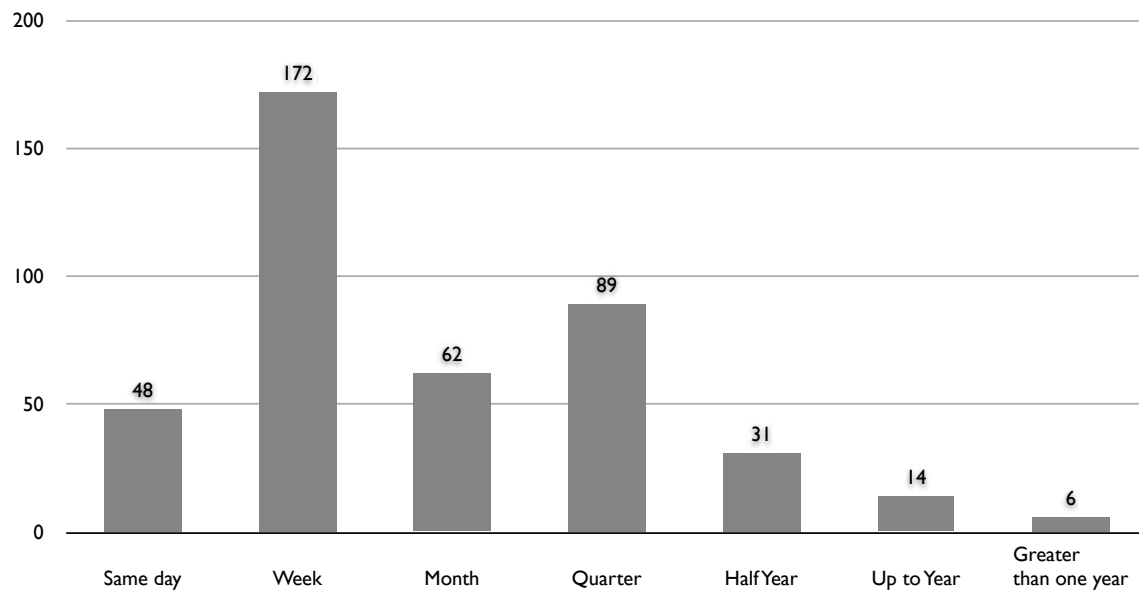
Provider name	Complaints No action – OOJ – register only	Complaints Referred to higher level	No further investigation Fair/reasonable offer	No further investigation Insufficient grounds/not warranted	No further investigation No further contact from customer	No further investigation Withdrawn by customer	Out of Jurisdiction	Resolved Facilitated resolution	Resolved Negotiated resolution	Grand Total
Aurora - Network Division	0	45	7	8	6	3	3	33	25	130
Aurora - Retail Division	1	113	12	37	19	8	5	58	34	287
Powerco	0	0	0	1	0	0	0	0	0	1
Tas Gas Retail	0	0	1	0	0	0	2	1	0	4
Grand Total	1	158	20	46	25	11	10	92	59	422

ENERGY TABLE 4. CLOSURE REASONS BY CATEGORY

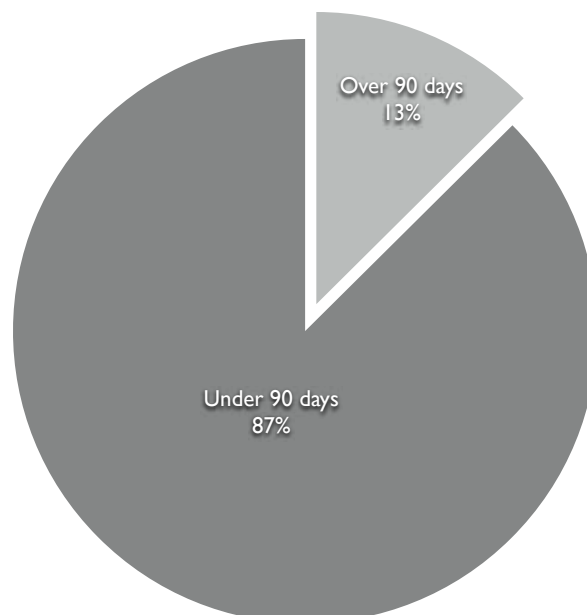
BILLING	2008/09	2009/10
Backbill	0	2
Delay	3	8
Error	29	14
Estimation	4	26
Fees & charges	14	17
High	52	74
Meter	27	30
Other	2	5
Rebate / concession	11	9
Tariff	10	14
Billing total	152	199
CREDIT	2008/09	2009/10
Collection	4	4
Disconnection / restriction	21	36
Payment difficulties	35	40
Credit Total	60	80
CUSTOMER SERVICE	2008/09	2009/10
Failure to consult / inform	7	6
Failure to respond	3	4
Incorrect advice / information	6	10
Poor / unprofessional attitude	1	2
Poor service	3	16
Privacy	1	2
Customer Service Total	21	40
GENERAL	2008/09	2009/10
Energy / water	0	1
General Total	0	1
LAND	2008/09	2009/10
Easement	0	2
Network assets	10	13
Other	1	3
Street lighting	1	2
Vegetation management	5	6
Land Total	17	26
PROVISION	2008/09	2009/10
Disconnection / restriction	7	4
Existing connection	23	24
New connection	31	50
Provision Total	61	78
SUPPLY	2008/09	2009/10
Off supply (planned)	8	11
Off supply (unplanned)	15	24
Quality	4	2
Variation	2	0
Supply Total	29	37
Grand Total	340	461



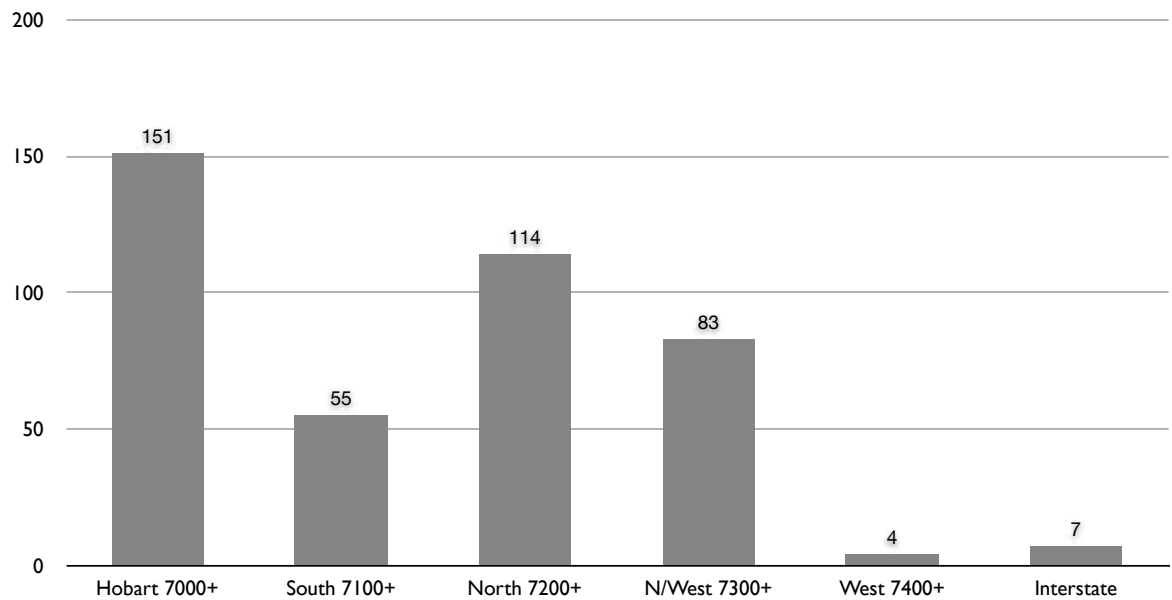
ENERGY FIGURE 1. TIME TAKEN TO RESOLVE COMPLAINTS



ENERGY FIGURE 1A. COMPLAINTS RESOLVED WITHIN 90 DAYS



ENERGY FIGURE 2. GEOGRAPHICAL LOCATION OF COMPLAINANTS



OMBUDSMAN
TASMANIA



Office of the Ombudsman and Health Complaints Commissioner

Financial Statements 2009-10

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Office of the Ombudsman and Health Complaints Commissioner Statement of Comprehensive Income for the year ended 30 June 2010

	Notes	2010 Budget \$'000	2010 Actual \$'000	2009 Actual \$'000
Continuing operations				
Revenue and other income from transactions				
Revenue from Government				
Appropriation revenue - recurrent	1.6(a), 3.1	1 409	1 665	1 364
Revenue from Energy Entities	1.6(b), 3.2	475	436	403
Other revenue	1.6(c), 3.3	-	20	19
Total revenue and other income from transactions		1 884	2 121	1 786
Expenses from transactions				
Employee benefits	1.7(a), 4.1	1 378	1 597	1 370
Amortisation	1.7(b), 4.2	28	32	23
Supplies and consumables	4.3	183	403	350
Other expenses	4.4	332	108	108
Total expenses from transactions		1 921	2 140	1 851
Net result from transactions (net operating balance)		(37)	(19)	(65)

This Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Office of the Ombudsman and Health Complaints Commissioner Statement of Financial Position as at 30 June 2010

	Notes	2010 Budget \$'000	2010 Actual \$'000	2009 Actual \$'000
Assets				
<i>Financial assets</i>				
Cash and deposits	1.8(a), 8.1	266	127	208
Receivables	1.8(b), 5.1	4	83	41
<i>Non-financial assets</i>				
Intangibles	1.8(c), 5.2	109	145	136
Total assets		379	355	385
Liabilities				
Payables	1.9(a), 6.1	49	38	86
Employee benefits	1.9(b), 6.2	205	281	247
Other liabilities	1.9(d), 6.3	11	17	14
Total liabilities		265	336	347
Net assets (liabilities)		114	19	38
Equity				
Accumulated funds		114	19	38
Total equity		114	19	38

This Statement of Financial Position should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Office of the Ombudsman and Health Complaints Commissioner Statement of Cash Flows for the year ended 30 June 2010

	Notes	2010 Budget \$'000	2010 Actual \$'000	2009 Actual \$'000
		Inflows (Outflows)	Inflows (Outflows)	Inflows (Outflows)
Cash flows from operating activities				
Cash inflows				
Appropriation receipts - recurrent		1 409	1 665	1 364
GST receipts		46	-	-
Other cash receipts		475	463	422
Total cash inflows		1 930	2 128	1 786
Cash outflows				
Employee benefits		(1 292)	(1 468)	(1 118)
Superannuation		(77)	(145)	(127)
GST payments		(46)	-	-
Supplies and consumables		(183)	(408)	(375)
Other cash payments		(332)	(147)	(146)
Total cash outflows		(1930)	(2 169)	(1 766)
Net cash from (used by) operating activities	8.2	-	(41)	20
Cash flows from investing activities				
Cash outflows				
Cash payments for intangible asset		-	(40)	(78)
Total cash outflows		-	(40)	(78)
Net cash from (used by) investing activities		-	(40)	(78)
Net decrease in cash held and cash equivalents		-	(81)	(58)
Cash and deposits at the beginning of the reporting period		266	208	266
Cash and deposits at the end of the reporting period	8.1	266	127	208

This Statement of Cash Flows should be read in conjunction with the accompanying notes.

Budget information refers to original estimates and has not been subject to audit.

Explanations of material variances between budget and actual outcomes are provided in Note 2 of the accompanying notes.

Office of the Ombudsman and Health Complaints Commissioner Statement of Changes in Equity for the year ended 30 June 2010

	Accumulated surplus / deficit \$'000	Total equity \$'000
Notes		
Balance as at 1 July 2009	38	38
Transactions with owners in their capacity as owners:		
Withdrawal of equity	(19)	(19)
Total	19	19
Balance as at 30 June 2010	19	19

	Accumulated surplus / deficit \$'000	Total equity \$'000
Notes		
Balance as at 1 July 2008	103	103
Transactions with owners in their capacity as owners:		
Withdrawal of equity	(65)	(65)
Total	(65)	(65)
Balance as at 30 June 2009	38	38

This Statement of Changes in Equity should be read in conjunction with the accompanying notes.

Notes to and forming part of the Financial Statements for the year ended 30 June 2010

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Note 1 Significant Accounting Policies

1.1 Objectives and Funding

The Office of the Ombudsman and Health Complaints Commissioner (the Office) operates under the *Ombudsman Act 1978* and is responsible for the enquiry and investigation into complaints regarding the administrative actions of Tasmanian government agencies, local councils and a broad range of other public authorities. The Ombudsman also has a number of other responsibilities including being the Health Complaints Commissioner under the *Health Complaints Act 1995*, and the Energy Ombudsman under the *Energy Ombudsman Act 1998*. The Office therefore also investigates complaints under these Acts.

By providing impartial investigations and seeking to resolve individual grievances, the Office aims to:

- promote fairness and equity;
- improve the quality of public administration; and
- improve health and energy services provided to the Tasmanian community.

The Office activities are classified as controlled as they involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Office in its own right.

The Office is predominantly funded through Parliamentary appropriations. The financial report encompasses all funds through which the Office controls resources to carry on its functions.

1.2 Basis of Accounting

The Financial Statements are a general purpose financial report and have been prepared in accordance with:

- Australian Accounting Standards issued by the Australian Accounting Standards Board and Interpretations; and
- The Treasurer's Instructions issued under the provisions of the *Financial Management and Audit Act 1990*.

The Financial Statements were signed by the Head of Agency on 13 August 2010.

Compliance with the Australian Accounting Standards may not result in compliance with International Financial Reporting Standards, as the AAS include requirements and options available to not-for-profit organisations that are inconsistent with IFRS. The Office is considered to be not-for-profit and has adopted some accounting policies under the AAS that do not comply with IFRS.

The Financial Statements have been prepared on an accrual basis and, except where stated, are in accordance with the historical cost convention. The accounting policies are generally consistent with the previous year except for those changes outlined in Note 1.5.

The Financial Statements have been prepared as a going concern. The continued existence of the Office in its present form, undertaking its current activities, is dependent on Government policy and on continuing appropriations by Parliament for the Office's administration and activities.

1.3 Reporting Entity

The Financial Statements include all the controlled activities of the Office. The Financial Statements consolidate material transactions and balances of the Office.

1.4 Functional and Presentation Currency

These Financial Statements are presented in Australian dollars, which is the Office's functional currency.

1.5 Changes in Accounting Policies

(a) Impact of new and revised Accounting Standards

In the current year, the Office has adopted all of the new and revised Standards and Interpretations issued by the Australian Accounting Standards Board that are relevant to its operations and effective for the current annual reporting period. These include:

- *AASB 101 Presentation of Financial Statements* – This Standard has been revised and introduces a number of terminology changes as well as changes to the structure of the Statement of Changes in Equity and the Statement of Comprehensive Income. It is now a requirement that owner changes in equity be presented separately from non-owner changes in equity. There is no financial impact resulting from the application of this revised Standard.
- *AASB 2009-2 Amendments to Australian Accounting Standards: Improving Disclosures about Financial Instruments* - Introduces new disclosure requirements for fair value measurement and refines existing disclosures on liquidity risk for financial instruments. There is no financial impact from the application of this Standard.

The impact of the changes has been adjusted in the comparative information presented in the Financial Statements and associated notes.

(b) Impact of new and revised Accounting Standards yet to be applied

The following applicable Standards have been issued by the AASB and are yet to be applied:

- *AASB 2007-10 Further Amendments to Australian Accounting Standards arising from AASB 101* - revised Standard to be applied from reporting periods beginning on or after 1 January 2010. This Standard changes the term “general purpose financial report” to “general purpose Financial Statements” and the term “financial report” to “Financial Statements”, where appropriate, in Australian Accounting Standards (including Interpretations) and the *Framework* to better align with IFRS terminology. The Standard will not have a financial impact on the Financial Statements.

The future adoption of these standards is not expected to have a material impact on the financial statements of the Office.

1.6 Income from transactions

Income is recognised in the Statement of Comprehensive Income when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably.

(a) Revenue from Government

Appropriations, whether recurrent or capital, are recognised as revenues in the period in which the Office gains control of the appropriated funds.

(b) Revenue from Energy Entities

Revenue from energy entities is recognised in the period in which the Office gains control of the funds. A membership fee is payable by each energy entity, within the meaning of the *Energy Ombudsman Act 1998*. A complaint levy is payable based on the number of complaints and enquiries received by the Ombudsman against an entity during the previous calendar year, as a proportion of the total number of complaints and enquiries received by the Ombudsman during that period.

(c) Other revenue

Revenue from other sources is recognised when the Office gains control of the funds and can be reliably measured.

1.7 Expenses from transactions

Expenses are recognised in the Statement of Comprehensive Income when a decrease in future economic benefits related to a decrease in asset or an increase of a liability has arisen that can be measured reliably.

(a) Employee benefits

Employee benefits include, where applicable, entitlements to wages and salaries, annual leave, sick leave, long service leave, superannuation and any other post-employment benefits.

(b) Amortisation

All intangible assets having a limited useful life are systematically amortised over their useful lives reflecting the pattern in which the asset's future economic benefits are expected to be consumed by the Office. Resolve, the Case Management System software, is amortised on a straight-line basis over 5 years and the office websites will be amortised on a straight-line basis over 5 years from 1 July 2010.

1.8 Assets

Assets are recognised in the Statement of Financial Position when it is probable that the future economic benefits will flow to the Office and the asset has a cost or value that can be measured reliably.

(a) Cash and deposits

Cash means notes, coins, any deposits held at call with a bank or financial institution, as well as funds held in the Special Deposits and Trust Fund. Deposits are recognised at amortised cost, being their face value.

(b) Receivables

Receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.

(c) Intangibles

An intangible asset is recognised where:

- it is probable that an expected future benefit attributable to the asset will flow to the Office; and
- the cost of the asset can be reliably measured.

The development costs towards the installation of RESOLVE (the Office's case management system) are recognised as an intangible asset and are currently valued at cost. The system went live and the asset was commissioned in mid October 2008 at which point amortisation commenced.

The implementation costs of the office websites are recognised as an intangible asset and are currently valued at cost as Work In Progress. The websites were launched and the asset commissioned on 1 July 2010.

1.9 Liabilities

Liabilities are recognised in the Statement of Financial Position when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably.

(a) Payables

Payables, including goods received and services incurred but not yet invoiced, are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Office becomes obliged to make future payments as a result of a purchase of assets or services.

(b) Employee benefits

Liabilities for wages and salaries and annual leave are recognised when an employee becomes entitled to receive a benefit. Those liabilities expected to be realised within 12 months are measured as the amount expected to be paid. Other employee entitlements are measured as the present value of the benefit at 30 June 2010, where the impact of discounting is material, and at the amount expected to be paid if discounting is not material.

A liability for long service leave is recognised, and is measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date.

(c) Superannuation

The Office does not recognise a liability for the accruing superannuation benefits of Office employees. This liability is held centrally and is recognised within the Finance-General Division of the Department of Treasury and Finance.

(d) Other liabilities

The Office has separately recognised a liability for the Payroll Tax on the accruing employee Annual Leave and Long Service Leave entitlements calculated at 6.1% of the outstanding leave provisions.

1.10 Leases

The Office has entered into a number of operating lease agreements for property, plant and equipment, where the lessors effectively retain all the risks and benefits incidental to ownership of the items leased. Equal instalments of lease payments are charged to the Statement of Comprehensive Income over the lease term, as this is representative of the pattern of benefits to be derived from the leased property.

The Office is prohibited by Treasurer's Instruction 502 *Leases* from holding finance leases.

1.11 Judgements and Assumptions

In the application of Australian Accounting Standards, the Office is required to make judgements, estimates and assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

Judgements made by the Office that have significant effects on the Financial Statements are disclosed in the relevant notes to the Financial Statements.

The Office has made no assumptions concerning the future that may cause a material adjustment to the carrying amounts of assets and liabilities within the next reporting period.

1.12 Comparative Figures

Comparative figures have been adjusted to reflect any changes in accounting policy or the adoption of new standards. Details of the impact of changes in accounting policy on comparative figures are at Note 1.5.

Where amounts have been reclassified within the Financial Statements, the comparative statements have been restated.

1.13 Budget Information

Budget information refers to original estimates as disclosed in the 2009-10 Budget Papers and is not subject to audit.

1.14 Rounding

All amounts in the Financial Statements have been rounded to the nearest thousand dollars, unless otherwise stated. Where the result of expressing amounts to the nearest thousand dollars would result in an amount of zero, the financial statement will contain a note expressing the amount to the nearest whole dollar.

1.15 Office Taxation

The Office is exempt from all forms of taxation except Fringe Benefits Tax, Payroll Tax and is not registered for the Goods and Services Tax. All taxation issues are managed by the Department of Justice on the Office's behalf.

1.16 Goods and Services Tax

Revenue, expenses and assets are recognised net of the amount of Goods and Services Tax, except where the GST incurred is not recoverable from the Australian Taxation Office. Receivables and payables are stated inclusive of GST. The net amount recoverable, or payable, to the ATO is recognised as an asset or liability within the Statement of Financial Position.

In the Statement of Cash Flows, the GST component of cash flows arising from operating, investing or financing activities which is recoverable from, or payable to, the Australian Taxation Office is, in accordance with the Australian Accounting Standards, classified as operating cash flows.

Note 2 Explanations of Material Variances between Budget and Actual Outcomes

The following are brief explanations of material variances between Budget estimates and actual outcomes. Variances are considered material where the variance exceeds the greater of 10 per cent of Budget estimate and \$25,000.

2.1 Statement of Comprehensive Income

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Appropriation from Government	(a)	1 409	1 665	(256)	(19)
Employee Benefits	(b)	1 378	1 597	(219)	(16)
Supplies and Consumables	(c)	183	403	(220)	(121)
Other expenses	(c)	332	108	224	68

Notes to Statement of Comprehensive Income variances

(a) The variance relates to the Mental Health Official Visitors \$175,000 budget that was not included in the original budget and an \$81,000 Request for Additional Funding approved by the Treasurer for scope and work related costs.

(b) The cost of employee benefits increased during the year due to a redundancy payment, the addition of the Mental Health Official Visitor Unit and an additional investigation officer funded by the RAF.

(c) The office accommodation operating lease of \$178,000 was budgeted against Other Expenses but was re-categorised under Supplies and Consumables in the actual costs.

2.2 Statement of Financial Position

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Receivables	(a)	4	83	(79)	(1975)
Intangibles	(b)	109	145	(36)	(33)
Employee Benefits	(c)	205	281	(76)	(37)

Notes to Statement of Financial Position variances

(a) Receivables were not included in the original budget. This has been updated in the 2010/11 budget.

(b) Expenses relating to the office websites of \$40,300 were not included in the original budget.

(c) The addition of the Mental Health Official Visitors staff and one additional investigation officer has been the primary reasons the Employee Benefits liability has increased.

2.3 Statement of Cash Flows

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Appropriation receipts – recurrent	(a)	1 409	1 665	(256)	(19)
GST receipts	(b)	46	-	46	100
Supplies and consumables	(c)	183	408	(225)	(123)
Other cash payments	(c)	332	147	185	56
Cash payments for intangible asset	(d)	-	40	(40)	(100)

Notes to Statement of Cash Flows variances

- (a) The variance relates to the \$175,000 budget for Mental Health Official Visitors that was not included in the original budget and an \$81,000 Request for Additional Funding approved by the Treasurer for scope and work related costs.
- (b) The Office is not registered for GST. All taxation matters are managed by the Department of Justice on behalf of the Office. GST Receipts were included in the budget but no actual receipts or payments were transacted.
- (c) The office accommodation operating lease of \$178,000 was budgeted against Other Cash Payments but was re-categorised under Supplies and Consumables in the actual costs.
- (d) Expenses relating to the office websites of \$40,300 were not included in the original budget.

Note 3 Income from transactions

3.1 Revenue from Government

Revenue from Government includes revenue from appropriations, appropriations carried forward under section 8A(2) of the *Public Account Act 1986* and Items Reserved by Law.

The Budget information is based on original estimates and has not been subject to audit.

	2010 Budget \$'000	2010 Actual \$'000	2009 Actual \$'000
Appropriation revenue - recurrent			
Current year	1 409	1 665	1 364
Total revenue from Government	1 409	1 665	1 364

3.2 Revenue from Energy Entities

	2010 \$'000	2009 \$'000
Energy Entities Membership and Complaint Levy Fees	436	403
Total	436	403

3.3 Other revenue

	2010 \$'000	2009 \$'000
Commonwealth Ombudsman Funding	17	17
Seminar Fees	1	-
Agfest Reimbursements	2	2
Total	20	19

Note 4 Expenses from transactions

4.1 Employee benefits

	2010	2009
	\$'000	\$'000
Wages and salaries	1 426	1 211
Superannuation – contribution scheme	145	128
Other employee expense (temporary employee payments)	26	31
Total	1 597	1 370

Superannuation expenses relating to defined benefits schemes relate to payments into the Superannuation Provision Account held centrally and recognised within the Finance-General Division of the Office of Treasury and Finance. The amount of the payment is based on an employer contribution rate determined by the Treasurer, on the advice of the State Actuary. The current employer contribution is 11 per cent of salary.

Superannuation expenses relating to the contribution scheme are paid directly to the superannuation fund at a rate of nine per cent of salary. In addition, departments are also required to pay into the SPA a “gap” payment equivalent to two per cent of salary in respect of employees who are members of the contribution scheme.

4.2 Amortisation

Amortisation

	2010	2009
	\$'000	\$'000
Intangibles	32	23
Total amortisation	32	23

4.3 Supplies and consumables

	2010	2009
	\$'000	\$'000
Audit fees – financial audit	9	6
Operating lease costs	178	168
Consultants	9	29
Property services	11	8
Maintenance	5	-
Communications	29	30
Information technology	59	45
Travel and transport	35	21
Advertising and promotion	5	9
Printing	20	12
Other supplies and consumables	43	22
Total	403	350

4.4 Other expenses

	2010	2009
	\$'000	\$'000
Salary on-costs	93	90
Other expenses	15	18
Total	108	108

Note 5 Assets**5.1 Receivables**

	2010	2009
	\$'000	\$'000
Receivables	189	147
Less: Provision for impairment	(106)	(106)
Total	83	41
Settled within 12 months	83	41
Total	83	41

During 2007-08, a debt of an organisation associated with the Child Abuse Review Team (CART) project was assessed as being impaired. The impairment arose as a result of the debtor having failed to settle the outstanding amount and thus the amount was deemed unrecoverable. The Office continues to pursue this matter and the provision for impairment loss continues to be recognised in the Balance Sheet in 2009/10.

	2010	2009
	\$'000	\$'000
Reconciliation of movement in provision for impairment of receivables		
Carrying amount at 1 July	106	106
Amounts written off during the year	-	-
Carrying amount at 30 June	106	106

5.2 Intangibles

(a) Carrying amount

	2010 \$'000	2009 \$'000
Intangibles with a finite useful life		
At cost (Resolve Case Management System)	159	159
Work in Progress (Office Websites)	41	-
Less: Accumulated amortisation	(55)	(23)
Total intangibles	145	136

(b) Reconciliation of movements

	2010 \$'000	2009 \$'000
Carrying amount at 1 July	136	80
Additions – internal development	-	79
Work in progress at cost	41	-
Amortisation expense	(32)	(23)
Carrying amount at 30 June	145	136

Note 6 Liabilities

6.1 Payables

	2010 \$'000	2009 \$'000
Creditors	38	86
Total	38	86
Settled within 12 months	38	86
Total	38	86

Settlement is usually made within 30 days.

6.2 Employee benefits

	2010	2009
	\$'000	\$'000
Accrued salaries	30	21
Annual leave	84	81
Long service leave	167	145
Total	281	247
Settled within 12 months	113	102
Settled in more than 12 months	168	145
Total	281	247

6.3 Other liabilities

	2010	2009
	\$'000	\$'000
Other liabilities		
Employee benefits – on-costs	17	14
Total	17	14
Settled within 12 months	7	5
Settled in more than 12 months	10	9
Total	17	14

Note 7 Commitments and Contingencies

7.1 Schedule of Commitments

	2010 \$'000	2009 \$'000
By type		
<i>Lease Commitments</i>		
Operating leases	1 371	300
<i>Total lease commitments</i>	1 371	300
<i>Other commitments</i>		
Resolve Case Management System Maintenance	13	26
<i>Total other commitments</i>	13	26
By maturity		
<i>Operating lease commitments</i>		
One year or less	261	215
From one to five years	1 053	85
More than five years	57	-
<i>Total operating lease commitments</i>	1 371	300
<i>Other commitments</i>		
One year or less	13	13
From one to five years	-	13
<i>Total other commitments</i>	13	26
Total	1 384	326

Note: The Operating Lease commitments include buildings, motor vehicles and information technology equipment leases. The 10-year building lease expires in September 2010. The three tenants have taken up the lease option to renew the lease for another five years.

Note 8 Cash Flow Reconciliation

8.1 Cash and deposits

Cash and deposits includes the balance of the Special Deposits and Trust Fund Accounts held by the Office, and other cash held, excluding those accounts which are administered or held in a trustee capacity or agency arrangement.

	2010 \$'000	2009 \$'000
Special Deposits and Trust Fund balance		
T516 Operating Account	127	208
Total cash and deposits	127	208

8.2 Reconciliation of Net Result to Net Cash from Operating Activities

	2010 \$'000	2009 \$'000
Net result	(19)	(65)
Amortisation	32	23
Decrease (increase) in Receivables	(43)	(37)
Increase (decrease) in Employee entitlements	34	60
Increase (decrease) in Payables	(48)	37
Increase (decrease) in Other liabilities	3	2
Net cash from (used by) operating activities	(41)	20

8.3 Financing Facilities

	2010 \$'000	2009 \$'000
Tas Government Card – Credit card facility		
Amount used	1	4
Amount unused	14	13
Total	15	17

Note 9 Financial Instruments

9.1 Risk exposures

(a) Risk management policies

The Office has exposure to the following risks from its use of financial instruments:

- credit risk;
- liquidity risk; and
- market risk.

The Head of Agency has overall responsibility for the establishment and oversight of the Office's risk management framework. Risk management policies are established to identify and analyse risks faced by the Office, to set appropriate risk limits and controls, and to monitor risks and adherence to limits.

(b) Credit risk exposures

Credit risk is the risk of financial loss to the Office if a customer or counterparty to a financial instrument fails to meet its contractual obligations.

Financial Instrument	Accounting and strategic policies (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)
Financial Assets		
Receivables	Receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.	It is Office policy to issue invoices with 30 day terms of trade.

The following tables analyse financial assets that are past due but not impaired

Analysis of financial assets that are past due at 30 June 2010 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	83	83

Analysis of financial assets that are past due at 30 June 2009 but not impaired

	Past due 30 days	Total
	\$'000	\$'000
Receivables	41	41

(c) Liquidity risk

Liquidity risk is the risk that the Office will not be able to meet its financial obligations as they fall due. The Office's approach to managing liquidity is to ensure that it will always have sufficient liquidity to meet its liabilities when they fall due.

Financial Instrument	Accounting and strategic policies (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount. Timing and certainty of cash flows)
Financial Liabilities		
Payables	Payables are recognised at amortised cost, which due to the short settlement period, equates to face value, when the Office becomes obliged to make future payments as a result of a purchase of assets or services.	Payables, including goods received and services incurred but not yet invoiced arise when the Office becomes obliged to make future payments as a result of a purchase of assets or services. The Office's terms of trade are 30 days.

The following tables detail the undiscounted cash flows payable by the Office by remaining contractual maturity for its financial liabilities. It should be noted that as these are undiscounted, totals may not reconcile to the carrying amounts presented in the Statement of Financial Position:

2010

Maturity analysis for financial liabilities			
	1 Year	Undiscounted Total	Carrying Amount
	\$'000	\$'000	\$'000
Financial liabilities			
Payables	38	38	38
Total	38	38	38

2009**Maturity analysis for financial liabilities**

	1 Year	Undiscounted	Carrying
	Total	Total	Amount
	\$'000	\$'000	\$'000
Financial liabilities			
Payables	86	86	86
Total	86	86	86

9.2 Categories of Financial Assets and Liabilities

	2010	2009
	\$'000	\$'000
Financial assets		
Cash and cash equivalents	127	208
Loans and receivables	83	41
Total	210	249
Financial Liabilities		
Financial liabilities measured at amortised cost	38	86
Total	38	86

9.3 Net Fair Values of Financial Assets and Liabilities

2010	Total	Net Fair
	Carrying	Value
	Amount	Total
	\$'000	\$'000
Financial assets		
Cash in Special Deposits and Trust Fund	127	127
Receivables	83	83
Total financial assets	210	210
Financial liabilities		
(Recognised)		
Trade creditors	38	38
Total financial liabilities		
(Recognised)	38	38

2009

	Total Carrying Amount	Net Fair Value Total
	\$'000	\$'000
Financial assets		
Cash in Special Deposits and Trust Fund	208	208
Receivables	41	41
Total financial assets	249	249
Financial liabilities (Recognised)		
Trade creditors	86	86
Total financial liabilities (Recognised)	86	86

Financial Assets

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

The net fair value of receivables are recognised at amortised cost, less any impairment losses, however, due to the short settlement period, receivables are not discounted back to their present value.

Financial Liabilities

The net fair values for trade creditors are approximated by their carrying amounts.

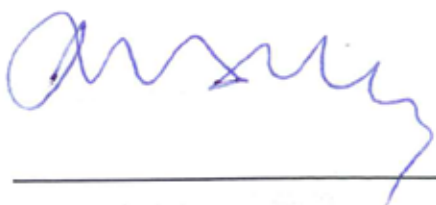
Note 10 Output Group Information

The Office of the Ombudsman and Health Complaints Commissioner is a single Output which is the fulfilment of the statutory responsibilities of the Ombudsman and Health Complaints Commissioner. The summary budgeted and actual revenues and expenses for this Output are the same as in the Statement of Comprehensive Income and the inclusion of a separate Output Schedule is not necessary.

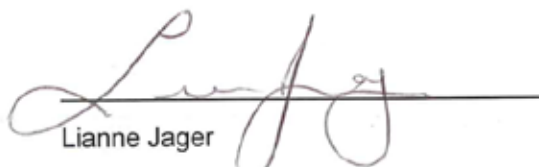
Statement by Head of Agency and Principal Accounting Officer

The accompanying Financial Statements of the Office of the Ombudsman and Health Complaints Commissioner are in agreement with the relevant accounts and records and have been prepared in compliance with Treasurer's Instructions issued under the provision of the *Financial Management and Audit Act 1990* to present fairly the financial transactions for the year ended 30 June 2010 and the financial position as at the end of the year.

At the date of signing, I am not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.



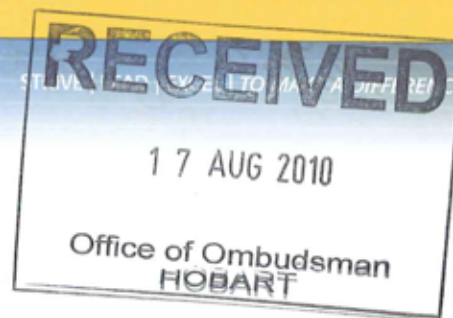
Simon Allston
HEAD OF AGENCY



Lianne Jager
BUSINESS MANAGER



Tasmanian Audit Office



INDEPENDENT AUDIT REPORT

To Members of the Parliament of Tasmania

OFFICE OF THE OMBUDSMAN AND HEALTH COMPLAINTS
COMMISSIONER

Financial Statements for the Year Ended 30 June 2010

Report on the Financial Statements

I have audited the accompanying financial statements of the Office of the Ombudsman and Health Complaints Commissioner (the Office), which comprises the statement of financial position as at 30 June 2010, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the statement from the Ombudsman.

Ombudsman's Responsibility for the Financial Statements

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and Section 27 (1) of the *Financial Management and Audit Act 1990*. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that is 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 upon my audit. My audit was conducted in accordance with 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 as to whether the financial statements are free of 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 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's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate to the circumstances, but not for the purpose of expressing an

opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the 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 an audit opinion.

My audit is not designed to provide assurance on the accuracy and appropriateness of the budget information in the Office's financial statements.

Independence

In conducting this audit, I have complied with the independence requirements of Australian Auditing Standards and other relevant ethical requirements. The *Audit Act 2008* further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of State Entities but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Tasmanian Audit Office are not compromised in their role by the possibility of losing clients or income.

Auditor's Opinion

In my opinion the financial statements of the Office of Ombudsman and Health Complaints Commissioner:

- (a) present fairly, in all material respects, the financial position of the Office of Ombudsman and Health Complaints Commissioner as at 30 June 2010, and of its comprehensive income, cash flows and changes in equity for the year then ended; and
- (b) are in accordance with the *Financial Management and Audit Act 1990* and Australian Accounting Standards (including Australian Accounting Interpretations).

TASMANIAN AUDIT OFFICE



H M Blake
AUDITOR-GENERAL

HOBART
16 August 2010

APPENDIX E: ORGANISATIONAL CHART

AS AT 30 JUNE 2010

