

OMBUDSMAN
TASMANIA



ANNUAL REPORT 2007-2008

SERVING THE TASMANIAN COMMUNITY

To

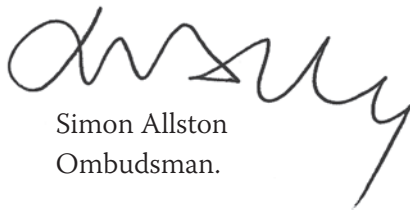
The Honourable the President of the Legislative Council

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 2007-08.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S. Allston', written in a cursive style.

Simon Allston
Ombudsman.

October 2008

OMBUDSMAN TASMANIA ANNUAL REPORT 2007/8

Inquiries about this twenty-ninth annual report, or any of the information or references contained within, should be directed to –

THE OMBUDSMAN

Telephone: 1800 001 170 (Free call)
03) 6233 6217
Facsimile: (03) 6233 8966
E-mail: ombudsman@ombudsman.tas.gov.au
Internet: www.ombudsman.tas.gov.au

The Office of the Ombudsman is located at Ground Floor, 99 Bathurst Street, Hobart, Tasmania 7000.

© OMBUDSMAN, TASMANIA 2008

APART FROM ANY FAIR DEALING FOR THE PURPOSE OF PRIVATE STUDY, RESEARCH, CRITICISM OR REVIEW, AS PERMITTED UNDER THE COPYRIGHT ACT 1968, NO PART OF THIS REPORT MAY BE REPRODUCED BY ANY PROCESS WITHOUT WRITTEN PERMISSION.

ISBN – 978-0-9804203-2-6 (PAPERBACK FORMAT)
ISBN – 978-0-9804203-3-3 (ONLINE FORMAT)

TABLE OF CONTENTS

From the Ombudsman	5
Role of the Ombudsman	12
Energy Ombudsman	15
Freedom of Information Reviews	17
Public Interest Disclosures	24
<i>Telecommunications (Interception) Tasmania Act 1999</i>	27
Police Complaints	28
Prison Complaints	34
Ashley Youth Detention Centre	39
Public Authorities	41
Prison Official Visitor Program	56
Appendix A: Statistics Appendix B: Energy Ombudsman Complaint Activity Appendix C: Financial Statement Appendix D: Independent Audit Report	58

FROM THE OMBUDSMAN

This is my third annual report under section 30 of *the Ombudsman Act 1978*. Although it is a report on the performance of my functions as Ombudsman, it is also an opportunity to report on the performance of my office as a whole. I am both Ombudsman and Health Complaints Commissioner, and the staff who assist me with each of these roles work together as a team.

I publish a separate annual report under section 12 of the *Health Complaints Act 1995*, dealing solely with my work as Health Complaints Commissioner. This can be viewed at www.healthcomplaints.tas.gov.au. A brief description of the major changes that have occurred in the management of this jurisdiction during the year are included below.

Caseload

The past year has seen increasing demand for the services of this office. The number of complaints received in the Ombudsman jurisdiction increased from 374 in 2006/7 to 433 in the reporting year, an increase of 14%. The number of complaints received in the Health Complaints jurisdiction rose from 224 to 235, an increase of 5%. The most significant increase was in the Energy Ombudsman jurisdiction, where the number of complaints received rose from 133 to 227, an increase of 71%.

In these figures, I am referring to our complaint management work. On top of this comes our substantial workload in addressing enquiries from members of the public that do not develop into complaints. Recorded enquiries in the Ombudsman jurisdiction opened and closed during the year increased from 500 to 628, an increase of 26%, and recorded enquiries in the Health Complaints jurisdiction rose from 298 to 475, an increase of 59%. These increases are, in part, attributable to greater discipline in recording enquiries and the jurisdictions to which they relate. Part of the reason also lies in the fact that prison inmates and remandees can now contact the office by telephone, an initiative I refer to again later.

Resources

Twenty staff worked in the office at year's end, representing 16.4 FTE's. Turnover during the year was low, with three staff leaving, and three new staff being recruited. At the time of reporting, only two of my staff are temporary. The only temporary staff member at the time of my last annual report has been made permanent in the meantime.



Simon Allston

HIGHLIGHTS

Ombudsman complaints up by 14%

Health complaints up by 5%

Energy complaints up by 71%

Increase in complaints and enquiries from prison inmates

Increase in complexity of FOI reviews

108 of 227 Energy complaints dealt with through Aurora Energy RHL

Significant changes to the management of the Health Complaints' jurisdiction

New case management database

Part of the responsibility of an Ombudsman is to assist in the improvement of Government administration.

I am very pleased with the quality and dedication of my current staff. The standard of work that we produce is uniformly high, across the office.

My continuing concern about resources is that officers who have the capacity to carry out major investigations are overly occupied with day-to-day complaint management work. I need to be able to freely devote resources to a major investigation when it arises in dealing with a complaint. In addition, part of the responsibility of an Ombudsman is to assist in the improvement of Government administration by carrying out an independent investigation, on his or her own motion, of matters of administration that, in the public interest, deserve scrutiny. Such matters might, for example, involve standards of ethical conduct, possible breaches of human rights, potentially illegal behaviour or apparent administrative inefficiency (I also have own motion powers as Health Complaints Commissioner, to be used in seeking to improve health services). With the workloads currently carried by my most skilled investigators, I cannot freely embark on such projects.

Ideally, I would create a separate investigation unit in the office to handle major investigations arising in any of my jurisdictions. This would have two staff. I applied for funding this year that would have enabled this to happen. The request was for funding for a Deputy Ombudsman, on various grounds, one of which was that the additional funding would free up one senior salary to be used in the establishment of an investigation unit. The application for funding was declined, without explanation. So was the application for additional funds needed to meet recurrent costs associated with our new case management database. These latter costs will now have to be met out of the other resources of the office, which are slim.

Case management system

The project to replace the office's case management system is well advanced. Tenders closed in August 2007, and five tenders were received. The successful tenderer, after an exhaustive assessment process, was Beethoven Pty Ltd, the producer of the *Resolve* database system. A contract was signed in March, implementation started in April, and the intended "go live" date is mid-October.

The *Resolve* system is used by a number of other Ombudsmen in Australia, by one other Health Complaints Office, and by two other Energy Ombudsmen. It is therefore particularly suitable for our purposes. However, it is a complex task to introduce a system which

addresses each of my different jurisdictions, all of which necessarily use different processes, and which does so in a way that will enable us to match our performance against comparable offices elsewhere.

Statistics

I have already mentioned the increase in complaint numbers in my three main jurisdictions.

To analyse the statistics for complaints under the *Ombudsman Act* 1978, 67% of all complaints were against Government departments, and 17.5% were against local councils. The number of complaints against departments rose from 227 to 274, an increase of 21%. Complaints against councils rose from 63 to 76, an increase of the same magnitude. Complaints against public authorities were up by 70%, from 27 to 46. Those against Government Business Enterprises (GBEs) rose from 21 to 31, an increase of 48%.

As is usual, the departments against which most complaints were made were the Department of Health and Human Services (DHHS) (37%), the Department of Justice (27%) and the Department of Police and Emergency Services (16%). Total complaints against police dropped from 46 to 34.

There was a substantial increase in complaints from inmates and people on remand in the State's prisons, from 27 to 56, an increase of 107%. The reason for this is most likely that since last July inmates and remandees have been able to make complaints to the Office by telephone.

Complaints from detainees in the Ashley Detention Centre rose from 17 to 21, an increase of 23%. This is probably due to better knowledge of the role of the Ombudsman among detainees and staff at Ashley, as a result of revised complaint procedures adopted in the facility in 2007.

A notable feature of the complaint statistics is the increase in complaints against the Pharmaceutical Services Branch (PSB) of DHHS, from two to 18. These complaints almost universally relate to the stricter controls introduced by PSB in the last year over authority to prescribe opiates.

Energy Ombudsman

As I have mentioned, there has been a significant surge in complaint numbers in this jurisdiction. (However, enquiry numbers dropped from 118 to 82, a decrease of 31%.) As a result, at year's end we carried forward 64 files, compared to 47 at the end of 2006/7. Staff numbers had not increased.

The reasons for the increase in complaint activity in workload are not clear. One factor may be the introduction in mid-2007, in conjunction with the electricity retailer Aurora Energy Pty Ltd, of what we call our "RHL process". The letters RHL stand for "refer to a higher level". The process involves referring suitable complaints back to more senior management in Aurora, to give them the opportunity to attempt resolution before my office becomes more significantly involved. Of the 227 new complaint files in this jurisdiction in 2007/8, 108 were dealt with in this manner. These complaints are usually rapidly resolved. Nonetheless, they generate a significant administrative load for my staff.

I am very pleased to note that, despite the increasing workload in this jurisdiction, the number of complaints closed within 28 days increased from 33.33% to 54.39% between the first quarter in 2007 and the first quarter in 2008. Over the same period, the number of complaints closed within 90 days rose from 68.63% to 80.7%.

Freedom of Information Act 1991

The number of approaches to the Office in this jurisdiction dropped this year, from 79 in 2006/7, to 63. The number of reviews also declined, from 37 to 20. However, we have carried out a number of major reviews, each of which has required the examination of difficult legal issues and the examination of large numbers of documents. The load in this jurisdiction has been such that I have gone from using one full-time officer only to using an additional part-time officer. This has helped reduce the time taken to handle FOI reviews, but it is exceptional that a review can be completed within the 30-day timeframe required by section 48(6) of the Act. As I stated in my annual report last year, that provision requires review, as does the Act as a whole. I am pleased to note that the Government has made a commitment to carry out such a review, since year's end.

Subsidiary jurisdictions

There has been some activity under the *Public Interest Disclosures Act* 2002 this year. I referred two matters to the Auditor-General under section 44 of the Act, as being more suited to investigation by him than by me. I also commenced a major investigation following a disclosure about human resource practices in a local council in Northern Tasmania. That investigation was not complete at year's end.

I have again received no complaints under the *Personal Information Protection Act* 2004, and nothing has been required of me under the *Witness Protection Act* 2000 or the *Adoption Act* 1988.

I have continued to discharge my audit responsibilities under the *Telecommunications (Interception) Tasmania Act* 1999, with two audits being carried out in the reporting year.

Additional responsibilities

I have been appointed as the inspection entity for the purposes of the *Police Powers (Controlled Operations) Act* 2006 and the *Police Powers (Surveillance Devices) Act* 2006. These responsibilities also involve the audit of police records. The Acts have yet to commence.

From July 2009 I will also be providing ombudsman services in relation to water and sewerage complaints, pursuant to provisions in the *Water and Sewerage Industry Act* 2008. A customer who is not satisfied with the outcome of their complaint under the provider's customer complaints process will be able to take the matter to the Ombudsman under the *Ombudsman Act* 1978. I have received an additional \$50,000 in this year's budget to enable me to prepare for this additional work.

Health Complaints jurisdiction

It is important to briefly mention my work as Health Complaints Commissioner during the year, in order to give a more complete picture of the activities of the Office. I have earlier referred to the fact that complaint numbers increased by 5%, and enquiries in this jurisdiction rose by 59%.

Starting in March 2008, I introduced a number of significant changes to the way in which this jurisdiction is administered. These involved:

Additional responsibilities to come under the Police Powers Acts, and the Water and Sewerage Industry Act.

- Forming a team of two officers to assess new complaints. The *Health Complaints Act 1995* requires that complaints be assessed within a period of 45 days, extendable to 90 days, to determine how they are best handled. Complaints can often be resolved during this period. This initiative is designed to improve our performance in meeting the statutory timeframes.
- Limiting the formal investigation of complaints to cases where public interest issues arise.
- Increasing the use of conciliation, and referring cases to conciliation sooner than has previously been the case.

These changes will mean that complaints are addressed more quickly, and will advance one of the fundamental purposes of the Health Complaints system, which is to reduce litigation.

Community outreach

We again held a stall this year at Agfest and the Royal Hobart Show, and also included a presence at the University of Tasmania during Orientation Week. I have given numerous talks to community and professional groups about my roles and the services provided by the Office. There have also been regional visits, one by myself to the west and north-west coasts and one by Richard Connock, Principal Officer (Ombudsman), to the north-east and east coasts. Unfortunately, despite extensive promotion, these visits did not attract much local interest.

We now have new brochures covering the Ombudsman, Health Complaints, Energy Ombudsman and FOI jurisdictions, together with a new Information Sheet explaining all of the jurisdictions under which we engage with the public. These will be extensively distributed during the forthcoming year.

We attended Agfest, the Royal Hobart Show, UTAS orientation week, as well as visiting community groups and regional areas around the State.

Conclusion

The institution of the Ombudsman is one of the essential checks and balances in modern government. It is a community resource, providing the potential for swift, independent review of administrative action, and a means of resolving difficulties with government without recourse to litigation.

As this report amply indicates, the Ombudsman also represents an independent officer to whom additional review and oversight functions can suitably be given. I believe that we have reached the point, however, where additional functions cannot be absorbed, and the full expectations of an Ombudsman met, without additional resources.

The State is well served by the staff assisting me in the discharge of my functions, and I thank each and every one of them for their assistance and support during the reporting year.



SIMON ALLSTON
OCTOBER 2008

ROLE OF THE OMBUDSMAN

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

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

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

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

All of the jurisdictions operate on the principles of independence, impartiality, equity, fairness and accessibility, with a commitment to the resolution of disputes in an efficient manner.

Ombudsman

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

FOI Review

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

Public Interest Disclosures

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

Personal Information Protection

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

Health Complaints Commissioner

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

Under the Act the Commissioner is required to:

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

Energy Ombudsman

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

Cross-jurisdiction services

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

Approaching the office

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

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

ENERGY OMBUDSMAN

The Ombudsman administers the *Energy Ombudsman Act 1998*, supported by a Principal Officer (Energy) and an Investigation Officer. Appendix B of this report is dedicated to the Energy Ombudsman and provides statistical information for 2007/8. This section is included because the *Energy Ombudsman Act 1998* does not require a separate annual report, presumably expecting that reporting on the Ombudsman's functions under that Act will occur under the *Ombudsman Act 1978*. (An annual Energy Ombudsman report is nonetheless produced as a matter of good practice, and as a resource for the energy entities, consumers and others. A full report can be viewed at www.energyombudsman.tas.gov.au).

The introduction to this report contains a description of the more significant aspects of the administration of this jurisdiction during the year, and the statistics in Appendix B demonstrate increasing demand for the services of the Energy Ombudsman. The number of complaints received increased from 133 in 2006/7 to 227 this year, a rise of 71%. However, enquiry numbers decreased from 118 to 82, a drop of 31%.

The process introduced last year under which suitable complaints are referred in the first instance to senior management in Aurora Energy – our "RHL process" – has proved extremely effective, and may have given rise to some of the increased demand. Out of the 227 new complaint files opened this year, 108 passed through this process.

The number of cases managed through the RHL process has increased progressively through the year, with 14 cases being dealt with in this way in the first quarter, 27 cases being referred in the second and third quarters, and 40 cases being referred in the last quarter.

The number of complaints about gas services has continued to remain at a very low level, constituting five of the 227 complaints received. As is to be expected, nearly all complaints were against Aurora Energy, as the monopoly electricity retailer to domestic and small business customers, representing 97.4% of the total.

A significant feature of the statistics reported is the increase in the number of complaints about bills. Billing is recorded as having been an issue in 182 cases, increasing from 129 the previous year. This could be connected to the higher cost of living, and the fact that Aurora Energy now includes contact details for the Energy Ombudsman on disconnection warnings.

Another interesting statistic is the number of cases in which a negotiated outcome was achieved. This rose from 52 in 2006/7, to 95 this year – an indicator of the efficient way this office assists in resolving complaints.

A significant feature of the statistics reported is the increase in the number of complaints about bills.

FREEDOM OF INFORMATION REVIEWS

Role of the Ombudsman

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

The FOI Act

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

- obtain information contained in the records of government agencies and Ministers specified in the FOI Act; and
- have information in such records which relates to their personal affairs amended where it is incorrect, incomplete, out of date or misleading.

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

Powers

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

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

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

Who can lodge an FOI application?

Any individual person or corporate entity can apply for access to information under the FOI Act. An individual can apply to amend information that relates to his or her personal affairs.

All applications are, in the first instance, made directly to the agency that has possession of the relevant information.

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

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

Who applies for external reviews?

External review applicants continue to come from every part of society.

Applications are made by:

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

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

FOI workshops

During the reporting period, staff conducted seven workshops aimed to give Agency FOI officers practical material to acquaint them with the responsibilities, appointment and functions of authorised officers under the FOI Act.

Website

The Ombudsman's office maintains a website to assist in the making of an application. The website is linked to sites of the Information Commissioners in Queensland and Western Australia. The current web address is:

www.ombudsman.tas.gov.au/freedomofinformation.

Freedom of Information statistics

During the reporting period the office received 63 (79 in 2006/7) new applications under the FOI Act. Of the 63 applications, 20 (37 in 2006/7) external reviews were finalised.

FOI TABLE 1.
RESULTS OF FINALISED CASES

Decision	2005/6	2006/7	2007/8
Agency decisions affirmed	13	15	10
Agency decisions varied	5	18	10
Agency decisions set aside	5	4	0
Other*	34	42	43
Total	57	79	63
Total external reviews/determinations	23	37	20

* The term "other" denotes those applications that did not result in reviews. There can be numerous reasons for this – e.g., out of jurisdiction, application withdrawn, resolved without review, etc.

FOI TABLE 2.
REVIEWS AGAINST STATE GOVERNMENT DEPARTMENTS

Departments	2005/6	2006/7	2007/8 Applications received	2007/8 Reviews undertaken	2007/8 Agency decision Varied
Economic Development (DED)	0	0	0	0	0
Education (DOE)	2	0	3	1	1
Health & Human Services (DHHS)	0	5	15	4	1
Infrastructure, Energy & Resources (DIER)	0	2	3	0	0
Justice (DOJ)	5	6	9	2	0
Police & Emergency Management (DPEM)	2	6	2	1	1
Premier & Cabinet (DPAC)	0	2	1	2	2
Primary Industries & Water (DPIW)	2	4	6	0	0
Treasury & Finance (DT&F)	0	2	0	0	0
Tourism, Arts & the Environment (DTA&E)	3	2	3	0	0
Sub-total	14	29	42	10	5

FOI TABLE 3.
REVIEWS AGAINST LOCAL GOVERNMENT

Departments	2005/6	2006/7	2007/8 Applications received	2007/8 Reviews undertaken	2007/8 Agency decision Varied
Break O'Day Council	0	0	1	0	0
Central Coast	1	0	2	0	0
Circular Head Council	1	0	0	0	0
Huon Valley Council	1	0	1	1	0
Kingborough Council	0	0	2	1	1
Launceston City Council	0	0	0	1	0
Southern Midlands Council	0	0	2	0	0
Tasman Council	0	0	2	0	0
Clarence City Council	0	0	0	1	0
Glamorgan/Spring Bay Council	0	1	1	0	0
Sub-total	3	1	11	4	1

FOI TABLE 4.
REVIEWS AGAINST STATUTORY AUTHORITIES AND OTHER BODIES

Departments	2005/6	2006/7	2007/8 Applications received	2007/8 Reviews undertaken	2007/8 Agency decision Varied
Anti-Discrimination Commissioner	3	1	0	0	0
Aurora Energy	0	0	5	2	2
Clyde Water Trust	0	1	0	0	0
Director of Public Prosecutions	0	2	0	0	0
Forestry Tasmania	0	0	5	3	1
Law Society of Tasmania	0	1	1	0	0
Legal Aid Commission	0	0	1	0	0
Medical Council	1	0	0	0	0
Psychologists Registration Board	0	0	2	0	0
Transend Networks	2	1	1	0	0
University of Tasmania	0	0	1	1	1
Private Forests	0	1	0	0	0
Sub-total	6	7	16	6	4
Out of jurisdiction	0	0	1	0	0
Total (Tables 2,3 and 4)	23	37	70	20	10

Information affecting personal privacy: Police files

The review in this case raised important issues about the interpretation and application of section 30 (the exemption for information affecting personal privacy) of the *Freedom of Information Act* 1991 (the FOI Act) including the “reverse FOI procedures” contained in sections 30(3), (4) and (5).

The Australian Broadcasting Corporation (ABC) applied to Tasmania Police under the FOI Act for access to information concerning a police internal investigation into possible criminal offences or breaches of discipline by serving police officers, arising from the “non prosecution” of an alleged offender. Tasmania Police claimed that the information falling within the terms of the request was exempt from producing the information under section 30 of the FOI Act.

After considering the relevant legal authorities, the Ombudsman was satisfied that, in so far as the information at issue related to the performance by a police officer of that officer’s work or duties, disclosure of that information would not, within the terms of section 30 of the FOI Act, represent the disclosure of information relating to that officer’s personal affairs. The information instead related to the officer’s employment affairs.

The situation in relation to information identifying the alleged offender was different. The offender had not been charged with an offence and therefore the alleged criminal conduct was never proven. The Ombudsman found that all information identifying the offender or enabling the offender to be identified was information relating to the offender’s personal affairs within the terms of section 30 of the FOI Act, and that it would be unreasonable for this to be released. This information was found to be exempt, but the Ombudsman determined that all of the remaining information should be provided to the ABC. The full decision can be read on the Ombudsman’s website at www.ombudsman.tas.gov.au.

Information affecting legal proceedings

In this case a Member of Parliament sought access to information provided to the Launceston City Council by its legal representatives in relation to the “Regional Aquatic Centre appeals process”. In response, the Council partially released the records but deleted information claimed to be exempt under section 29 (the exemption for information affecting legal proceedings) and section 31 (the exemption for information relating to trade secrets and competitive disadvantage) of the FOI Act.

The Ombudsman upheld the claim of legal professional privilege in relation to information giving the Council legal advice about existing litigation concerning the Regional Aquatic Centre. However, the Ombudsman was not satisfied that other information related solely to the formation of a costs agreement between the Council and a barrister regarding the litigation fell within section 29 of the FOI Act. The Ombudsman was also not satisfied that information concerning legal fees relates to trade secrets or that the disclosure of the information under the FOI Act would be likely to expose the barrister to competitive disadvantage within the meaning of section 31, the result being that the information was not exempt information and was required to be released to the applicant.

Exposure to competitive disadvantage and confidential information

The applicant applied to the Department of Justice for documents relating to a psychological profiling test. The applicant undertook the test through a professional organisation to determine her psychological suitability for employment with the Department. The Department claimed that the documents were exempt from disclosure pursuant to section 33 (information obtained in confidence) and section 31 (information relating to trade secrets and competitive disadvantage) of the FOI Act.

It was apparent that the requested documents were communicated in confidence to the Department by the professional organisation as they contained a statement that the information was privileged and confidential and to be used only by the Department. They also contained a statement that no part of the requested information could be disclosed to anyone outside the Department, including the applicant. The applicant had also signed a release form that included express agreement that all findings would be kept confidential.

It was determined that disclosure of the requested information would be reasonably likely to impair the ability of the Department to obtain similar information in the future, as the professional organisation might not be as candid in its reporting if there was a likelihood that disclosure would subsequently be made to the subject candidate. It was found that disclosure would thus be contrary to the public interest, in that it would create the risk that the Department might not be able to obtain reliable psychological testing to assist it in the assessment of the suitability of candidates.

In relation to whether the requested information related to trade secrets, the organisation had selected a particular combination and structure of tests and a form of analysis used during the psychological profiling. This particular combination and structure of testing was not known outside of its business. The organisation had spent considerable effort and funds in developing its testing methods and analysis and had taken steps to ensure that the reports are kept strictly confidential. On this basis, it was determined that the requested information related to trade secrets.

Information affecting personal privacy: Employment

The applicant sought access to records of applications for two positions of employment with the Department of Health and Human Services. The Department released some of the requested information after deleting the names of the job applicants and claimed an exemption in relation to the balance under section 30 (information affecting personal privacy) of the FOI Act. The Department consulted with each job applicant, as required by the FOI Act, notifying them of the request.

It was determined that all the information contained in the requested information, including the names of all the job applicants (except for those who were successful) related to information that was personal to the individuals concerned within the terms of section 30. It was determined that the mere presence of an applicant's name revealed something personal about that individual, namely that he or she had applied for a position of employment. In contrast, it was determined that the names of the successful applicants did not relate to personal affairs.

The next issue for determination was whether disclosure of the information deemed to relate to personal affairs, would be unreasonable. This required a balancing exercise between the interests of the applicant against the potential harm to the privacy of the other job applicants. There was no doubt that most of the information in question was of a sensitive nature as it contained details relating to the job applicant's personal circumstances such as their address, marital status, work history, educational achievements and personality characteristics. The information was generated in a context where the job applicants would not reasonably have expected there would be disclosure to a third party.

It was considered that although there is a need for transparency in the administration of government tasks, such as the appointment and promotion of employees, to ensure that there is a fair and impartial system in place, this did not outweigh the desirability of keeping personal details of the job applicants confidential.

PUBLIC INTEREST DISCLOSURES

The Act

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

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

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

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

- publishing guidelines to assist public bodies in interpreting and complying with the Act;
- reviewing written procedures established by public bodies;
- determining whether a disclosure received by the Ombudsman warrants investigation;
- investigating disclosures;
- monitoring investigations which have been initiated by public bodies or which have been referred to public bodies; and
- collating and publishing statistics about disclosures handled by the Ombudsman.

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

Annual reporting requirements under section 84

Section 84 of the Act sets out the annual reporting requirements for the Ombudsman (refer PID Table 1). Three disclosures were received under the Act in the reporting year. Two were referred to the Auditor-General, and an investigation into the third was commenced. This investigation, into human resources practices in a local council in northern Tasmania, was not complete at year’s end. It is the first investigation of a public interest disclosure that the Ombudsman has conducted since the commencement of the Act.

PID TABLE 1.
SECTION 84(A TO L) - PERIOD COVERED: 1 JULY 2007 TO 30 JUNE 2008

Sub-section	Annual Report requirements	Response
(a)	Information as to how persons may obtain or access copies of the current guidelines published by the Ombudsman under Part 6.	Ombudsman’s website or office
(b)	The number and type of disclosures made to the Ombudsman during the year.	3
(c)	The number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures.	1
(d)	The number and types of disclosed matters that during the year the Ombudsman has investigated.	1 (not yet complete)
(e)	The number and types of disclosed matters that during the year the Ombudsman has referred – i. under section 41, to the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; or ii. to a public body to investigate under Part 7.	2 Nil
(f)	The number and types of disclosed matters – i. that the Ombudsman has declined to investigate during the year; or ii. that were referred by a public body during the year to the Ombudsman to investigate.	Nil
(g)	The number and types of disclosures referred to the Ombudsman under this Act by the President of the Legislative Council or the Speaker of the House of Assembly during the year.	Nil
(h)	The number and types of investigations of disclosed matters taken over by the Ombudsman during the year.	Nil
(i)	The number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year.	Nil
(j)	The recommendations made by the Ombudsman during the year in relation to each type of disclosed matter.	Nil
(k)	The recommendations made by the Ombudsman during the year re the procedures established by a public body under Part 7.	Nil
(l)	The action taken during the year on each recommendation of the Ombudsman under this Act.	N/A

There have been no notifications to the Ombudsman under section 34, of a disclosure determined by a public body to be a public interest disclosure.

There have been no referrals of disclosures to the Ombudsman from public bodies in accordance with section 35, or from the State Service Commissioner in accordance with section 28, or the President of the Legislative Council or the Speaker of the House of Assembly in accordance with section 78.

There have been no formal reviews of public body procedures under section 62. Most public bodies follow the model procedures prepared by the Ombudsman. There have been no notifications to the Ombudsman by a public body, under section 34.

The PID Act encourages and facilitates the making of disclosures about improper conduct by public officers and public bodies

TELECOMMUNICATIONS (INTERCEPTION) TASMANIA ACT

The *Telecommunications (Interception) Tasmania Act 1999* (the Act) requires that certain records be kept by Tasmania Police with respect to the interception of telephone calls by Police. The Ombudsman is given the role of auditing the extent of Tasmania Police's compliance with certain aspects of the legislation.

Pursuant to part 3 of the Act the Ombudsman may at any time, but at least once every six months, inspect the records of the service. The purpose of the inspections is to monitor the extent of Tasmania Police's compliance with the requirements of part 2 of the Act as to the keeping of records and the provision of documents and reports to the Minister. The Ombudsman reports annually on the outcome of his inspections to the Minister.

Inspections were carried out in December 2007 and June 2008, as required by section 10 of the Act. Inspecting officers remain impressed with the standard of record keeping, level of security and general compliance with the requirements of the Act demonstrated by Tasmania Police. The Ombudsman reported on the inspections to the Minister.

At least once every six months the Ombudsman must inspect the records of the service.

POLICE COMPLAINTS

The Ombudsman is at present the only independent body in Tasmania with power to review activities and conduct of officers of Tasmania Police. However, he is limited to reviewing administrative action. This does not include police misconduct in the course of operational activity.

That review function continues to be performed in accordance with Guidelines developed several years ago by the Ombudsman and the Commissioner of Police whereby complaints against Police are initially referred to Police Internal Investigations, with the Ombudsman monitoring progress. Once they have completed their enquiries, Internal Investigations report the outcome to the Ombudsman and, if the complaint has been substantiated, outline any action taken to address it. The Ombudsman then reviews the investigation. On nearly all occasions, the Ombudsman has been satisfied that Internal Investigations have handled complaints in a fair, thorough and appropriate manner.

The Guidelines do not preclude the Ombudsman from conducting his own investigations, nor from conducting a fresh investigation into a matter previously referred to Internal Investigations. There have been occasions when officers of the Ombudsman have undertaken preliminary enquiries in relation to a Police complaint without referring it to Internal Investigations. This usually involves the inspection of Police files and interviewing the parties to the complaint. When this has occurred, Tasmania Police, recognising the independence and authority of the Ombudsman, have cooperated readily and complied with all requests for information.

Complaints against Police have steadily declined in recent years, from 82 in the 2004/5 reporting year to 61 in 2005/6 (a decrease of around 25%), and 46 in 2006/7 (again a decrease of around 25%). The number of complaints received this reporting year was 35, which represents a further decrease of approximately 24%. There is no obvious explanation for the reduction in the number of complaints.

As in previous years, people complaining about Police fell within two broad categories – those who thought Police did too little and those who thought they did too much. Examples of the former included alleged failures to investigate and/or prosecute offences, alleged failures to take action in particular situations and alleged delay in processing matters.

Examples of the latter included allegations of harassment by and unwarranted attention from Police, wrongful issuing of infringement notices and wrongful arrest and/or prosecution.

As in previous years, most complaints about Police were either declined, discontinued or not substantiated. There continued to be a comparatively high percentage of complaints that related to the manner in which individual officers carried out their duties. Because these involved operational matters rather than administrative action, they were outside the Ombudsman's jurisdiction.

Complaints that were not investigated included:

- A complaint that a Caution Infringement Notice for having a rear number plate obscured by a tow ball should be withdrawn because the number plate was clearly visible behind the tow ball in a subsequent photograph taken by a speed camera. The complainant had taken the matter up directly with Tasmania Police Traffic Liaison Services who advised that it was satisfied that the tow ball obscured the number plate. It was noted that a Caution Infringement Notice can only be issued to a driver who accepts responsibility for the offence, and if the complainant continued to dispute liability, it was proposed that the Caution be withdrawn and a full Infringement Notice be issued so that the complainant could put her grievance before a court. The Ombudsman was of the view that the Police response had been reasonable and that it was not his role but that of the court to determine liability. The complaint was declined under section 20(1) of the *Ombudsman Act 1978* because the complainant had the right to have the action she complained of reviewed by a court.
- A complaint that Tasmania Police had insisted upon the complainant signing a statement which was then relied on in support of an application for a Police Family Violence Order (PFVO) against her partner. The PFVO was made and, as a result, the complainant and her children had been unable to have any contact with the complainant's partner. The complainant asserted that the contents of the statement were incorrect but Police had refused to respond to her requests that it be amended. By making her complaint, the complainant wanted to have the PFVO withdrawn. Again, this was a matter for the court, and the Ombudsman declined to investigate the complaint. However, with the consent of the complainant, the matters raised by her were

*Complaints
against Police
have steadily
declined in
recent years.*

referred to Tasmania Police Internal Investigations to be dealt with as a Customer Service Complaint.

- The grandparents of a child complained that Police had failed to take action to retrieve their grandson after associates of his mother had taken him from outside his school. The child had been living with the complainants' son, pursuant to an agreement that had been reached between him and the child's mother, from whom he was separated. The complainants' son had then been remanded in custody and the child had gone to live with the complainants. Had the parenting agreement been sanctioned by the Family Court or the Federal Magistrates' Court, then the Australian Federal Police, rather than Tasmania Police, would have been the agency with the authority to act, but it had not. The complainants were not the legal guardians of the child. Tasmania Police confirmed that the persons who had taken the child had done so on the authority of the mother and, in the circumstances, there was nothing further Police could do, other than to ensure that the child was safe. The complainants confirmed that he was. The Ombudsman was not satisfied that there had been any administrative action on the part of Tasmania Police that he could investigate, and in any event, was not satisfied that the Police had behaved unreasonably.

Other examples are given in the following case summaries.

Retention of seized property

An inmate of the Hobart Reception Prison complained that items of his personal property, which had been seized by Police from his home at the time of his arrest, had not been returned to him. The complainant also alleged that Police had not issued a Field Receipt for the items of property taken.

Tasmania Police confirmed that the items had been seized as part of a murder investigation, that they had been receipted into miscellaneous property at Bellerive Police Station and were retained for use as possible exhibits at any trial. The items seized included not only items of clothing and the complainant's mobile telephone, but also items of furniture and bedding. Copies of the relevant entries in the Miscellaneous Property Receipt Book and Register were provided to the Ombudsman by Police confirming all the items seized, the date they were seized and where they were being stored.

Records showed that after the complainant had pleaded guilty to the murder, he had contacted Police seeking the return of his property. The Police Property Officer had then contacted Prisoner Support Services at the Risdon Prison Complex because he thought that the Prison would not be willing to accept and store items of furniture belonging to an inmate. The Property Officer had suggested that arrangements should be made for the complainant to authorise a third party to collect the property on his behalf. The Property Officer had heard nothing further in this regard.

Tasmania Police acknowledged that no Field Receipt had been issued, and that the relevant provisions of the Police Manual had not therefore been complied with in this instance. Clause 2.28.6 of the Manual requires that, "where practicable," Field Receipts are to be issued when officers take possession of property in the field for further investigation or for use as an exhibit. Field Receipts are made in triplicate; the original is given to the person from whom the property is taken, one copy is placed on the relevant Police file and the other remains in the Field Property Receipt Book as a permanent record. The only explanation for the failure to provide a Field Receipt on this occasion was that the officers concerned had been deeply involved in the investigation. This was an oversight, but it was reiterated that all items seized had been accurately recorded – not only in the Register, but on Exhibit Sheets.

Despite the failure to issue the Field Receipt, the Ombudsman was satisfied that Tasmania Police had made an accurate and sufficient record of the property that had been taken from the complainant, and had taken steps for return of the property, some of which was not practical for Corrective Services to store on behalf of the complainant. The Property Officer had not heard further from Prisoner Support Services, and there was little that could be done until arrangements were made for the storage of the complainant's property. The Ombudsman was of the view that there had been no defective administration on the part of Tasmania Police that would warrant an investigation.

Failure to prosecute in a timely fashion

While in prison for driving offences in 2006, the complainant alleged that he had been sexually and physically assaulted on a number of occasions. He made a complaint to Tasmania Police; a statement was taken and forensic tests were conducted. When it seemed to the complainant that no progress had been made in relation to the prosecution of the alleged offenders some six months later, he complained to the Ombudsman alleging undue delay on the part of Police. The complaint was referred to Police Internal Investigations for a response.

It seems that after the complainant had disclosed to custodial staff that he had been sexually assaulted on four occasions and physically assaulted on another occasion, he had been taken to the Royal Hobart Hospital where Detectives from Eastern CIB had attended him. The statement had been taken and a number of exhibits were collected for forensic analysis. The following day, the two men identified by the complainant as his assailants, were interviewed by Police, and their interviews video taped. Both denied the allegations. Another inmate, whom the complainant alleged was involved, was approached some months later but declined to be interviewed.

There was some evidence that corroborated the complainant's version of events, including his disclosures to prison staff, and the fact that another inmate in the same unit had said that the complainant had told him of the sexual assaults, and that he had heard the alleged perpetrators threatening newcomers to the unit with assaults of a similar kind. Police were concerned that, should the matter go to trial, this other inmate's credibility as a witness would be vigorously challenged by defence counsel because he had a history of committing crimes of dishonesty. Another inmate claimed that the alleged perpetrators had attempted to assault him in the same manner as alleged by the complainant, but he refused to provide a statement or to be involved in the matter in any way.

At the time of providing its response to the Ombudsman, Tasmania Police were still awaiting medical reports from the Risdon Prison Medical Service and the Prison Support Councillor. The results of forensic testing had also been delayed due to a backlog of cases with Forensic Science Services (FSS), but Police had asked for the forensic examination to be completed as a matter of urgency. While conceding that the delay by FSS could have been queried earlier, Police maintained that it had been appropriate to wait for the results of forensic testing before taking further action.

When the results were finally received, they were found to be negative and did not assist Police in their enquiries. This outcome had been anticipated to an extent because condoms had been placed over the objects used to assault the complainant, and Police had explained this to the complainant at a comparatively early stage of their investigation. Notwithstanding that the evidence available to Police suggested that the prospects of obtaining convictions against the alleged perpetrators were not good, Police advised the Ombudsman that the matter had been referred to the Director of Public Prosecutions (DPP) for consideration. It is for the DPP to decide whether or not a particular prosecution should proceed, and his decisions in this regard are not reviewable by the Ombudsman.

Although there was delay due to the backlog at FSS, and Police could have sought to expedite the process in this instance, the Ombudsman was satisfied that it was appropriate to await the outcome of forensic testing before referring the matter to the DPP, and the delay had not been undue considering the circumstances. The Ombudsman was also satisfied that Police had treated the complainant's allegations seriously and had investigated his complaints appropriately and diligently, and the decision as to whether any further action should be taken or not is now for the DPP and not Police. It was determined that the complaint would not be further investigated.

Harassment

The complainant alleged continued harassment of him by Police over a period of two and a half years. He also alleged that Tasmania Police had placed magnetic metal dust in his house which was blocking his lungs and which could be fatal. The complainant had referred his concerns directly to Tasmania Police but was not satisfied that they had been adequately addressed.

Tasmania Police were notified of the complaint and asked to respond. They did so by acting to address it. The Deputy Commissioner referred it to the Commander of the Northern Police District, which covered the area where the complainant lives. The Commander requested that the Sergeant, who was the Officer in Charge of the sub-division closest to the complainant's home, arrange to visit him to discuss his concerns.

The visit was arranged, and the Sergeant spent a considerable amount of time with the complainant attempting to address all issues raised by him. He examined the complainant's house, with his permission, and could find no magnetic metal dust. The Sergeant was eventually able to satisfy the complainant that the only dust present was of the common variety, which could have been stirred up by log trucks passing his house. He was also able to reassure the complainant that he was not, and had not been, the subject of any Tasmania Police operation. The Sergeant had given the complainant his contact details and encouraged the complainant to refer any future concerns directly to him.

The Ombudsman was satisfied that Tasmania Police had responded promptly and appropriately to the complainant's concerns.

PRISON COMPLAINTS

The Ombudsman remains the only independent avenue of review for prisoners and detainees in the State's various correctional facilities. Handling complaints made by prisoners and detainees remains a significant part of the Ombudsman's work.

The reporting year was the first full year of operations for the new Risdon Prison Complex, including the Mary Hutchinson Women's Prison, which first opened in August 2006. Work continues on the conversion of various divisions of the old Risdon Prison to the Ron Barwick Minimum Security Prison, but the main medium and maximum security complex is fully operational. The transition from the old to the new, as might have been anticipated, has not been without its problems, with both inmates and correctional staff having to adapt to different systems and models (see case summaries below).

These problems might offer, in part, an explanation for the large increase in the number of complaints in the reporting year – the number of complaints received was more than double that received in the previous year – but it seems likely that a more significant factor in this regard was the introduction of a secure free-call line to the Office of the Ombudsman on Corrective Service's Arunta telephone system. This initiative commenced at the start of the reporting year, and prisoners and detainees now have direct and unmonitored telephone access to the Office. Most calls received from inmates relate to day-to-day matters that are capable of swift resolution, but the system also allows for those inmates who have lodged formal complaints to communicate more quickly and effectively with the officer handling their matter. It has made notifying the Office of a complaint easier, and the handling of complaints more efficient.

Many inmates were initially wary about using the service, believing that their calls would be monitored, but Ombudsman officers who have visited the various facilities are satisfied that the line is private and secure. Inmates have gradually come to trust it and now use it extensively. The telephone service, in combination with the protections afforded to written communications between the Ombudsman and prisoners and detainees by both the *Ombudsman Act 1978* and the *Corrections Act 1997*, provides confidential access to the services of the Ombudsman.

Though a large number of the complaints received were not substantiated, the ease with which prisoners and detainees can raise their concerns and complaints allows the Ombudsman to actively oversee their conditions and treatment.

As in past years, complaints received from prisoners and detainees were varied and ranged from minor matters to serious issues of concern. The majority of complaints were received from inmates of the Risdon Prison Complex's medium and maximum security units. Complaints about prison food were much lower than in previous years, while complaints about lost property continued. Other things complained about included:

- conditions placed on visits and the frequency of visits;
- access to educational and other programs;
- the punishments meted out for prison offences;
- the frequency of lockdowns in various units;
- the conditions of and payment for work done by inmates;
- issues of safety and security in relation to other inmates;
- the issuing of Leave Permits under section 42 of the *Corrections Act 1997*; and
- mail not being received.

An investigation undertaken in the last reporting year found that the method being used to calculate remissions on sentences by Corrective Services did not comply with the *Corrections Act 1997* or the *Corrections Regulations*. A recommendation was made that policies in this regard be reviewed, but nonetheless, several more complaints were received in the reporting year alleging miscalculation. In one it was found that the old method had again been used and remissions had once more been calculated incorrectly (see case summaries). A new policy in relation to remissions has now been implemented by Corrective Services, such that similar complaints should not be received in the future.

Inmates may contact the Office of the Ombudsman by telephone, at no cost.

Punishment for Prison offences

A complaint was made by a maximum security inmate at the Risdon Prison Complex, who admitted that he and other inmates had ignited fires in their cells, but who alleged that he and the other inmates had been treated inhumanely by Corrective Services in response to the fires. In particular, the inmate alleged that:

- he was left in the burnt out cell for a period of 72 hours and during that time charred items and soot had not been removed;
- due to the condition of the cell, the air had become polluted to the extent that it had made the inmate sick;
- he was made to sleep naked on the cement floor of the cell with only a horse blanket for warmth;
- the water to his cell had been cut off and only turned on once each day for the toilet to be flushed;
- he was allowed a ration of one litre of bottled water over two days but no water had been provided for him to wash his hands; and
- he was required to eat with his fingers in the cell in close proximity to a full toilet pan.

Enquiries were made and information sought from the Director. It seemed that there had been a situation developing in the unit where the complainant had been housed, with a small group of inmates standing over and intimidating others. There had also been an increasing number of incidents where inmates had been disrespectful and threatening toward staff. Prison management had identified the inmates believed to be responsible for the situation, including the complainant, and moved them to another unit.

On the evening of the move to the new unit, the complainant and three other inmates had simultaneously lit fires in their cells and by doing so, had exposed themselves, other inmates and Correctional Officers to significant risk. When officers attempted to extinguish the fires, the complainant and others actively fought against them. Due to a lack of alternative accommodation, the complainant and the other three inmates involved were placed in a heated holding cell in the Processing Unit where they spent the night under observation. During that time, the General Manager of the complex attended the Processing Unit and the inmates there had been strip searched, and then provided with therapeutic gowns, mattresses and safe blankets. The reason for the search was a concern that the complainant or one of the others may have secreted matches and a match strike in a body cavity.

The Director advised that placing an inmate in a holding cell is an absolute last resort and is only done when an inmate persists in behaving in a manner that poses a threat to the inmate's own health and safety or to the good order of the Prison. A therapeutic gown, at minimum, is provided for any inmate, regardless of their behaviour.

It took the whole of the next day for maintenance staff to render the burnt cells safe for occupancy. Walls were washed down but not repainted. The complainant and the others were returned to their original cells and were given the option of further scrubbing the walls before they were repainted. The complainant lit another fire in his cell the day after he had been returned to it, thereby placing himself and others at significant risk

once more. When the cell was again rendered safe, the complainant was returned to it, and he then flooded it. The water supply to the complainant's cell had then been isolated and cut, and only turned on to allow the complainant to shower and use the toilet. The Director confirmed that the complainant had been given bottled water for drinking, and after his behaviour had moderated and he had cleaned up his cell a few days later, the water supply was reinstated and the cell repainted.

The Ombudsman was satisfied that, although some of the matters complained of might have had some factual basis, others did not, and the complainant had been behaving in a highly inappropriate and dangerous manner immediately prior to the events complained about occurring. The Director had dealt with the situation in the best way possible, given the limited accommodation options. The Director denied that the complainant had been left naked in his cell, and said that a therapeutic gown as well as a blanket had been provided. The decision to limit the complainant's access to water seemed reasonable in the circumstances and the Ombudsman was satisfied that the complainant's own conduct had necessitated the action taken, and that the action had been designed to ensure the safety of the complainant, other inmates and staff.

Classification

At the time the old Risdon Prison was being recommissioned as the Ron Barwick Minimum Security Prison, complaints were received from several inmates who claimed that they had been classified as minimum security in the old prison but had been transferred to medium and maximum security units at the new Risdon Prison Complex. The complainants said that they had not committed any prison offences, nor engaged in any conduct that would warrant their reclassification. They complained to Corrective Services and were advised that they had been identified as being *high risk* while the old prison was in transition. Staff had raised concerns about manning levels and the risk of escape. The complainants claimed that they had then discussed the matter with staff who denied any concerns. They therefore believed that they had been moved for some other reason.

Enquiries were made to the Director of Prisons, and the new operating models for the Risdon Prison Complex were compared with those for the old prison. The part of the old prison that became the Ron Barwick Minimum Security Prison had previously been maximum security units and operated according to a maximum security model. As part of the old regime, some inmates were classified as either medium or minimum, but only within the maximum security units; it was not a general classification. Operating procedures referable to a maximum security setting were still maintained for all inmates in the old maximum security units. For example, all inmates in the maximum security units, notwithstanding that their internal rating might have been medium or minimum, were locked down in accordance with maximum security practices in order to reduce the risk of escape.

At the time the complainants were moved to the new Prison Complex, the old maximum units were being recommissioned as a true minimum security prison and an appropriate minimum security regime was being introduced. The Director advised that staff had expressed concerns that there could be a risk to security if the complainants – rated minimum within the old maximum system but still subject to maximum security practices and protocols – were to be housed in a true minimum security environment. The risk of escape – there had been an escape from the Ron Barwick Minimum Security Prison not long after its transition began

– and the nature and seriousness of the offences for which the complainants had been imprisoned were taken into account in making the decision to move them.

The Ombudsman was satisfied that the decision to relocate the complainants from the Minimum Security Prison to the new Prison Complex had been reasonable in all the circumstances and based on relevant considerations, and that to investigate the complaints would not be justifiable.

Remissions

The calculation of remissions on sentence were the subject of complaint to the Ombudsman in the last reporting year. The Ombudsman's investigation of that earlier complaint revealed that Corrective Services had been calculating remission periods by taking into account an inmate's global term of imprisonment; the total effective term to be served by him or her. The Ombudsman formed the view that this was not the appropriate way to calculate remissions. Under the *Corrections Act 1997* and *Corrections Regulations 1998*, remission may be granted in relation to an inmate's sentence rather than his or her term of imprisonment, which might be the cumulative term of a number of sentences. Advice from the Solicitor-General confirmed that remissions should be calculated on each individual sentence being served by an inmate.

A further complaint in relation to remissions was received in this reporting year. The inmate concerned was serving multiple sentences for various offences going back to 2004 and he complained that he had not received remissions to which he might have been entitled. The Director was requested to provide details of his calculations and relevant documentation. The Ombudsman reviewed the calculations by reference to the Warrants of Commitment issued for each of the inmate's sentences and formed the preliminary view that they were incorrect. Further information was sought from the Director, and it seemed that remissions had again been calculated by reference to the inmate's total effective term of imprisonment, rather than by reference to each individual sentence.

When calculated by reference to individual sentences, there were remissions for which the inmate had been potentially eligible but had not received. However, there is no provision in the *Corrections Act 1997* allowing the Director to grant remissions retrospectively in relation to sentences already served.

The inmate was reminded, and it is important to note, that remissions are not granted *as of right* but are at the discretion of the Director; remission is granted to reward an inmate for his or her good conduct while serving his or her sentence and is not an automatic entitlement. It was not, therefore, possible for the Ombudsman to say whether the particular inmate would have received the remissions for which he was potentially eligible, or that he had mistakenly been detained in custody for any specific period.

Corrective Services has now implemented a new remission policy which should ensure that eligibility for remission is assessed correctly and at the appropriate time.

ASHLEY YOUTH DETENTION CENTRE

As noted in the 2006/7 annual report, changes to the client complaints procedure at Ashley Youth Detention Centre (AYDC) in early 2007 led to an increase in the number of complaints received by the Ombudsman from AYDC residents. The revised client complaints process made it clear to residents that they could make complaints to the Secretary of the Department of Health and Human Services (DHHS) or to the Ombudsman.

A number of the complaints made to the Ombudsman were considered to be of a minor nature, relating to matters such as the application of the AYDC Behaviour Development program or where it seemed likely that AYDC management could resolve the matter through discussion with staff and the young person involved. These complaints did not appear to raise any significant areas of concern, but nonetheless needed to be addressed with some kind of oversight by the Ombudsman. The Ombudsman came to an arrangement with DHHS and Ashley management in November 2007 that complaints such as these would initially be referred back to AYDC management to attempt quick and efficient resolution. The Ombudsman is notified of the outcome of this informal process and must be satisfied that the matter has been dealt with appropriately. The young person also has the opportunity to return the complaint to the Ombudsman if not satisfied with the outcome.

During the reporting year, 21 complaints about AYDC were received, with seven of these being dealt with through the informal resolution process. A total of eight complaints were carried over from the previous reporting year, with two cases still being open at the start of the 2008/9 year. Of the AYDC complaints closed in 2007/8, two were declined, three discontinued, 20 were found to have no evidence of defective administrative action, and two were partially or fully substantiated (see case summaries).

Almost all of the complaints from AYDC residents alleged either unfair treatment by staff or rough handling during violent or aggressive incidents where the resident had to be restrained. In the vast majority of these cases, it was found that staff had acted in accordance with legislation and AYDC Standard Operating Procedures. In the cases that were substantiated or partially substantiated, the issues that were found to be of concern were about staff properly documenting incidents rather than any finding that staff had acted inappropriately. AYDC management addressed any such issues with the relevant staff members.

Extended detention

The complainant, who was in custody at AYDC, complained to the Ombudsman that he had been held in isolation on two occasions for longer periods than permitted under the AYDC Standard Operating Procedures. The matter was referred to the Secretary of the Department of Health and Human Services and a response was received from AYDC along with all relevant incident documentation.

The documentation showed that the complainant had been isolated on the first occasion due to aggressive behaviour. He was 15 years of age at the time, and should not have been held in isolation for longer than three hours without approval from a senior staff member. Records show that he came out of isolation after a period of four hours and 10 minutes, but staff reported that for over an hour of that time he had been in the corridor discussing strategies for improving his behaviour with the Team Leader. However, this had not been adequately documented, and it was suggested that the importance of adequate documentation be reinforced with all AYDC staff.

The complainant was isolated again on the second occasion for aggressive behaviour. Records showed that he was held in isolation for a period of three hours and 26 minutes. The reason given for the extended period was reasonable; it had been decided to allow the next shift of workers to release the complainant in order to try to avoid further confrontation. However, the fact that approval had been sought from a senior staff member had not been adequately documented, and it was again suggested that this be raised with staff, with a view to reinforcing the need to adequately document such decisions.

All suggestions were accepted and implemented by AYDC management.

Rough treatment

The complainant was a young person in custody at AYDC who alleged the following:

- unfair treatment from a female staff member who he also said had touched him inappropriately;
- rough treatment or assault by staff members;
- threats had been made against him by staff;
- failure by staff to assist him with making a complaint to the Ombudsman.

All issues of complaint were found to be unsubstantiated on the basis of documentation and transcripts of interviews with staff provided by AYDC. There were some minor discrepancies in the Incident Report documentation where the details of a scuffle and aggressive restraint had not been adequately recorded. The account of events given by staff was accepted by the Ombudsman but it was suggested that, in the interests of protecting young people in custody and protecting staff from allegations of assault, management reinforce the need to adequately document such incidents with staff.

STATE GOVERNMENT DEPARTMENTS

DEPARTMENT OF EDUCATION

Good character clearances

In a complaint to the Health Complaints Commissioner in 2004, it was alleged that a psychologist in the employ of the Department had formed an inappropriate relationship with the complainant's 13-year-old daughter. The Commissioner referred the complaint to the Psychologists' Registration Board and it was ultimately found that the psychologist had engaged in conduct that would reasonably be regarded by psychologists of good repute and competency as being disgraceful or dishonourable. It was resolved, among other things, that his name be removed from the Register of Psychologists for a period of two years.

The Secretary of the Department also referred the matter to the State Service Commissioner who found that the psychologist had breached the State Service Code of Conduct. As a result, he was reprimanded and ceased to be employed by the Department; he left his employment before it was terminated.

Despite the above, in 2005 the complainant became aware that the psychologist had been seen at a Department school, and she contacted the Department's Grievances and Investigations Unit. The Department was unaware that the psychologist had been to the school but determined to investigate the matter, and confirmed assurances given earlier that the psychologist's Good Character Clearance had been withdrawn and he could not work in schools without it. Despite these assurances, the complainant complained to the Ombudsman in February 2008 that the psychologist was actively involved with students at the school attended by her daughter (now aged 17), producing the school musical. Because of what had happened in the past, her daughter felt unable to continue with her studies at the school, and transferred to another school.

In response to the complaint, the Department confirmed that the psychologist's Good Character Clearance had been withdrawn in December 2004, and he had not sought to have it reinstated. This meant that he was not able to work at, or be on the site of, any Department school. Having received the complaint, officers of the Department's Human Resources Management Branch liaised with management at the school and ascertained that in late 2007 the psychologist had been involved in the production of the school musical as a volunteer.

The Department made it clear to the school's management that the psychologist did not have a Good Character Clearance and was not permitted in any Department school while that remained the case, even as a volunteer. The Department also wrote to the psychologist confirming that he was unable to participate as a volunteer at any Department school without a Good Character Clearance, and instructed him not to attend at any school site in the future.

The Department's policy in relation to volunteers was, and is, that they are required to have Good Character Clearances if there is a potential for them to be alone with a student or students. The policy is contained in the Department's Guidelines for Schools. The Department acknowledged that the policy had not been adhered to in this instance, and expressed its regret in this regard.

The policy and Guidelines should have acted to prevent the situation from arising and the school's management had been reminded of their obligations in relation to volunteer workers.

The Ombudsman was satisfied that the Department had responded to the complaint and that its policy and Guidelines were appropriate, but in light of the complaint having been substantiated, questioned the steps taken by the Department to ensure that management staff at its schools were aware of the Guidelines.

Advice from the Department was that the Guidelines were not adhered to in this instance, due to an oversight on the part of school management. However, it was the first time such an oversight had occurred and schools generally were very aware of the need for volunteers to possess a Good Character Clearance. The Department was confident that the situation would not be repeated at the school. The Department advised that it would continue to re-evaluate its policy in relation to volunteers and the need for them to have a Good Character Clearance, and to strengthen and promote that policy. It further advised that the Principal and other senior staff at the school now being attended by the complainant's daughter had been formally advised that the psychologist did not hold the necessary clearance and should not be allowed on the school site for any reason.

The Ombudsman was satisfied that, though the complaint had been substantiated, it had been properly handled by the Department, the issues of complaint had been addressed and resolved appropriately, and it was unlikely that the situation in which the complainant and her daughter had found themselves would arise again.

DEPARTMENT OF HEALTH AND HUMAN SERVICES *Child and Family Services: Complaint handling*

A complaint was made by long-standing foster carers working for Child and Family Services (CFS) in a Family Group Home. The complaint related to the way the Department had investigated complaints made about the care they were providing. The foster carers also went to the media with their grievances.

The complaints were initially put to the Acting Secretary of the Department who provided a response. The entire investigation file was then reviewed. The allegations of the complainants and the Ombudsman's findings were as follows:

1. The complainants alleged that they had not been provided with a copy of the CFS Policy and Practice Guidelines, or any documents setting out the complaints against them, at an early stage or prior to their first interview with Department officers. It was found that, due to the nature of the allegations against the complainants, it was reasonable for CFS workers to have conducted their first visit to the Family Group Home unannounced. The complainants were given the relevant documentation during the second visit by CFS workers and, while there seemed to be no clear reason why the documents were not provided earlier, clear verbal explanations had been given as to the nature of the investigation and how it would proceed. The Ombudsman was not persuaded that the complainants had suffered any adverse outcomes as a result of the late provision of documents and therefore did not make any findings against the Department.
2. The complainants claimed that the allegations as put to them were so lacking in specificity that it had been impossible for them to properly respond and defend themselves. It was acknowledged by all parties that it was essential to protect the identity of notifiers of concerns to CFS, but CFS maintained that the substance of the allegations was sufficiently put to the complainants. Careful analysis of the investigation file, as well as reference to the relevant legal requirements, led the Ombudsman to the view that that CFS had met its obligations to put the substance of the allegations to the complainants and that there had been no denial of procedural fairness.
3. The complainants were aggrieved that they had not been offered the opportunity to have their interviews tape recorded as provided by the Policy and Practice Guidelines. The Guidelines allow for taping of interviews *if the carer requests this*, but it appeared that the CFS workers who conducted the first interview did not have the necessary equipment. However, the complainants had tape recorded all interviews themselves and ultimately provided copies of the recordings to the Department, notwithstanding that one of the CFS workers noted her objection to the audio recordings at the interviews. It was unclear why the workers did not agree to record subsequent interviews once it was obvious that the complainants wanted them to do so. The Ombudsman was of the view that audio taping of formal interviews is a sensible, and arguably essential, practice which, if adopted, would minimise the scope for disputes about what allegations were put and what responses were given. The issue was raised with the Secretary who accepted the correctness of the Ombudsman's view. Since the interviews had been recorded by the complainants and they had therefore suffered no adverse consequences, no further recommendations were made.

4. The complainants alleged that their confidentiality had been breached because another foster carer knew about the investigation, and they asserted that the Department had taken no appropriate action in relation to this breach. The fact that a breach of confidentiality had occurred was acknowledged by the Department, but it was clear from the file that action was taken in relation to this at the earliest possible time. The person in question seemed to have *put two and two together* concerning the investigation but in any event, was spoken to by the Co-ordinator of Out of Home Care, was counselled in relation to the breach and a notation placed on their Departmental file. The Ombudsman was satisfied that the Department had taken appropriate action.
5. The complainants were aggrieved that the investigation took far longer to finalise than the timeframe indicated by the Policy and Practice Guidelines. A review of the Department's investigation file satisfied the Ombudsman that the initial stages of the investigation proceeded in a timely fashion. Although the timeframes in the Policy refer to the date of notification, there had been a period of less than a month between the complainants being made aware of the investigation and the report being forwarded to the then Director of CFS.

However, there had been a considerable delay once the investigation report had been provided to the Director for a final decision. The Director advised the Ombudsman by letter that, having received the report, she felt that she had to seek further background information before she could make a considered decision. This was due to the complexity of the matter and the fact that the complainants, after 13 years as foster carers, were being recommended as no longer suitable in this regard.

The Director met with the complainants a month after having received the report and explained the outcome of the investigation and the recommendations made to her, and discussed matters arising from the investigation about which she had concerns. As a result of the meeting, she formed the view that the complainants were no longer suitable to be Family Group Home carers but, since they had advised her that they did not wish to renew their contract, she only provided general advice by email of the outcome of the investigation. The complainants were not satisfied with this, and the Director then forwarded a more comprehensive response, which she believed concluded the matter. The complainants apparently remained unaware that the matter was finalised until a further meeting three months later.

It was found that there had been delay once the report was with the Director. This may have been due to the fact that she had only just taken up the position and was familiarising herself with the role. She had also been on leave for some of the relevant time. However, the Ombudsman found that she should have considered finalising the matter herself as quickly as possible or, if that were not possible, delegating the task to a suitable officer. Since there is now a new Director, the matter was brought to the attention of the Secretary, but no further recommendations were made.

DEPARTMENT OF JUSTICE

Poppy Advisory Control Board: Procedural fairness, Licensing

The complainants were a farmer and his wife from Cressy, in northern Tasmania. Their complaint concerned the refusal of a delegate of the Minister administering the *Poisons Act 1971* to grant the farmer a licence under section 52 of the Act to grow poppies during the 2005/6 growing season.

The Ombudsman was not able to investigate the merits of the delegate's decision, due to the combined effect of section 12(5)(a) of the *Ombudsman Act 1978* and section 23AA(4) of the *Acts Interpretation Act 1931*. The first of these sections forbids the Ombudsman from questioning the merits of a decision of a Minister; the second states that a function or power that is duly exercised by a delegate is to be taken to have been exercised by the delegator.

There were, however, elements to the case that the Ombudsman considered it necessary to investigate. These were whether the processes followed by the Poppy Advisory and Control Board (PACB) prior to the making of the delegate's decision had been fair, and whether, in light of this case, the licensing system administered by the PACB needed adjustment.

The refusal to grant the farmer a licence was based upon a finding that the farmer had grown a greater area of poppies in 2005/6 than he was licensed to grow. When the alleged over-sowing first came to light, the farmer was told that the matter had been referred to Tasmania Police. Shortly afterwards, the PACB was told by the Director of Public Prosecutions that a prosecution would not succeed, because of deficiencies in the licensing documentation as it related to the contractual arrangements between the farmer and the poppy processing company that had received the crop. Consequently, the farmer was never charged.

The PACB failed to tell the farmer that he was not going to be prosecuted, and he continued to maintain a right to silence about how the over-sowing occurred. This state of affairs continued until just before the delegate made his decision, and the fact that the farmer was not going to be prosecuted was only revealed at the delegate's instigation.

The Ombudsman found that failure to tell the farmer was procedurally unfair, effectively depriving the farmer of the opportunity to put his case to the PACB before it made its recommendation to the Minister, and therefore to the delegate, about whether a licence should be granted.

The Ombudsman's report went on to recommend changes to the licensing system in light of the case.

The case showed that, because of practical issues arising in the sowing of a crop, it was not uncommon for a decision to be taken in the field to increase the area of the crop sown, and to consequently breach the grower's licence, with the farmer and the processing company then making application to the PACB for the licence to be amended to regularise the situation. The Ombudsman pointed out that the licensing system needed to be changed if it was not sufficiently flexible to allow for such changes without the farmer breaking the law. The

Ombudsman questioned whether it was necessary to control the area sown through grower licences, and suggested that consideration be given to controlling this through the licences of the processing companies.

The report also contained the following recommendations:

- that the form of grower licences be reviewed;
- that a provision in the standard-form processor's licence be reconsidered;
- that the relevant provisions in the *Poisons Act 1971* be amended;
- that consideration be given to controlling the poppy industry through stand-alone legislation, not through the *Poisons Act 1971*; and
- that the PACB, which is an administrative arm of the Department of Justice, be placed on a statutory footing.

After making these recommendations and in closing his report, the Ombudsman commented that: "The present arrangements for managing the industry may have been appropriate for a fledgling industry, but are anachronistic for controlling an industry which has achieved such significance to the Tasmanian economy and such significance within the global licit opiate market."

DEPARTMENT OF INFRASTRUCTURE ENERGY AND RESOURCES *Registrar of Motor Vehicles: Vehicle registration*

The complainants were residents of Tasmania but at the time of making their complaint were enjoying an extended interstate touring holiday. While staying in New South Wales with relatives in 2007, the complainants bought a caravan and registered it in that State. They had left New South Wales by the time the registration was due to be renewed, and because they would be returning to Tasmania at the end of their trip, and would have no fixed address until their return, they wished to transfer the caravan's registration to their home State. They made enquiries with the Registrar of Motor Vehicles about this, and were advised that the caravan would need to be inspected in Tasmania before it could be registered in the State. The complainants, who were by then in South Australia, complained that this requirement would impose a heavy burden on them in terms of both time and money and was unreasonable.

When an officer of the Registrar was contacted by the Ombudsman's office in order to clarify the situation, that officer confirmed that the caravan was required to be inspected in Tasmania before it could be registered here. The officer further advised that the caravan could be registered in another State or Territory and upon their return to Tasmania, the complainants could re-register it and seek a refund of the unused period of registration from the other State. However, the complainants had tried to register the caravan in South Australia but could not do so under that State's laws because they were not resident there. The Registrar's position did not seem entirely reasonable in all the circumstances and it was decided that further enquiries should be made.

The *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* were considered. Regulation 48(3) provides that an applicant must, if so required by the Registrar, produce a vehicle for inspection at a time and place nominated by the Registrar. Regulation 48(2), however, provides that the Registrar may require an applicant to satisfy him that the vehicle is eligible for registration, which suggests that the Registrar has some discretion and that an inspection at a place nominated by the Registrar might not always be required. Regulation 46(1)(b) also allows the Registrar to accept a certificate issued by another suitably qualified person to the effect that a vehicle or trailer complies with relevant vehicle standards. The complainants had their caravan inspected in South Australia when trying to register it there.

A response to the above was sought from the Registrar, who advised that the policy of his Office was to require vehicles to be inspected in Tasmania when they were being registered here for the first time. Part of the inspection is to ensure that the vehicle that is being registered is the vehicle described in the application, and the balance is to ensure that the vehicle is roadworthy and meets all relevant vehicle standards. The Registrar acknowledged, however, that he did have the power to register a vehicle if satisfied by an inspection done elsewhere and certification confirming the vehicle's identity and roadworthiness. The Registrar was provided with a copy of the inspection report from South Australia, and because the complainants had purchased the caravan as new, he agreed to accept the certification of the South Australian inspection station and to register the caravan in Tasmania.

DEPARTMENT OF INFRASTRUCTURE ENERGY AND RESOURCES

Registrar of Motor Vehicles: Complaint handling

The complainant had lodged a formal complaint with the Registrar of Motor Vehicles about the offensive and abusive manner in which a taxi driver had behaved toward her, her sister and her elderly mother. The complainant was of the view that the driver was not a fit and proper person to be driving a public passenger vehicle. The Registrar acknowledged the complaint and advised that the matter would be investigated and appropriate action taken. The complainant was concerned that the Registrar's acknowledgement seemed to indicate that she would not be advised of the outcome of her complaint so she wrote to the Registrar asking for the name of the officer conducting the investigation so that she might speak to him or her about the progress of the matter. In response, the Registrar advised that while it was the policy of the Department to investigate complaints and take appropriate action, it was also policy that outcomes of investigations and actions taken are not communicated to the person making the complaint.

The complainant expressed her concern about the policy to the Ombudsman, and complained that her complaint to the Registrar had not been properly investigated as nobody from the Registrar's Office had contacted her, her sister or her mother to clarify events that were the subject of her complaint. In his response to the complaint the Registrar referred to an earlier complaint to the Ombudsman where the policy had been considered and, in that instance, it had been thought inappropriate for the complainant to be notified of the outcome of his complaint. However, the Ombudsman was of the view that the earlier complaint involved different issues. That complaint was one by a person who alleged that a family member was unfit to drive, and was considered by the Registrar to have been made maliciously and in bad faith; the complainant and the family member referred to had been in the throes of a domestic dispute at the time the complaint was made. The complainant had been well aware of the identity of the family member, and disclosure of the steps taken to address his complaint, particularly the outcome of any medical assessment of the family member, could well have contravened the *Personal Information Protection Act 2004*.

In the present case, the Ombudsman considered it at least arguable that there was a public interest component to the complaint because it concerned an ancillary certificate to drive a public passenger vehicle and, therefore, the driver's suitability to be interacting with members of the public. The complainant did not know the identity of the driver beyond his Taxi Cab Number and his Driver Identification Number and, under those circumstances, issues of personal privacy did not arise. The Ombudsman was of the view that it would not be unreasonable to tell the complainant what steps had been taken to address her complaint and to advise her of the outcome on the basis that members of the public should feel confident that only suitable people are permitted to drive public passenger vehicles, that behaviour of the sort complained of is investigated and, where necessary, suitable sanctions are imposed. The Registrar was asked to respond further.

The Registrar outlined what steps had been taken to investigate the complaint, and the Ombudsman was satisfied that these had been adequate and appropriate. However, in relation to the release of this and other information to the complainant, the Registrar again referred to the earlier complaint and to the policy of providing complainants with only a *blanket statement* to the effect that all necessary steps had been taken.

This, it was said, mitigated any expectation complainants might harbour of having input into the process and of being able to challenge outcomes. Another significant issue for the Registrar was that once information is released by him, he has no control over what happens to it or how it might be used.

The Ombudsman considered the Registrar's further response but remained of the view that de-identified information on the outcome of her complaint could and should be released to the complainant, especially given that most of the information sought by her would be made available should she opt to make formal application for it under the *Freedom of Information Act 1991*. This was communicated to the Registrar who agreed to release a limited summary of the outcome of his investigation to the complainant. The Ombudsman considered that it would be appropriate for complainants to receive the same amount of information that they would if they made a FOI request, and decided to review the Registrar's policies and guidelines. Having done so, the Ombudsman decided to recommend that they be amended to allow for the provision of information to complainants.

Following a meeting between the Ombudsman and the Registrar, the Registrar agreed to amend the guidelines for dealing with complaints so that, on request, complainants are entitled to be given any information that could be obtained by way of a FOI application, details of the investigation carried out, the outcome of that investigation and the reasons for the decision made. The Ombudsman was satisfied that the complainant's issues had been addressed and the matter resolved.

DEPARTMENT OF PRIMARY INDUSTRIES AND WATER

The Valuer-General: Procedure for Revaluations and Objections

The complaint, made by a representative from a group of ratepayers, was about the process used by the Office of the Valuer-General for the revaluation of properties in her municipal area. Specifically, that the same firm of valuers engaged by the Valuer-General to undertake the revaluation of properties had also been engaged to consider and determine the numerous objections that had then been made to those revaluations by property owners. The complainant considered this to have been inappropriate and to have given rise to a possible conflict of interest.

The Ombudsman decided to make preliminary enquiries in relation to the complaint and a response was sought from the Valuer-General to the matters raised. The Valuer-General advised that he did not undertake revaluations himself but engaged a valuation contractor as he was authorised to do by the *Valuation of Land Act 2001*, and that the review of objections was considered to be *part and parcel* of the revaluation process. The Ombudsman was satisfied that the Act did authorise the Valuer-General to engage a contractor to undertake revaluations, but was not satisfied that there was any specific provision allowing the Valuer-General to contract out his obligation to consider objections; the Act provides that the Valuer-General must do this, though he is able to seek the assistance of a valuation contractor.

The Ombudsman decided to make further enquiries and these consisted of: seeking a further response from the Valuer-General, meeting with the Valuer-General and one of his officers, reviewing relevant legislation, and making enquiries of other States as to the procedures and practices adopted by them for the revaluation of properties and the processing of objections to those revaluations.

The Valuer-General further explained the process used by his office and said that the valuation contractor dealt with objections because he or she was the person who had inspected the properties and analysed sales and rental information. He or she would, therefore, be conversant with market nuances in the particular municipality and able to determine an accurate value. Revaluations are made *en masse* rather than being detailed valuations of each property and are intended to ensure consistency and equity. The contractor is provided with information in relation to each property, including historical information, so that he or she knows the land size, any additions or changes that might have been made, and previous sales. The initial revaluation is based on a *curb side* visit to the property and the information provided.

If an objection is made, the contractor contacts the owner and undertakes a detailed inspection of the property, inside and out. He or she then reports to one of the Valuer-General's Senior Valuers with a recommendation as to whether or not there should be an adjustment to the revaluation. The Senior Valuer then reviews the revaluation and reports to the Valuer-General who either accepts the recommendation of the contractor or dismisses the objection. In doing so, the Valuer-General acts on the advice of the Senior Valuer. Senior Valuers do disagree with contractors and decline to accept their recommendations, and on occasions the Valuer-General has sent Senior Valuers to check on the work of a contractor. The Valuer-General's main concern was to ensure the integrity of the register of valuations.

The Ombudsman reviewed the form of contract used by the Valuer-General when engaging valuation contractors and noted that it provides for contractors to be paid on a progressive basis. There is no separation under the contract between revaluations and objections, but 10% of the contract price is retained until all objections have been determined. This encourages contractors to be as accurate as possible with their initial valuations because they earn their fee with less work if the number of objections is kept to a minimum.

The *Valuation of Land Act 2001* also allows an objector who is dissatisfied with a decision of the Valuer-General to have that decision reviewed by the Land Valuation Court, and if the objector remains unhappy, there is a right of appeal to the Supreme Court. This means that the substance of objections can be considered at various levels by independent decision-makers and the integrity of the register is protected. The Valuer-General also advised that it is in the interests of contractors to ensure their valuations are correct because any costs associated with the contractor attending court are not included in the contract but are an additional out-of-pocket expense.

A review of the procedures adopted by other States revealed that, while it is not the uniform practice to contract out both valuations and the processing of objections, it is done in at least New South Wales and Victoria, with the practice in Victoria being very similar to that adopted in Tasmania.

The Valuer-General retains control over the final decision in relation to an objection and the Ombudsman was satisfied that the process, the terms under which contractors are engaged and the legislation contain sufficient checks and balances to ensure that valuation contractors approach revaluations and the processing of objections with honesty and diligence. The Ombudsman was also satisfied that there is adequate provision for the external review of decisions made, which ensures both the integrity of the register and the interests of landowners. The Ombudsman was of the view that no defective administration had been demonstrated by the Office of the Valuer-General.

PUBLIC AUTHORITIES

THE PUBLIC TRUSTEE

Delay and additional costs

The complainants were the son and daughter of the deceased and the beneficiaries under his will. The deceased had appointed the Public Trustee as the executor of his estate. The complaint alleged undue delay on the part of the Public Trustee in finalising the estate and additional costs to the estate being incurred as a result. In particular, they complained that:

- the Public Trustee had obtained a Grant of Probate of their father's will in Tasmania when all his assets, including the proceeds of a bank account, were in New South Wales, and the Grant had to be resealed in New South Wales before the bank would release funds;
- the solicitors engaged by the Public Trustee to reseal the Grant were located in Albury rather than Sydney which added to delay in that the complainants could not collect and file the necessary papers in the New South Wales Supreme Court and thus expedite matters;
 - additional delay had been occasioned as a result of the Public Trustee requiring further information, such as the divorce papers of the deceased, and clarifying the deceased's creditors; and
 - unnecessary costs had been incurred by the Public Trustee's conduct and they did not believe that these should be borne by the estate.

In responding to the complaint, the Public Trustee acknowledged that it had been required to obtain a reseal of probate, but maintained that it had not been the practice of the particular bank in the past to require resealing for the release of funds held by an interstate branch. Notwithstanding this, the Public Trustee acknowledged that its actions caused delay.

The Ombudsman was of the view that the Public Trustee's reliance on past practice had not been prudent in all the circumstances, as regardless of practice, it had always been a possibility that the bank would require probate to be granted in the jurisdiction within which the assets were located. The Ombudsman considered that obtaining probate in Tasmania had been an error of judgement, and informed the Public Trustee accordingly, but because the Public Trustee had admitted responsibility for delays as a result of its actions and formally apologised to the complainants, decided not to take any further action.

The engagement of solicitors in Albury, the Public Trustee maintained, had not caused delay. It had used that particular firm in the past and had received good service from it. The location of the solicitors was not material, and, in any event, the Public Trustee was of the opinion that it would not have been appropriate for those solicitors, who were acting as agents of the Trustee, to release legal documents to the complainants/beneficiaries under the will. The Ombudsman was of the same opinion.

In relation to the divorce papers, by virtue of section 20 of the *Wills Act 1992*, a divorce has the effect of revoking a will and the Public Trustee had to be satisfied that the deceased's divorce had taken place after he had executed his will. It had also to satisfy the court in this regard before probate could be granted. In requiring the papers to be produced, the Public Trustee acted appropriately. A period of five months had passed between the Public Trustee first raising the issue of the divorce papers and probate being granted, but this delay was not attributable to the actions of the Public Trustee, as the complainants themselves had indicated that they would follow up in this regard.

As to the clarification of creditors, this related to a Bankcard debt potentially owed by the estate. The complainants had advised that the debt had been satisfied, but the Public Trustee was of the view that, as executor of the estate, it had an obligation to satisfy itself that the debt had been paid. It also maintained that no additional delay had been caused by its doing so.

The Ombudsman was satisfied that the Public Trustee had acted appropriately in relation to both the divorce papers and the Bankcard debt, but was of the view that the legal process and the obligations of the Public Trustee had not been clearly explained to the complainants. Had they been, some of the complainant's concerns could have been allayed. The Ombudsman brought this to the attention of the Public Trustee in order that its administrative practices might be improved in the future.

The Ombudsman was satisfied that the charges levied against the estate by the Public Trustee had been proper and in accordance with statutory provisions. At the time the deceased appointed the Public Trustee as his executor, he would have been made aware of the charges that would be made against his estate. The only unusual cost related to the resealing of probate, but this had been borne by the Trustee and not debited to the estate.

LOCAL GOVERNMENT

BREAK O'DAY COUNCIL

Budget process

Stormwater from the complainant's street in Fingal is directed through a drain on her property and she complained to Council that the drain was in poor condition and prone to flooding during heavy rain. When this occurred, water flowed into her front garden and washed away topsoil. The complainant wanted the drain removed. She also complained to Council that the placement of pavers on her street caused the water that should flow down the curb, to run down an embankment into her garden. She wanted this rectified, or at least wanted Council to ensure that the drains were regularly and adequately cleaned – she said that she herself had to clean the drains on several occasions because Council had failed to do so.

In response, Council proposed two possible solutions: it could either reconstruct the existing drain, or construct a new one to travel further along the street and connect with an existing drain in an intersecting street. However, Council advised that it was unlikely that a budget variation to undertake the work immediately would be approved. The complainant was not satisfied and brought her grievance to the Ombudsman, asserting that there had been problems with the drains for over 30 years.

Preliminary enquiries were undertaken and Council maintained that it had not been aware of the problems with the drains until the complainant had raised them some months earlier. By the time the Ombudsman notified Council of the complaint, Council's Municipal Engineer had inspected the drains and estimated that rectification works would cost around \$20,000. Council advised that it could not fund that amount from the current year's budget but would consider it as part of the next year's budget process.

Further enquiries were made in relation to Council's budget process generally and it seems that budget workshops commence in March of each year and all proposed items of expenditure are then discussed. Apart from numerous recurring annual costs, such as infrastructure maintenance, Council also receives a large number of requests from ratepayers to fund various works. All items are tabled at the workshops and debated by the Councillors, with input and recommendations from the Engineer and the Works Manager. There are not usually sufficient funds to meet all items and priority is given to those that carry with them safety issues – repairs to roads and bridges, for example. Budgets are reviewed quarterly and if Council receives extra grants, further items can be funded. Or there might also be items of emergency expenditure that arise and this means that items have to be re-prioritised.

Council became aware of the problem too late in the process to allocate funds from the current budget. However, Council had arranged for its officers to meet with the complainant and her son to discuss the cleaning of the drains in an endeavour to reach a practical resolution to the problem, and the drains were subsequently cleaned. The Ombudsman was satisfied that Council's budget process was reasonable and appropriate, and that the complainant's concerns were not being ignored. The Ombudsman was also satisfied that Council had acted to address the issues of complaint on an interim basis, until such time as rectification works could take place, and determined not to investigate the complaint.

PRISON OFFICIAL VISITOR PROGRAM

There were seven Official Visitors during the reporting year and between them they regularly visited all prison facilities in the State. The Ombudsman's office co-ordinates the Program and receives regular reports from the Visitors, who may also report to the Minister. Visitors are allocated to a particular facility or facilities and visits are conducted monthly, by one Visitor alone in the case of the Mary Hutchinson Women's Prison, the Hobart and Launceston Reception Prisons and Hayes Prison Farm, and by two Visitors together in the case of the Ron Barwick Minimum Security Prison and the Risdon Prison Complex. Visitors are appointed by the Minister under the *Corrections Act 1997* and their functions are to inquire into the treatment, behaviour and conditions of prisoners and detainees and to receive and investigate complaints. They are not salaried but receive a small annual stipend and a contribution towards expenses.

Official Visitors provide an independent and objective overview of the prison system. Their role is recognised and respected by Corrective Services, and they are allowed free access to prisoners and detainees for the purposes of carrying out their functions. They are afforded confidentiality in their communications with prisoners and detainees and are able to resolve many complaints quickly, effectively and informally; day-to-day concerns are referred to Prison Management at the conclusion of visits, and most are sorted out then. More significant issues for individual prisoners and detainees, and issues of a systemic nature are referred to by the Visitors in their reports to the Ombudsman, which are usually circulated to the Director of Prisons and other stakeholders. The Director has responded constructively to these issues.

As noted elsewhere in this report, the reporting year was the first full year of operations for the new Risdon Prison Complex, and the Official Visitors were able to observe the transition from the old prison and the implementation of new operating models. The standard of accommodation for prisoners and detainees has been greatly improved, and the atmosphere in the medium and maximum security units has seemed to the Visitors generally more settled. On the other hand, the management and operation of the Behaviour Management Unit at the Risdon Prison Complex, and the administration of the contract system whereby inmates receive increased privileges as their behaviour improves and they work through the contract levels, have been regular causes of complaint to the Visitors.

Complaints and concerns continued to be raised by inmates of all units and facilities, and these included complaints and concerns relating to:

- the frequency and duration of lockdowns for both security reasons and staff shortages;
- the cost of telephone calls, especially for inmates whose families are in the north of the State and who have to pay STD charges;
- property going missing when inmates are transferred from one unit or facility to another;
- transfers generally;
- the increasing cost of canteen items;
- a lack of activities and programs at both the Hobart and Launceston Reception Prisons;
- access to programs, education and educational materials by inmates of all facilities; and
- the allegedly unwarranted downgrading of contract levels.

The Official Visitors do not only report complaints and concerns, but also note positive developments, and the assistance that they receive from Correctional Officers in performing their functions. Their visits and reports provide a regular snapshot of the condition and treatment of prisoners and detainees and the prevailing environment in each of the individual units and facilities. The frequency of their visits means that they are able to effectively monitor the manner in which complaints and concerns are addressed.

The Official Visitors not only report complaints and concerns, but also note positive developments and assistance from Correctional Officers.

APPENDIX A - STATISTICS

Reasons for closure of files

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

Declined

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

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

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

Discontinued

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

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

No defective administration

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

Substantiated

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

TABLE 1.
COMPLAINT ACTIVITY FOR THE PERIOD 2005/6 TO 2007/8

Complaints & Enquiries	2005/6	2006/7	2007/8	2007/8 Complaints only
Open at beginning of period	184	113	117	117
Opened in period	936	885	1061	433
Closed in period	1000	882	1048	420
Open at end of period	113	117	130	130
Opened and closed in period	885	781	951	323

TABLE 2.
BREAKDOWN OF COMPLAINTS RECEIVED FOR THE PERIOD 2005/6 TO 2007/8

Complaint type	Opened			Closed			Opened and Closed		
	2005/6	2006/7	2007/8	2005/6	2006/7	2007/8	2005/6	2006/7	2007/8
Ombudsman	461	349	359	517	344	355	413	264	266
PID	1	0	3	1	0	2	1	0	2
Sub-total	462	349	362	518	344	357	414	264	268
FOI our records	2	0	0	2	0	0	2	0	0
FOI reviews	47	25	71	55	26	63	44	17	55
Total	511	374	433	575	370	420	460	281	323

TABLE 3.
COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS

Department	Received			Closed 2007/8	Declined	Discontinued	Referred	No defective administration	Partly / fully substantiated
	2005/6	2006/7	2007/8						
Department of Economic Development (DED)	1	0	0	0	0	0	0	0	0
Department of Health & Human Services (DHHS)	64	80	105	85	16	22	0	37	10
Departmental / Not specified	19	16	17	11	2	2	0	3	4
Adoption and Information Services	1	0	0	0	0	0	0	0	0
Alcohol and Drugs Service	3	2	3	1	1	0	0	0	0
Child and Family Services	0	3	1	0	0	0	0	0	0
Children and Families Division	10	11	6	12	1	4	0	6	1
Disability Services	1	1	4	1	0	1	0	0	0
Hospital and Ambulance Service	0	1	0	0	0	0	0	0	0
Housing Tasmania	25	25	32	26	8	8	0	7	3
Launceston General Hospital	0	0	1	0	0	0	0	0	0
North West Regional Hospital	0	1	0	0	0	0	0	0	0
Pharmaceutical Services	1	2	18	6	2	3	0	1	0
Portfolio Services	0	0	1	0	0	0	0	0	0
Royal Hobart Hospital	4	1	0	0	0	0	0	0	0
Screen Tasmania	0	0	1	1	0	1	0	0	0
Ashley Youth Detention Centre	0	17	21	27	2	3	0	20	2
Department of Infrastructure, Energy and Resources (DIER)	20	23	11	10	0	1	0	6	3
Departmental / Not specified	7	7	2	1	0	0	0	1	0
Driver Licensing Unit	0	0	0	2	0	1	0	1	0
Land Transport Safety	0	0	2	1	0	0	0	0	1
Registrar of Motor Vehicles	0	0	1	2	0	0	0	0	2
Registration and Licensing	0	8	0	0	0	0	0	0	0
Roads and Public Transport	13	8	2	2	0	0	0	2	0
Roads and Traffic Division	0	0	2	1	0	0	0	1	0
Transport Infrastructure	0	0	1	0	0	0	0	0	0
Vehicle Operations Branch	0	0	1	1	0	0	0	1	0
Department of Education (DOE)	16	10	13	14	2	5	0	6	1
Departmental / Not specified	7	6	6	9	1	2	0	5	1
Schools and Colleges	3	1	0	0	0	0	0	0	0
University of Tasmania	2	2	5	4	1	3	0	0	0
TAFE Tasmania	0	0	1	0	0	0	0	0	0
Teachers Registration Board	0	1	0	0	0	0	0	0	0
State Library and Information Services	0	0	1	1	0	0	0	1	0
State Archivist	1	0	0	0	0	0	0	0	0

Department	Received			Closed 2007/8	Declined	Discontinued	Referred	No defective administration	Partly / fully substantiated
	2005/6	2006/7	2007/8						
Department of Justice (DOJ)	46	42	78	64	11	9	0	38	6
Departmental / Not specified	5	1	6	3	0	2	0	0	1
Anti-Discrimination Commissioner	0	0	1	1	1	0	0	0	0
Attorney General	1	0	1	1	1	0	0	0	0
Births, Deaths and Marriages	1	3	1	1	1	0	0	0	0
Community Corrections	0	0	2	0	0	0	0	0	0
Corrective Services	29	27	57	51	4	7	0	35	5
Consumer Affairs and Fair Trading	2	4	0	0	0	0	0	0	0
Crown Law	0	1	0	0	0	0	0	0	0
Fines Enforcement	0	3	3	2	1	0	0	1	0
Launceston Magistrates Court	0	0	1	0	0	0	0	0	0
Parole Board	0	0	3	3	2	0	0	1	0
Victims Assistance Unit	0	1	0	0	0	0	0	0	0
Workplace Standards Tasmania	4	0	1	1	0	0	0	1	0
Magistrates Court	4	2	2	1	1	0	0	0	0
Department of Treasury and Finance	13	10	3	4	1	0	0	3	0
Departmental / Not specified	0	0	1	1	1	0	0	0	0
Liquor and Gaming Branch	0	0	0	1	0	0	0	1	0
State Revenue Office	0	0	2	2	0	0	0	2	0
Department of Premier and Cabinet	6	1	5	3	2	0	0	1	0
Departmental / Not specified	0	0	2	1	1	0	0	0	0
Local Government Division	0	0	1	1	0	0	0	1	0
Minister for Energy	0	0	1	0	0	0	0	0	0
Office of the Governor	0	0	1	1	1	0	0	0	0
Department of Primary Industries and Water	22	12	20	12	6	0	0	4	2
Departmental / Not specified	0	0	12	6	3	0	0	2	1
Information and Land Services	0	0	1	0	0	0	0	0	0
Land Data Registration Branch	0	0	1	1	0	0	0	1	0
Office of the Surveyor General	0	0	1	1	1	0	0	0	0
Office of the Valuer General	0	0	2	3	2	0	0	1	0
Service Tasmania Unit	0	0	0	1	0	0	0	0	1
Strategic Policies	0	0	1	0	0	0	0	0	0
Department of Police and Public Safety	61	46	35	41	14	8	0	15	4
Commissioner of Police	0	0	0	1	0	1	0	0	0
Eastern District	0	0	1	1	1	0	0	0	0
Tasmania Police	0	0	34	39	13	7	0	15	4
Department of Tourism, Parks, Heritage and Arts	4	3	5	1	0	0	0	1	0
Departmental / Not specified	0	0	4	0	0	0	0	0	0
Parks and Wildlife Services	0	0	1	0	0	0	0	0	0
Environment	0	0	0	1	0	0	0	1	0
Total (State Government Department)	253	227	273	234	52	45	0	111	26

TABLE 4.
COMPLAINTS AGAINST LOCAL GOVERNMENT

Council	Received			Closed	Declined	Discontinued	Referred	No defective administration	Partly / fully substantiated
	2005/6	2006/7	2007/8	2007/8					
Break O'Day Council	5	1	4	2	1	0	0	1	0
Brighton Council	2	2	3	3	2	0	0	0	1
Burnie City Council	0	1	0	0	0	0	0	0	0
Central Coast Council	5	1	3	0	0	0	0	0	0
Central Highlands Council	3	2	1	1	1	0	0	0	0
Circular Head Council	2	0	0	0	0	0	0	0	0
Clarence City Council	8	1	4	4	1	1	0	1	1
Derwent Valley Council	4	1	0	0	0	0	0	0	0
Devonport City Council	4	3	0	1	0	0	0	1	0
Dorset Council	2	1	1	1	0	0	0	1	0
Flinders Island Council	1	1	1	0	0	0	0	0	0
George Town Council	5	2	2	3	0	0	0	1	2
Glamorgan Spring Bay Council	3	2	5	4	1	1	0	1	1
Glenorchy City Council	2	8	4	4	1	1	0	2	0
Hobart City Council	14	2	5	4	1	0	0	2	1
Huon Valley Council	9	2	4	4	1	1	0	2	0
Kentish Council	5	3	1	1	0	0	0	1	0
King Island Council	1	0	9	1	1	0	0	0	0
Kingborough Council	6	2	1	6	1	1	0	4	0
Latrobe Council	2	2	1	1	0	1	0	0	0
Launceston City Council	8	9	6	8	3	2	0	3	0
Meander Valley Council	8	0	2	2	1	0	0	1	0
Northern Midlands Council	2	2	2	2	0	1	0	1	0
Sorell Council	6	6	8	7	1	2	0	3	1
Southern Midlands Council	0	0	2	0	0	0	0	0	0
Tasman Council	3	3	2	0	0	0	0	0	0
Waratah/Wynyard Council	0	4	2	1	1	0	0	0	0
West Coast Council	3	0	1	0	0	0	0	0	0
West Tamar Council	3	2	1	1	0	1	0	0	0
Total	116	63	75	61	17	12	0	25	7

TABLE 5.
COMPLAINTS AGAINST PUBLIC AUTHORITIES

Public Authorities	Received	Closed	Declined	Discontinued	Referred	No defective administration	Partly / fully substantiated
	2007/8	2007/8					
Board of Architects of Tasmania	0	0	0	0	0	0	0
Director of Public Prosecutions	1	1	1	0	0	0	0
Government Prices Oversight Commission	1	0	0	0	0	0	0
Guardianship and Administration Board	3	3	1	1	0	1	0
FOI Advisory Officer	1	0	0	0	0	0	0
Law Society	1	0	0	0	0	0	0
Legal Aid Commission	5	5	2	0	1	1	1
Marine and Safety Tasmania	2	1	1	0	0	0	0
Medical Council of Tasmania	0	1	0	0	0	1	0
Nursing Board of Tasmania	1	1	1	0	0	0	0
Office of the Tasmanian Energy Regulator	1	0	0	0	0	0	0
Pharmacy Board of Tasmania	0	1	0	0	0	1	0
Psychologists Registration Board of Tasmania	2	0	0	0	0	0	0
Public Guardian	0	0	0	0	0	0	0
Tourism Tasmania	0	0	0	0	0	0	0
Retirement Benefits Fund Board	8	3	0	0	0	3	0
Rivers and Water Supply Commission	1	0	0	0	0	0	0
Tasmanian Electoral Commissioner	0	0	0	0	0	0	0
Tote Tasmania	0	2	1	0	0	1	0
Tasmanian Fire Service	3	2	1	0	0	1	0
Tasmanian Qualifications Authority	0	0	0	0	0	0	0
The Public Trustee	17	15	3	3	0	7	2
Total	47	35	11	4	1	16	3

TABLE 6. COMPLAINTS AGAINST GOVERNMENT BUSINESS ENTERPRISES AND OTHER AUTHORITIES

GBEs and Other Authorities	Received		Closed		Declined	Discontinued	Referred	No Defective Administration	Partly / fully substantiated
	2007/8	2007/8	2007/8	2007/8					
Forestry Tasmania	8	2	0	1	0	1	0	1	0
Forest Practices Authority	5	2	1	0	0	0	1	0	0
Motor Accidents Insurance Board	4	4	2	1	0	1	0	1	0
Aurora Energy	8	2	1	0	0	1	0	1	0
Hydro Tasmania	1	1	0	0	1	0	0	0	0
Tasmanian Greyhound Racing Council	1	1	0	0	0	1	0	1	0
Transend Networks	1	1	0	0	0	0	0	0	0
TT Line	4	5	0	1	0	3	0	3	1
Total	32	18	4	3	1	8	1	8	1

TABLE 7. TOTAL CASES OPENED, CLOSED AND SUBSTANTIATED (EXCLUDING FOI AND PID)

	Received			Closed		Declined	Discontinued	Referred	No defective administration	Partly / fully substantiated
	2005/6	2006/7	2007/8	2007/8	2007/8					
Out of jurisdiction	33	11	6	10	10	0	0	0	0	0
GRAND TOTAL (Tables 3 – 7)	461	349	433	358	94	64	2	160	37	

Note:

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

FIGURE 1. WHO IS BEING COMPLAINED ABOUT

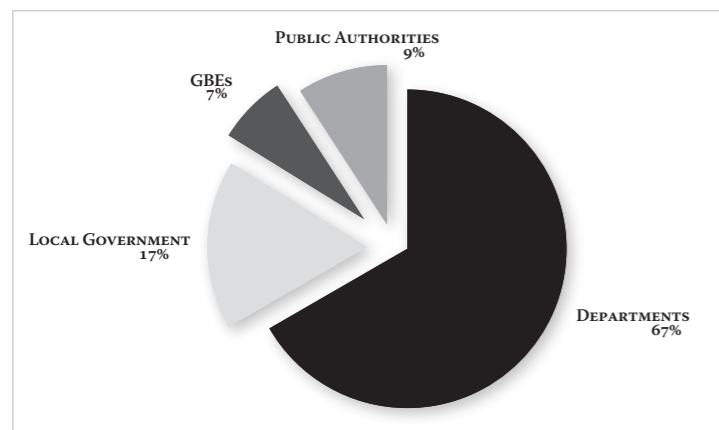


FIGURE 2. WHAT IS THE BREAKDOWN OF COMPLAINTS AGAINST STATE GOVERNMENT DEPARTMENTS?

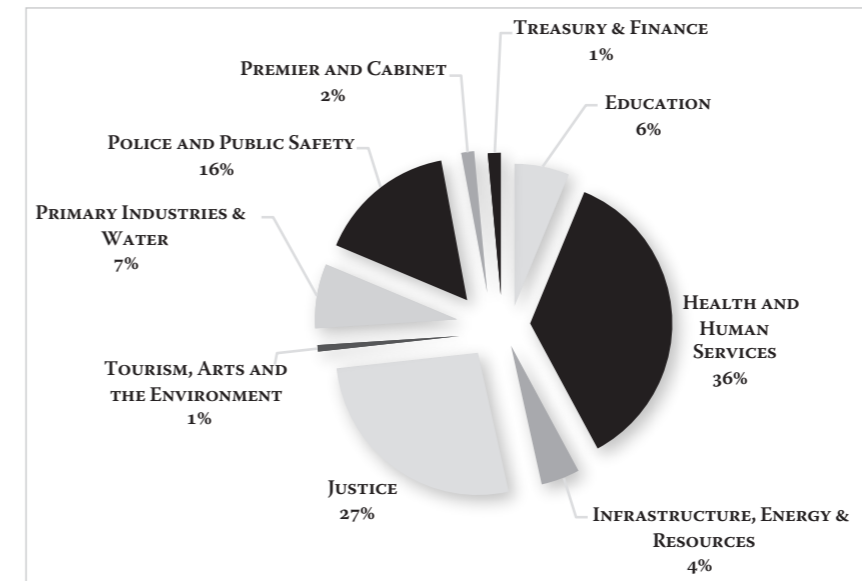


FIGURE 3. REASONS FOR CLOSURE (EXCLUDING FOI)

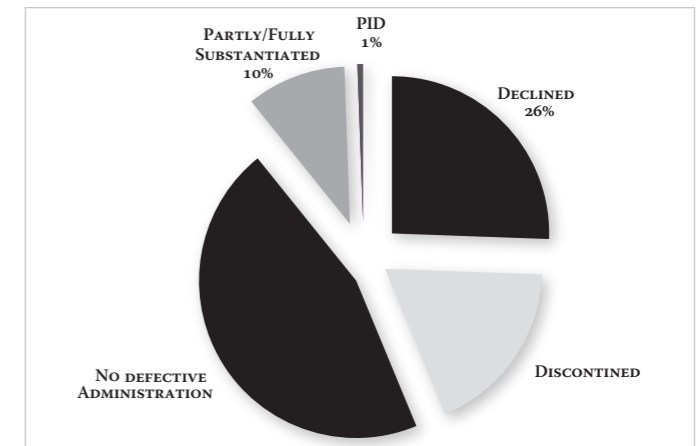


FIGURE 4. WHAT WERE COMPLAINANTS' OBJECTIVES?

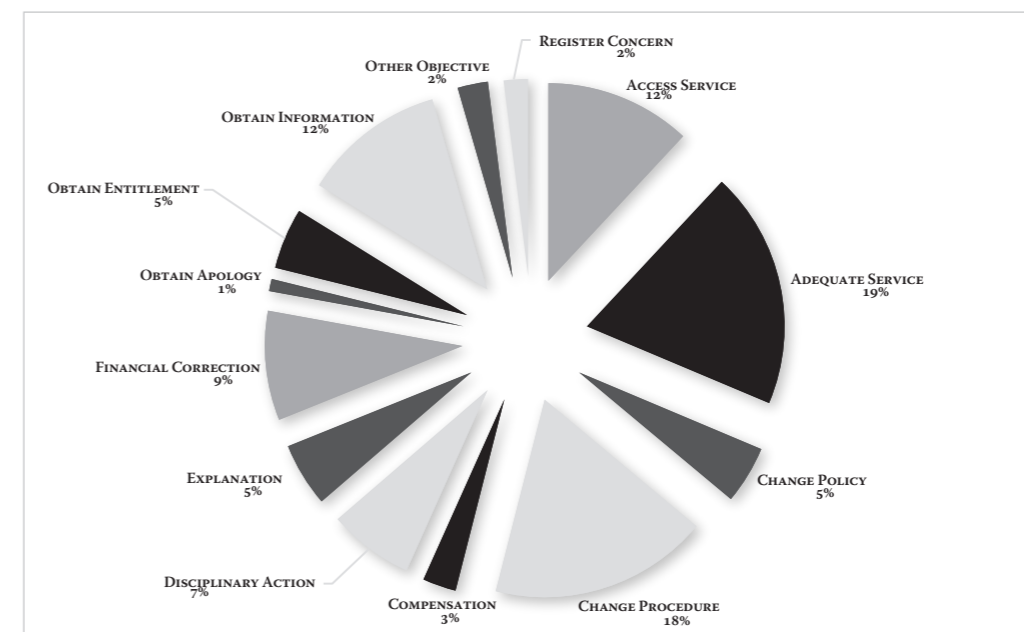
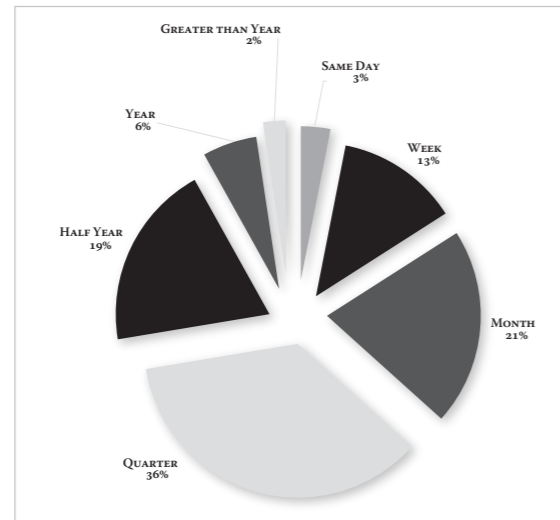
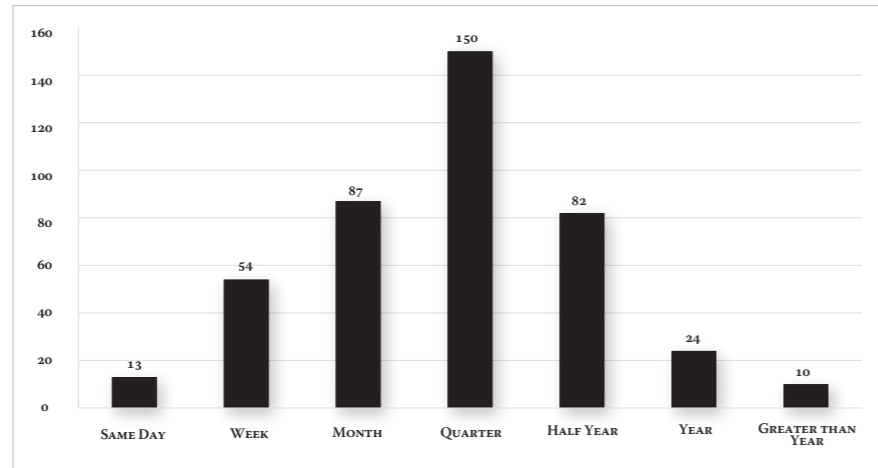


FIGURE 5.
TIME TAKEN TO RESOLVE COMPLAINTS?



COMPLAINT ISSUES

FIGURE 6.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST TASMANIA POLICE (DPSS)?

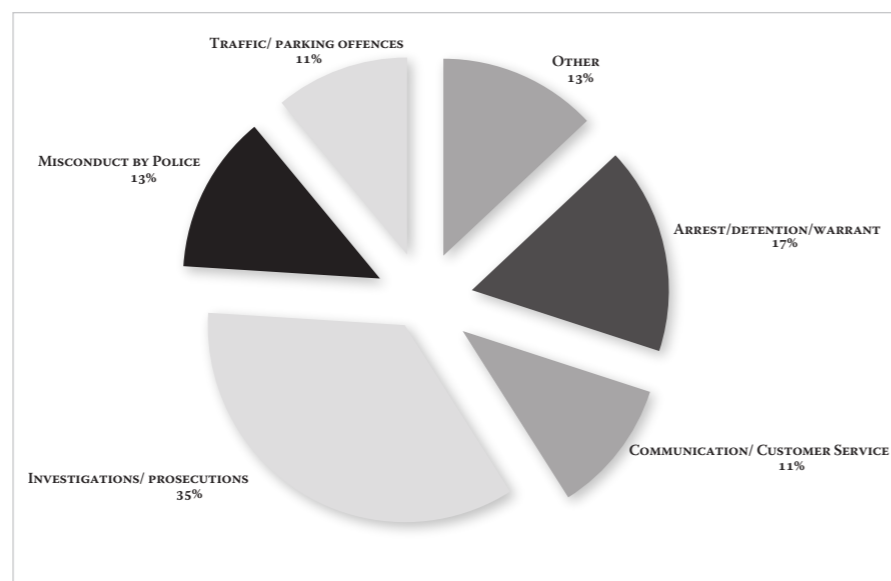


FIGURE 7.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST STATE DEPARTMENTS AND PRESCRIBED AUTHORITIES?

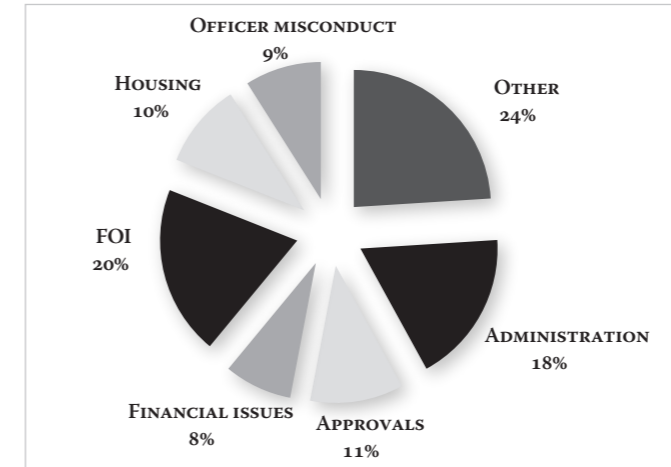


FIGURE 8.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST CORRECTIVE SERVICES?

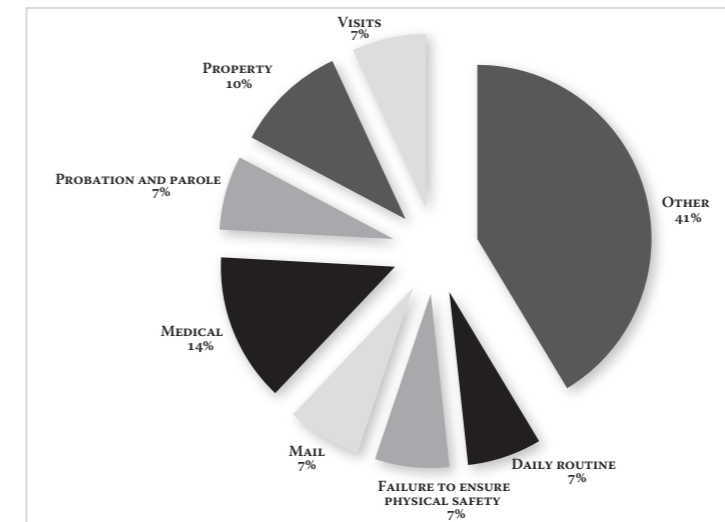
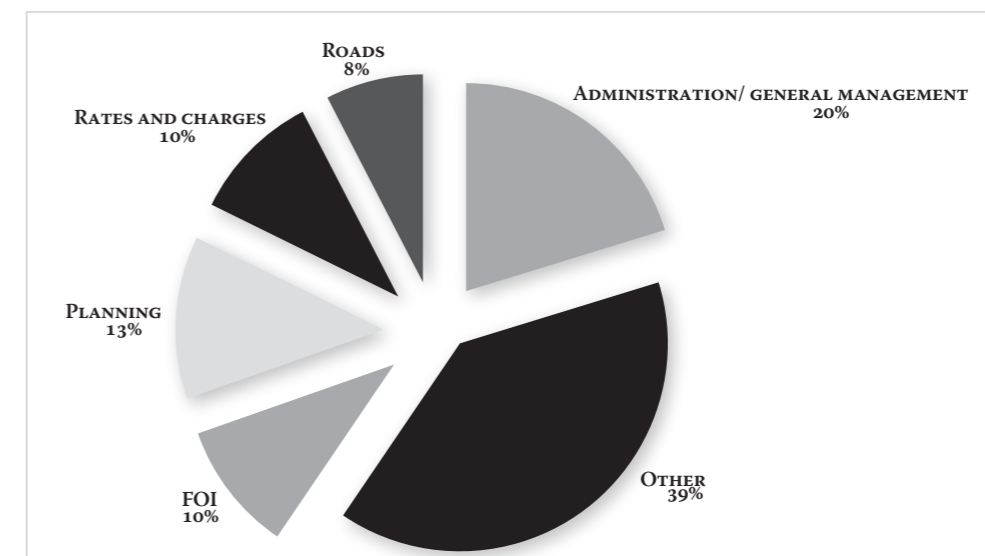


FIGURE 9.
WHAT WERE THE MAIN ISSUES OF COMPLAINT AGAINST LOCAL GOVERNMENT?



APPENDIX B - ENERGY OMBUDSMAN COMPLAINT ACTIVITY

ENERGY TABLE 1.
ACTIVITY

Number of Complaints	2005/6	2006/7	2007/8
B/Forward from previous	35	63	52
Opened in period	283	251	309
Closed in period	255	262	292
Carried Forward (still open)	63	52	69
Opened and closed in period	226	210	251

ENERGY TABLE 2.
ENQUIRIES AND COMPLAINTS RECEIVED

	2005/6			2006/7			2007/8		
	Enquiries	Complaints	Both	Enquiries	Complaints	Both	Enquiries	Complaints	Both
Aurora Energy	61	216	277	66	173	239	77	221	298
Hydro Tasmania	0	0	0	1	0	1	0	0	0
Transend Networks	1	2	3	0	2	2	1	1	2
Origin Energy	0	0	0	0	0	0	2	0	2
Option One	0	0	0	0	0	0	0	3	3
Powerco	0	3	3	3	3	6	0	2	2
General Enquiries	0	0	0	3	0	3	2	0	2
Total	62	221	283	73	178	251	82	227	309

ENERGY TABLE 3.
CLOSURE REASONS BY ENTITY

Provider name	Dismissed	Award made	Case withdrawn	Complaint resolved	Enquiry only	Explanation given	Out of jurisdiction	Referred to entity	Grand Total
Aurora Energy Pty Ltd	23	0	6	116	22	97	5	7	276
Hydro Tasmania	0	0	0	0	0	0	0	0	0
Transend Networks	0	0	0	0	0	0	0	0	0
Powerco	0	0	0	0	0	2	0	0	2
Option One	0	0	0	0	0	1	0	0	1
Origin Energy	0	0	0	0	1	0	1	0	2
General Enquiries	0	0	0	0	1	0	1	0	2
Grand Total	23	0	6	116	24	100	7	7	283

ENERGY TABLE 4.
CLOSURE REASONS

Closure reasons	2005/6	2006/7	2007/8
Dismissed 10.1(b) – referred to Energy Regulator	0	0	1
Dismissed 10.1(c) – lacks substance	26	2	1
Dismissed – complaint not received in writing	21	56	17
Dismissed – dealt with by others	1	1	5
Dismissed – other	1	3	0
Case withdrawn	13	10	6
Complaint resolved – negotiated outcome	65	52	95
Resolved – fair offer	3	14	25
Resolved – other	0	0	2
Enquiry only	61	26	24
Explanation given, no further action	43	86	102
Referred to Aurora	11	4	7
Referred to Transend	0	0	0
Referred to Powerco	1	1	0
Referred to Option One	0	1	0
Award made	0	0	0
Referred to court	0	0	0
Out of jurisdiction	9	6	7
Total	255	262	292

Explanation of Closure reasons

- Dismissed – lacks substance:** The Ombudsman dismissed one complaint under this category. The major reason for dismissal is where the complainant is unable to support the argument presented in the complaint, or refute the explanation provided by the energy entity.
- Dismissed – frivolous, not in good faith:** There was one complaint dismissed under this category during the reporting year. A complaint is dismissed under this category where it lacks any merit or the complainant's motives are not necessarily directed to the resolution of a valid grievance.
- Dismissed – complaint not received in writing:** There were 17 complaints recorded under this category, significantly down on the 56 last year. The *Energy Ombudsman Act 1998* requires a complaint to be made in writing and to be signed. However, the Act also provides the Ombudsman with discretion to receive a complaint that does not comply with this requirement. As a general rule, the Energy Ombudsman deals orally with any

complaint that is considered urgent, or one that is considered to be easily resolvable or a relatively simple matter. In all other circumstances, it is requested that the complaint be made in writing. If a written complaint is not received within 14 days, the complainant is given a courtesy call. In many cases, the complaint has been resolved. Where a complainant indicates that providing a complaint in writing might be a problem, the Ombudsman sends out a letter detailing the issues of the complaint, for the complainant to sign and return. The decrease in numbers in this category is a direct result of the determination that all people with a valid complaint should have access to the Energy Ombudsman service.

4. **Dismissed – dealt with by others:** This category recorded five complaints for the reporting period. A complaint will be recorded in this category where it is resolved prior to the Ombudsman making enquiries. For example, the energy entity may have implemented a process to resolve a complaint before the complaint reaches the Ombudsman’s office and the circumstances giving rise to the complaint might then be regarded as having been adequately addressed with no need to investigate further.
5. **Resolved – other:** There were only two complaints in this category. This category is only used where the reason for closing a complaint does not fit into any of the other closure reasons.
6. **Case withdrawn:** There were six cases withdrawn during the reporting period. A complainant may withdraw a case for a number of reasons: the problem may have resolved itself, the information provided along the way to the complainant may have resulted in a change of mind about a perceived problem; or the complainant may just no longer wish to proceed with the complaint.
7. **Explanation given, no further action:** There were 102 complaints recorded in this category. Complaints are recorded in this category where there has been an explanation provided by the entity which satisfies the Ombudsman, and frequently also the complainant.
8. **Resolved – negotiated outcome:** The Ombudsman closed 95 complaints in this category during the reporting year. Complaints are recorded in this category where a mutually acceptable outcome has been reached following negotiations between the entity and the Ombudsman to resolve the issues raised by the complainant.

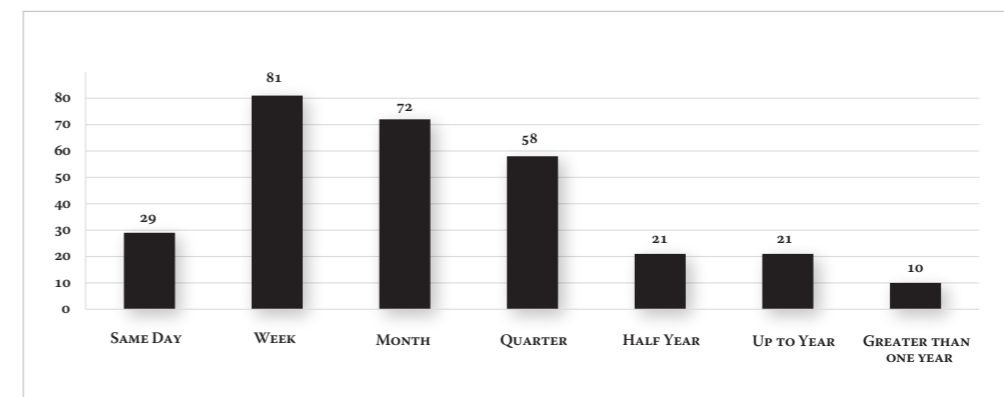
9. **Resolved – fair offer:** There were 25 complaints recorded in this category. A complaint is closed under this category when the entity suggests or offers a resolution that is accepted by the complainant.

10. **Referred to Aurora Energy:** There were seven complaints referred to Aurora Energy. A complaint is closed under this category where a complainant has not raised the complaint with Aurora Energy prior to making a complaint to the Ombudsman, or where the complainant is seeking compensation from Aurora Energy and has not lodged a claim form.

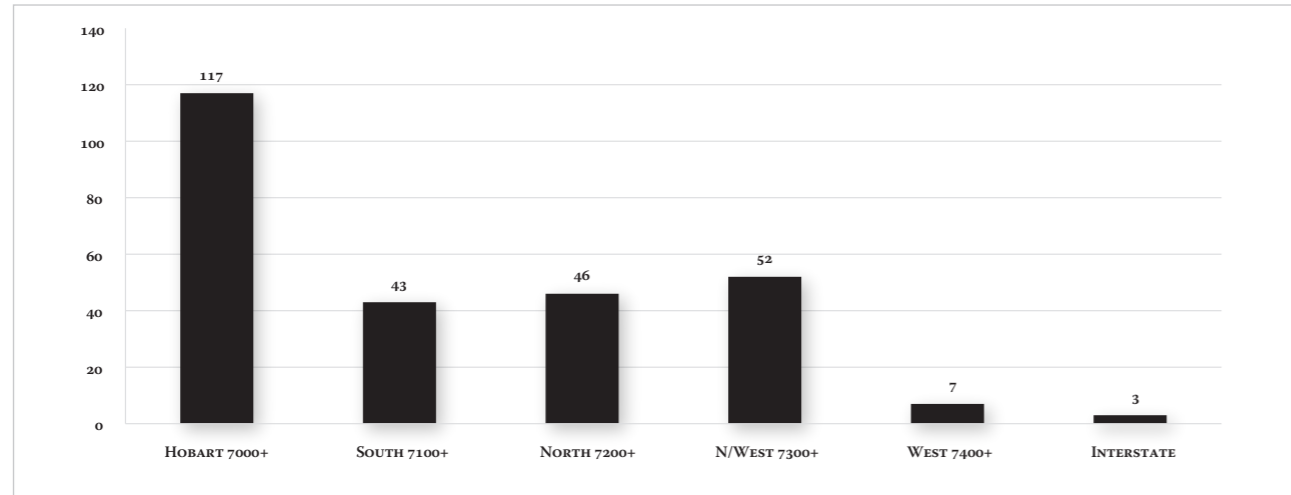
11. **Out of jurisdiction:** There were seven complaints in this category. A complaint is closed under this category when it is identified that the complaint is not strictly about any service of, or relating to the sale and supply of electricity or natural gas by an energy entity.

12. **Enquiry only:** There were 24 matters recorded under this category. An enquiry only is where a contact is made with the office and the matter is referred elsewhere, for example to the Office of Consumer Affairs and Fair Trading, or where some general information is provided that in no way involves the investigation of a complaint.

ENERGY FIGURE 1.
TIME TAKEN TO RESOLVE COMPLAINTS



ENERGY FIGURE 2.
DISTRIBUTION OF COMPLAINTS RECEIVED BY POSTCODE



ENERGY TABLE 5.
COMPLAINT ISSUES - JULY 2007 TO JUNE 2008

Category	Issue	Sub-issue	Primary	Secondary	Tertiary	Grand Total	
Billing	Arrears	Difficulty in payment	25	5	0	30	
		Disconnection	16	9	0	25	
		Error	11	2	0	13	
	Error			2	0	0	2
			Debt transfer	2	0	0	2
			Disconnection	3	0	0	3
			EasyPay	2	0	0	2
			Fees	1	1	0	2
			No bill	2	0	0	2
			Other	1	0	0	1
			Pay As You Go	1	0	0	1
			Statements	6	1	0	7
			Fees	Connection	1	0	0
	Service and Meter Charges	4	0	0	4		
Health Care Card Concession High			4	0	0	4	
			1	0	0	1	
		Difficulty in payment	2	0	0	2	
		Disputed	17	4	0	21	
		Estimated	1	0	0	1	
Hydro Heat			1	0	0	1	

Category	Issue	Sub-issue	Primary	Secondary	Tertiary	Grand Total	
Meter			1	0	0	1	
		Accuracy	6	2	0	8	
		Misread	2	0	0	2	
		Not read	2	0	0	2	
		Pay As You Go	13	0	0	13	
		Separation	1	0	0	1	
		Tampering / Damage	1	0	0	1	
Payment		Agents	0	1	0	1	
		Payment Plan	6	0	0	6	
		Pre-Payment Card	0	1	0	1	
		Pensioner rebate	1	0	0	1	
Security deposit		Error	1	0	0	1	
		Amount	5	0	0	5	
		Refund	2	0	0	2	
		Statement	1	0	0	1	
		EasyPay	1	0	0	1	
		Reminder	1	0	0	1	
Tariff		Incorrect	10	0	0	10	
		Information	1	0	0	1	
Billing Total			156	26	0	182	
Billing (Gas)	High	Disputed	1	0	0	1	
Billing (Gas) Total			1	0	0	1	
Customer Service		Failure to respond	2	2	1	5	
		Information	0	2	0	2	
		Information / Consultation	0	3	1	4	
		Poor attitude	2	3	0	5	
Customer Service Total			4	10	2	16	
Land		Damage	1	0	0	1	
		Existing easement	0	1	0	1	
			0	1	0	1	
		Use	0	1	0	1	
		General environment	2	0	0	2	
		Meter	Access	2	1	0	3
			PAYG	3	0	0	3
		Towers	Placement	1	0	0	1
			Safety	0	1	0	1
		Tree trimming / clearing		6	0	0	6
Land Total			15	4	0	19	
Land (Gas)	Meter	Placement	0	1	0	1	
Land (Gas) Total			0	1	0	1	

Category	Issue	Sub-issue	Primary	Secondary	Tertiary	Grand Total	
Provision	Connection	Capital contribution	1	0	0	1	
		Delay	30	1	0	31	
		Information	2	1	0	3	
		Supply upgrade	1	0	0	1	
	Disconnection			0	1	0	1
		Error		2	0	0	2
		Other (non bill)		4	0	1	5
		Supply / defect		2	0	0	2
	Poles and wires	Contract / Authorisation		1	0	0	1
		Cost		5	1	0	6
		Maintenance		1	1	0	2
		Placement		12	2	0	14
		Private Lines		7	0	0	7
		Safety		1	0	0	1
		Timeliness		2	1	0	3
	Street lighting	Repair		1	0	0	1
Provision Total			72	8	1	81	
Provision (Gas)	Connection	Delay	1	0	0	1	
		Pipes	1	0	0	1	
Provision (Gas) Total			2	0	0	2	
Supply	Damage	Customer equipment failure	4	0	0	4	
		District system failure	4	1	0	5	
		Third party	1	0	0	1	
		Unknown cause	1	0	0	1	
	Outage(planned)	Duration	4	0	0	4	
		Frequency	0	1	0	1	
		Notice	6	1	0	7	
	Outage(unplanned)			2	1	0	3
		Duration		3	0	0	3
		Frequency		3	0	0	3
		GSL payments		3	0	0	3
	Quality	RFI		1	0	0	1
		Variations (voltage)		3	0	0	3
	Supply Total			35	4	0	39
Out of jurisdiction			7	0	0	7	
Grand Total			292	53	3	348	

Defining Primary, Secondary and Tertiary issues

A “Primary” issue is the major issue raised by a complaint. Generally a complaint will only generate a primary issue, as most complaints usually raise only one major issue for investigation.

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

It is important to note that the complaint issues raised are taken directly from the complaint made.

Complaint trends

There has been a significant increase in the number of new complaints received for this reporting year. In 2006/7, 133 new complaints were received, whereas this year 227 complaints were received. (However, the number of enquiries dropped from 118 to 82.) Billing issues have risen slightly overall as a percentage of total complaints from 47% last year to 52% of the new complaints received for this reporting year.

Billing issues are up from 118 last year to 160 this year. There has also been an increase of 16 network related complaints from last year although the spread of issues remains similar.

The most significant change in the trend of the complaints made is the big rise in complaints associated with Aurora Energy customers facing disconnection or seeking assistance with payment plans as a result of being in arrears on their electricity accounts. As noted below, this is believed to be a result of the hardship many people now face with the rise in the cost of living, including a rise in electricity prices, and a consequence of Aurora Energy providing contact details for the Energy Ombudsman on disconnection warnings.

Billing

As earlier stated, complaints about billing issues have risen substantially on the figures for the reporting year.

The most obvious change in the make-up of these figures is that the issue of arrears on accounts forms 32.5% of the total (52 of 160), up from 17% last year's total (20 of 118). This may, at first glance, appear to be a direct result of increases in electricity prices during the second half the year. However, the Energy Ombudsman's Investigation Officers (IOs) have reported that only a very small number of complainants in this category have referred to the increased electricity prices in their contact with the office. Further, IOs have noted a higher number of complainants who have sought the assistance of a welfare agency, or to whom they have recommended that such assistance be sought.

The likely explanation for the greatly increased number of complainants who are in arrears on their electricity accounts is the broader rise in the cost of living that has been so well documented in the media. Higher electricity costs, coupled with a cold winter, appears to have led to generally high electricity accounts which, together with higher costs for petrol, groceries, mortgages and rent has been reflected in the number of complainants seeking some assistance from this office to stave off disconnection or to have a payment plan negotiated to meet both their arrears and on-going consumption.

An additional reason for these statistics is also likely to be the fact that contact details for the Energy Ombudsman are now, as the *Tasmanian Electricity Code* requires, included on each disconnection warning sent out by Aurora Energy. This change was introduced towards the end of the 2006/7 financial year.

Provision

There is little overall change in the complaint numbers in this category from the last reporting year. However, complaints regarding a delay in the connection of new electricity supply (30) continues to rise, as noted last year. Delay in connection is an issue that causes a great deal of concern for those complainants who often have to wait for some time if a connection is not made on the scheduled day.

It is important to note that in many cases a new connection is delayed as a result of limited or incorrect advice in the electrical works request (EWR) from the complainant's electrical contractor and, in some cases, the contractor has simply failed to lodge an EWR.

The Ombudsman will continue to monitor complaints about delay in connection, as he is concerned that Aurora Energy does contribute to delays in some cases, particularly where a prior site visit would have ensured a scheduled connection could proceed as planned.

Supply

Complaints in this category might relate to alleged damage to customer equipment as the result of an outage, the quality of the complainant's supply or the frequency or length of outages. Complaints regarding supply are up on last year. The issues raised in these complaints are well spread across the categories although there is a rise in the number of complaints about the adequacy of notices for planned outages.

On a number of occasions Aurora Energy has failed to provide adequate notice, as prescribed in the *Electricity Supply Industry (Tariff Customers) Regulations* 1998. Complaints about planned outages are generally made by small business operators who have difficulty in making adequate preparations for prolonged outages. On occasions the process for providing notice appears to be *ad hoc*, leading to customers having insufficient time to make alternative arrangements. In most of these cases where it is found that notice has not met with the Regulations, Aurora Energy has sought to change its plans to minimise any inconvenience to businesses impacted by the outage.

Land

Complaints recorded in this category might relate to alleged damage to customer property as a result of provisioning work, or the use of easements. Complaints might also be about access to meters or the actual placement of meters or transmission towers. Land related complaints remain much the same as last year. Complaints in this category are slightly down on last year.

APPENDIX C - FINANCIAL STATEMENTS



Office of the Ombudsman and
Health Complaints Commissioner

Financial Statements 2007-08



Table of Contents

Income Statement for the year ended 30 June 2008	3
Balance Sheet as at 30 June 2008	4
Cash Flow Statement for the year ended 30 June 2008	5
Statement of Recognised Income and Expense for the year ended 30 June 2008	6
Notes to and forming part of the Financial Statements for the year ended 30 June 2008	7



Income Statement for the year ended 30 June 2008

	Notes	2008	2008
		Budget \$'000	Actual \$'000
Revenue and other income			
Appropriation revenue – recurrent	1.6(a), 4.1	1 280	1 280
Other revenue	1.6(b), 4.2	475	442
Total income and other revenue		1 755	1 722
Expenses			
Employee benefits	1.7(a), 5.1	1 273	1 244
Supplies and consumables	5.2	404	172
Impairment losses	1.7(b), 5.3	-	106
Other expenses	1.7(c), 5.4	87	306
Total expenses		1 764	1 828
Net deficit attributable to the State		(9)	(106)

This Income Statement 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.



Balance Sheet as at 30 June 2008

	Notes	2008	2008
		Budget \$'000	Actual \$'000
Assets			
<i>Financial assets</i>			
Cash and deposits	1.8(a), 9.1	339	266
Receivables	1.8(b), 6.1	-	4
<i>Non-financial assets</i>			
Intangibles	1.8(c), 6.2	-	80
Total assets		339	350
Liabilities			
<i>Financial Liabilities</i>			
Payables	1.9(a), 7.1	5	49
Employee benefits	1.9(b), 7.2	192	187
Other liabilities	1.9(d), 7.3	-	11
Total liabilities		197	247
Net assets		142	103
Equity			
Accumulated funds		142	103
Total equity	8.1	142	103

This Balance Sheet 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.



Cash Flow Statement for the year ended 30 June 2008

	Notes	2008	2008
		Budget \$'000	Actual \$'000
Cash flows from operating activities			
Cash inflows			
		Inflows (Outflows)	Inflows (Outflows)
Appropriation receipts - recurrent		1 280	1 280
GST Receipts		46	-
Other cash receipts		475	442
Total cash inflows		1 801	1 722
Cash outflows			
Employee benefits		(1 264)	(1 246)
GST payments		(46)	-
Supplies and consumables		(404)	(225)
Other cash payments		(87)	(300)
Total cash outflows		(1 801)	(1 771)
Net cash used by operating activities	9.2	-	(49)
Cash flows from investing activities			
Cash inflows			
Cash inflow on administrative restructure	8.2	339	315
Total cash inflows		339	315
Net cash from investing activities		339	315
Net decrease in cash held		-	266
Cash and cash equivalents at the beginning of the reporting period		-	-
Cash and cash equivalents at the end of the reporting period	9.1	339	266

This Cash Flow Statement 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.



Statement of Recognised Income and Expense for the year ended 30 June 2008

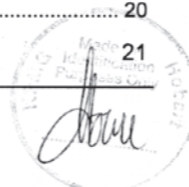
	Notes	2008
		\$'000
Income and expenses recognised directly in equity		
Increase in net assets due to administrative restructuring		209
Net income recognised directly in equity		209
Net deficit for the financial year	8.1	(106)
Total recognised income and expense for the financial year		103

This Statement of Recognised Income and Expense should be read in conjunction with the accompanying notes.



Notes to and forming part of the Financial Statements for the year ended 30 June 2008

Note 1	Significant Accounting Policies	9
1.1	Objectives and Funding	9
1.2	Basis of Accounting	9
1.3	Functional and Presentation Currency	9
1.4	Changes in Accounting Policies	9
1.5	Transactions by the Government as Owner – Restructuring of Administrative Arrangements	10
1.6	Income	10
1.7	Expenses	10
1.8	Assets	11
1.9	Liabilities	11
1.10	Leases	12
1.11	Judgements and Assumptions	12
1.12	Comparative Figures	12
1.13	Budget Information	12
1.14	Rounding	12
1.15	Taxation	13
Note 2	Explanations of Material Variances between Budget and Actual Outcomes	14
2.1	Income Statement	14
2.2	Balance Sheet	14
2.3	Cash Flow Statement	14
Note 3	Events Occurring After Balance Date	15
Note 4	Income	15
4.1	Appropriation Revenue	15
4.2	Other Revenues	15
Note 5	Expenses	15
5.1	Employee Benefits	15
5.2	Supplies and Consumables	16
5.3	Impairment losses	16
5.4	Other Expenses	17
Note 6	Assets	17
6.1	Receivables	17
6.2	Intangibles	18
Note 7	Liabilities	18
7.1	Payables	18
7.2	Employee Benefits	18
7.3	Other Liabilities	19
7.4	Schedule of Commitments	20
Note 8	Equity and Movements in Equity	21



8.1	Reconciliation of Equity	21
8.2	Administrative Restructuring	21
Note 9	Cash Flow Reconciliation	22
9.1	Cash and Cash Equivalents	22
9.2	Reconciliation of Operating Deficit to Net Cash used by Operating Activities	22
9.3	Financing Facilities	23
Note 10	Financial Instruments	24
10.1	Risk exposures	24
10.2	Categories of Financial Assets and Liabilities	25
10.3	Net Fair Values of Financial Assets and Liabilities	25



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

These Financial Statements are the first for the Office as a result of an administrative restructure within the Department of Justice. 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. In particular, AAS 29 *Financial Reporting by Government Departments* has been applied; 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 19 September 2008.

Compliance with the Australian Accounting Standards (AASBs and AASs) may not result in compliance with International Financial Reporting Standards (IFRS), as the AASBs and AASs 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 AASBs and AASs 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.

1.3 Functional and Presentation Currency

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

1.4 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 (AASB) that are relevant to its operations and effective for the current annual reporting period. These include:

- *AASB 7 Financial Instruments: Disclosures* replaces the presentation requirements of financial instruments in AASB 132 and introduces new financial instrument disclosure requirements. There has been no financial impact on the financial statements.

- *AASB 2007-4 Amendments to Australian Accounting Standards arising from Exposure Draft 151 and Other Amendments and Erratum: Proportionate Consolidation*. AASB 2007-4 makes amendments to a number of Australian Accounting Standards to introduce various accounting policy options, delete various disclosures presently required, and to make a number of editorial amendments.

The Office has not intended to change any of its current accounting policies on adoption of AASB 2007-4; accordingly, there has been no financial impact to these financial statements. However, in the financial statements, certain information is no longer required to be disclosed, or has been disclosed in an alternative manner, due to amendments made by AASB 2007-4 to the disclosure requirements of various Accounting Standards.

- *AASB 2007-7 Amendments to Australian Accounting Standards* makes editorial amendments to six Standards. The key change removes the encouragement in AASB 107 *Cash Flow Statements* to adopt a particular format for the cash flow statement. The Office did not intend to change any of its current accounting policies on adoption of AASB 2007-7; accordingly, there has been no financial impact to these financial statements.

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

The following new standards relevant to the Office have been issued by the AASB and are yet to be applied:

- *AASB 2007-8 Amendments to Australian Accounting Standards Arising from AASB 101* - revised standard to be applied in reporting periods on or after 1 January 2009. The Standard will not have a financial impact on the financial statements but will require a number of changes in disclosures.
- *AASB 2007-9 Amendments to Australian Accounting Standards arising from the Review of AASs 27, 29 and 31* - amending Standard to be applied on or after 1 July 2008. The primary focus of this Standard has been on relocating, where necessary, the requirements in AASs 27, 29 and 31, substantively unamended (with some exceptions), into topic-based Standards. The Standard will not have a material 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.

1.5 Transactions by the Government as Owner – Restructuring of Administrative Arrangements

Transactions and balances relating to a trustee or an agency arrangement are not recognised as Office revenues, expenses, assets or liabilities in these Financial Statements.

Net assets received under a restructuring of administrative arrangements are designated as contributions by owners and adjusted directly against equity. Net assets relinquished are designated as distributions to owners. Net assets transferred are initially recognised at the amounts at which they were recognised by the transferring agency immediately prior to the transfer. Details of these transactions are provided in 8.2.

1.6 Income

Income is recognised in the Income Statement 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) Appropriation Revenue

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

(b) Other Revenue

Revenue from other sources is recognised when the Office gains control of the funds and it is probable that the inflow of funds has occurred and can be reliably measured.

1.7 Expenses

Expenses are recognised in the Income Statement 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 Entitlements

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

(b) Impairment Losses

All assets are assessed to determine whether any impairment exists. Impairment exists when the recoverable amount of an asset is less than its carrying amount. Recoverable amount is the higher of fair value less costs to sell and value in use. The Office's assets are not used for the purpose of generating cash flows; therefore value in use is based on depreciated replacement cost where the asset would be replaced if deprived of it.

All impairment losses are recognised in profit or loss unless an asset has previously been revalued, in which case the impairment loss is recognised as a reversal to the extent that the previous revaluation with any excess recognised through profit or loss.

(c) Other Expenses

Expenses from ordinary activities are recognised when it is probable that the consumption or loss of future economic benefits resulting in a reduction of assets or an increase in liabilities has occurred and can be reliably measured.

1.8 Assets

Assets are recognised in the Balance Sheet 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 new case management system) are recognised as an intangible asset – work in progress (WIP) and are therefore currently valued at cost. The software has been recognised as WIP as the implementation is not yet complete. The system will go live, and the asset will be commissioned, in mid October 2008 at which point amortisation will commence.

1.9 Liabilities

Liabilities are recognised in the Balance Sheet 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 2008, 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 Income Statement 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

As part of a restructure within the Department of Justice, the Office became a separate agency on 1 July 2007. Comparative figures for 2007 are therefore not available.

1.13 Budget Information

Budget information refers to original estimates as disclosed in the 2007-08 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 Taxation

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



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 \$20,000.

2.1 Income Statement

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Supplies and Consumables	(a)	404	192	212	52
Other expenses	(a)	87	306	(219)	(252)

Notes to Income Statement variances

(a) Operating lease costs for office accommodation were budgeted against Supplies and Consumables but reported as Other expenses in actual costs. Total annual operating lease costs were \$172,000.

2.2 Balance Sheet

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
Cash and deposits	(a)	339	266	73	22
Intangibles - WIP	(b)	-	60	(60)	(100)
Payables	(c)	5	49	(44)	(880)

Notes to Balance Sheet variances

(a) Cash – Software and IT consultancy costs (of \$60,000) for new case management system were not included in the budget.

(b) Intangibles - Work in progress was not included in the budget.

(c) Payables – Variance mainly attributable an unpaid invoice of \$20,000 for software and consultancy costs for new case management system.

2.3 Cash Flow Statement

	Note	Budget \$'000	Actual \$'000	Variance \$'000	Variance %
GST Receipts	(a)	46	-	46	100
GST Payments	(a)	46	-	46	100
Supplies and Consumables	(b)	404	225	179	44
Other cash payments	(b)	87	300	(213)	(245)

Notes to Cash Flow Statement variances

(a) The Office is not registered for GST. All taxation matters are managed by the Department of Justice on behalf of the Office. GST Receipts and Payments were included in budget items but no actual receipts or



payments were transacted.
 (b) Operating lease costs for office accommodation was budgeted against Supplies and Consumables but reflected as Other expenses in the actual costs. Total annual operating lease costs \$172,000.

Note 3 Events Occurring After Balance Date

There have been no events subsequent to balance date which would have a material effect of the Office's financial statements as at 30 June 2008.

Note 4 Income

4.1 Appropriation Revenue

	2008 Budget \$'000	2008 Actual \$'000
Recurrent Appropriation	1 280	1 280
Total revenue from Government	1 280	1 280

4.2 Other Revenues

	2008 \$'000
Commonwealth Ombudsman Funding	40
Energy Entities Membership and Complaint Levy Fees	397
Seminar Fees	5
Total	442

Note 5 Expenses

5.1 Employee Benefits

	2008 \$'000
Wages and salaries	1 099
Superannuation – contribution scheme	120
Other employee expenses	25
Total	1 244

Superannuation expenses relating to defined benefits schemes relate to payments into the Superannuation Provision Account (SPA) held centrally and recognised within the Finance-General Division of the Department 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.

5.2 Supplies and Consumables

	2008 \$'000
Consultants	21
Property services	7
Maintenance	2
Communications	20
Information technology	60
Travel and transport	29
Advertising and promotion	19
Plant and Equipment	12
Other supplies and consumables	2
Total	172

5.3 Impairment losses

	2008 \$'000
Financial assets – impairment losses	
Receivables (bad and doubtful debts)	106
Total	106

Descriptions of any circumstances of any material impairment losses or reversals are at Note 6.1.



5.4 Other Expenses

	2008 \$'000
Operating lease costs	172
Personnel expenses	9
Office Requisites	11
Printing	12
Library	7
Salary on-costs	84
Other expenses	11
Total	306

Note 6 Assets

6.1 Receivables

	2008 \$'000
Receivables	110
Less: Provision for impairment	(106)
Total	4
Settled within 12 months	4
Total	4

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 impairment loss of \$106,134 is recognised in the Income Statement.



6.2 Intangibles

	2008 \$'000
Intangibles	
At cost - work in progress	80
Total	80

Note: The software, currently being developed, is valued at cost. During 2007-08, the Office's software was assessed as not being impaired.

Note 7 Liabilities

7.1 Payables

	2008 \$'000
Creditors	49
Total	49
Due within 12 months	49
Total	49

Settlement is usually made within 30 days.

7.2 Employee Benefits

	2008 \$'000
Accrued salaries	15
Annual leave	65
Long service leave	107
Total	187
Due within 12 months	77
Due in more than 12 months	110
Total	187



7.3 Other Liabilities

	2008 \$'000
Other liabilities	
Employee benefits – on-costs	11
Total	<u>11</u>
Due within 12 months	4
Due in more than 12 months	7
Total	<u>11</u>



7.4 Schedule of Commitments

	2008 \$'000
By type	
<i>Capital Commitments</i>	
RESOLVE Implementation Project	53
Total capital commitments	<u>53</u>
<i>Lease Commitments</i>	
Operating leases	366
Total lease commitments	<u>366</u>
<i>Other Commitments</i>	
RESOLVE Maintenance	39
Total other commitments	<u>39</u>
By maturity	
<i>Capital commitments</i>	
One year or less	53
From one to five years	-
Total capital commitments	<u>53</u>
<i>Operating lease commitments</i>	
One year or less	161
From one to five years	205
Total operating lease commitments	<u>366</u>
<i>Other commitments (Maintenance)</i>	
One year or less	13
From one to five years	26
Total operating lease commitments	<u>39</u>

Note: The Operating Lease commitments include buildings, motor vehicles and information technology equipment leases.



Note 8 Equity and Movements in Equity

8.1 Reconciliation of Equity

	Accumulated Funds	Total Equity
	2008	2008
	\$'000	\$'000
Balance at 1 July	-	-
Net deficit	(106)	(106)
Administrative Restructuring (see note 8.2)	209	209
Balance at 30 June	103	103

Note that accumulated funds include both contributed capital on formation of the Office and accumulated surpluses or deficits in subsequent years.

8.2 Administrative Restructuring

As a result of a restructuring of administrative arrangements, the Office assumed responsibility for its business activities, which were relinquished from the Department of Justice on 1 July 2007.

In respect of activities assumed, the net book values of assets and liabilities transferred to the Office from Department of Justice for no consideration and recognised as at the date of transfer were:

	2008
	\$'000
Net assets assumed on restructure	
Cash and deposits	315
Receivables	106
Total assets recognised	421
Payables	10
Employee Entitlements	190
Other Liabilities	12
Total liabilities recognised	212
Net assets assumed on restructure	209

**Activity:** The Office of the Ombudsman and Health Complaints Commissioner

	2008	2007
	\$'000	\$'000
Revenues		
Recognised by the Department of Justice	-	1 824
Total revenues	-	1 824
Expenses		
Recognised by the Department of Justice	-	1 634
Total expenses	-	1 634

Note 9 Cash Flow Reconciliation

9.1 Cash and Cash Equivalents

Cash and Deposits include the balance of the Special Deposits and Trust Fund Accounts held by the Office, and other cash held.

	2008
	\$'000
Special Deposits and Trust Fund balance	
T516 Operating Account	266
Total cash and cash equivalents	266

9.2 Reconciliation of Operating Deficit to Net Cash used by Operating Activities

	2008
	\$'000
Net operating deficit	(106)
Non-cash items	
Impairment losses	106
Movements in operating assets excluding those balances assumed during the year	
Receivables	(4)
Other assets	(80)
Employee entitlements	(3)
Payables	39
Other liabilities	(1)
Net cash used by operating activities	(49)



9.3 Financing Facilities

	2008 \$'000
Tas Government Card - Credit card facility	
Amount used	3
Amount unused	9
Total	<u>12</u>

Note 10 Financial Instruments

10.1 Risk exposures

(a) Risk management policies

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

- credit risk;
- liquidity risk.

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. The Office currently has no material exposure to market risks.

(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.

The following table analyses financial assets that are past due but not impaired:

Analysis of financial assets that are past due at 30 June 2008 but not impaired

	Past due 30 days \$'000	Total \$'000
Receivables	4	4

(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 by reviewing cash flow projections on a monthly basis.

The following table 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 Balance Sheet:

2008

	Maturity analysis for financial liabilities		
	1 Year	Undiscounted Total	Carrying Amount
Financial liabilities			
Payables	49	49	49
Total	<u>49</u>	<u>49</u>	<u>49</u>

10.2 Categories of Financial Assets and Liabilities

	2008
	\$'000
Financial assets	
Cash and cash equivalents	266
Loans and Receivables	4
Total	270
Financial Liabilities	
Financial liabilities measured at amortised cost	49
Total	49

10.3 Net Fair Values of Financial Assets and Liabilities

	2008	
	Total Carrying Amount \$'000	Net Fair Value \$'000
Financial assets		
Cash and cash equivalents	266	266
Receivables	4	4
Total financial assets	270	270
Financial liabilities		
Payables	49	49
Total financial liabilities	49	49

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.

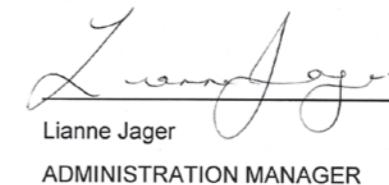


Statement by Head of Agency and Principal Accounting Officer

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 2008 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
 ADMINISTRATION MANAGER



APPENDIX D - INDEPENDENT AUDIT REPORT

**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 2008****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 comprise the balance sheet as at 30 June 2008, the income statement, statement of recognized income and expense and cash flow statement for the year ended on that date, a summary of significant accounting policies, and other explanatory notes.

The Responsibility of the Ombudsman 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 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 are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based 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 my audit opinion.

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

Independence

In conducting my audit, I have met applicable independence requirements of Australian professional ethical pronouncements.

Auditor's Opinion

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

- (a) present fairly, in all material respects, the financial position of the Ombudsman and Health Complaints Commissioner as at 30 June 2008, and of its financial performance, 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).

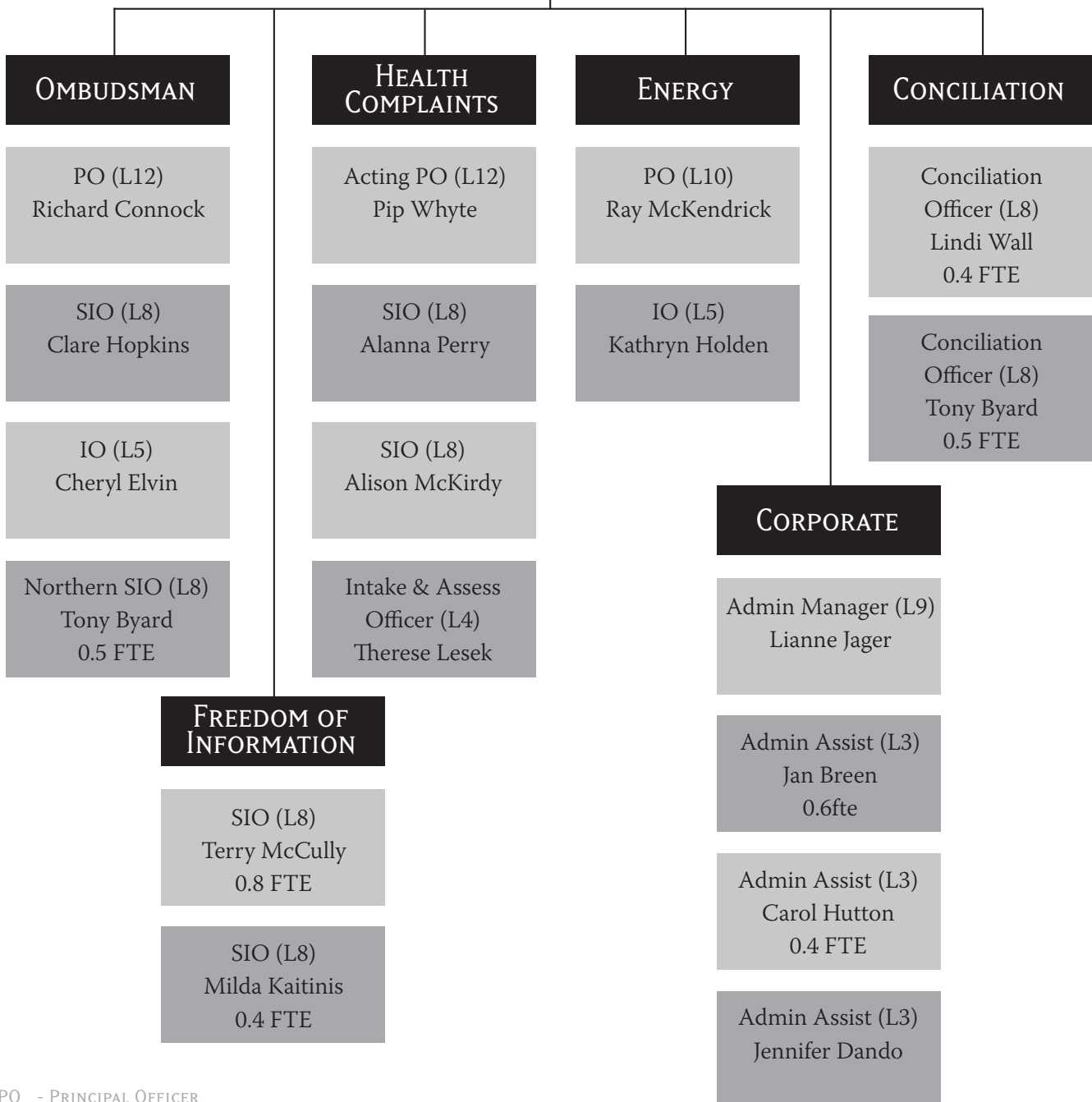
TASMANIAN AUDIT OFFICE

H M Blake
AUDITOR-GENERAL

HOBART
1 October 2008

**OMBUDSMAN/
HEALTH COMPLAINTS
COMMISSIONER**
Simon Allston

Executive Officer (L5 - 0.8 FTE)
Karen Adams



PO - PRINCIPAL OFFICER
SIO - SENIOR INVESTIGATION OFFICER
IO - INVESTIGATION OFFICER
FTE - FULL TIME EMPLOYEE