

OMBUDSMAN
TASMANIA

Annual Report 2006 – 07

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THE OMBUDSMAN

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ISBN 978-0-9757146-8-3

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 2006-07.

Yours faithfully

A handwritten signature in grey ink, appearing to read 'S. Allston', is written over the typed name.

**SIMON ALLSTON
OMBUDSMAN.**

October 2007

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FROM THE OMBUDSMAN



This is my second annual report as Ombudsman, and I report on a year which in retrospect seems to have been remarkably settled.

Independent appropriation

In his State of the State address to the Tasmanian Parliament on 26 September 2006, the Premier said –

The independence of the Auditor-General, the Ombudsman, the Office of the Governor and the Parliamentary agencies (consisting of the House of Assembly, the Legislative Council, and Legislature-General) needs to be absolutely clear.

They have a unique role in Tasmania's Parliamentary and democratic system.

From 2007-08, the Government will provide separate Consolidated Fund appropriations for the Auditor-General, the Ombudsman, the Governor and Parliament to clearly distinguish the funding for these independent entities from that of other agencies.

I welcome this initiative, which was implemented by amendment to the *Financial Management and Audit Act 1990*, to establish the Office of the Ombudsman as a separate agency for the purpose of receiving an appropriation from the Consolidated Fund, and for other purposes associated with that Act. The result will be greater direct interaction between the Office and the Department of Treasury and Finance, but the Department of Justice will continue to provide me with assistance and support in relation to finance, human resource management and IT.

Staffing

I had 19 staff at the end of the reporting year, and of these only one – a part-time officer returning to work after maternity leave – was on contract. This situation of greater job security should enable us to limit staff turnover, and so maintain skills in the office.

There have been five new staff in the Office during the year, including a new Principal Officer – Ombudsman (Richard Connock) and a new Administration Manager (Lianne Hasell), and all have proven to be great additions to our team.

Staff now benefit from formal performance management processes and the opportunity for flexitime. Communal spaces within the office have also been renovated in recent months, providing for a much more pleasant work environment.

Raemoc replacement

The Office has been looking to replace its aging Raemoc case management database for some years. In last year's report, I expressed the hope that a replacement database would be up and running by the end of 2006/7, but that has not happened. We were delayed this year by various administrative difficulties, and then by the fact that we did not have an Administration Manager for a couple of months. Lianne Hasell, the new Administration Manager, has taken up the project with gusto, and we have now advertised for tenders with a view to commencing implementation before the end of 2007.

Intranet and websites

The Department of Justice has for some time been engaged in a project to provide all of its staff with internet resources. An intranet for this Office commenced operation in mid-June 2007, making us the first output associated with the Department to have this facility. This will give my officers readier access to the information and resources needed in the course of their work, and facilitate intra-office communication.

During the year we commenced placing all significant reports produced by the Office on the appropriate website. We have three such sites – one for each of the jurisdictions of Ombudsman, Health Complaints Commissioner and Energy Ombudsman. The websites have been upgraded to some degree during the reporting year, but further work will be done in the coming year when new graphics have been developed.

Complaint numbers

In line with the changes made to office procedures in the last reporting year, simple enquiries which do not proceed to the lodging of a formal complaint, including enquiries in relation to matters that are out of the Ombudsman's jurisdiction, are not recorded as complaints. Table 1 of Appendix A, however, includes both complaints and enquiries and provides comparative figures. Those figures indicate the large number of enquiries received during this reporting year.

Complaints about particular agencies have remained fairly constant with the Departments of Health and Human Services, Justice and Police and Public Safety remaining the agencies against which the largest number of complaints is made. As noted in previous years, this is more a reflection of the frequency and nature of the contact and interaction between those agencies and the public than necessarily reflecting problems with their administrative practices.

The spread of complaints throughout the various divisions of public authorities is to be noted. As in previous years, complaints about the alleged actions of Housing Tasmania in the allocation and administration of public housing remain the largest cohort of complaints against the Department of Health and Human Services (DHHS). A revision of DHHS complaints procedures in relation to residents of the Ashley Youth Detention Centre, which made it clear to residents that they could complain either to the Secretary of DHHS or directly to the Ombudsman, made the Centre the next most frequently named division.

Complaints about the Children and Family Services division of DHHS were lower than in previous years, and some explanation for this might be a greater community understanding that the Child Abuse Review has been concluded, as a number of complaints made in recent years were made by people who had discovered too late that they could not be included in the Review.

The majority of complaints made against the Department of Justice remain complaints concerning Corrective Services, many arising in the reporting year as a result of the commissioning of the new Risdon Prison complex and the implementation of new operating models. As predicted in the last reporting year, issues of rehabilitation, programs and inmate development were significant, but complaints covered a broad range of areas.

Complaints about Tasmania Police again formed the bulk of the complaints recorded against the Department of Police and Public Safety, but were 25% less in number than in the previous reporting year.

Energy Ombudsman

As Tasmanian Energy Ombudsman, I am a member of the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO). Amongst the many benefits of participation in this group is the fact that it enables me to compare the performance of my Energy Ombudsman office with those interstate, which have been in operation for longer, with larger caseloads. Statistical data is shared each quarter, and this has consistently shown that my office lags behind the other jurisdictions in the time taken to resolve energy complaints. With a view to addressing this, and acting with the cooperation of Aurora Energy, against which most energy complaints we deal with are made, I introduced a system in May which is used in other jurisdictions, under which suitable complaints are referred back to more senior management in Aurora to resolve, before this office becomes actively involved. In the first month alone, this new approach resulted in the swift resolution of 9 out of the 10 new matters dealt with in this way. The approach promises to significantly reduce the number of complaints on hand at any one time, and the average time taken to resolve a complaint.

A fuller description of our work in this jurisdiction is given later in this report.

Freedom of Information Act 1991

A person may apply to the Ombudsman under s 48 of the *Freedom of Information Act 1991* for the review of various types of decision made under the Act. The number of reviews carried out in the reporting year has remained high – 37 during 2006/7 compared with 23 during 2005/6.

The Act needs review, now that it has been operation for some 16 years. One particular provision which is unrealistic affects my Office directly, and this is the requirement under s 48(6) that the Ombudsman make a decision in respect of an application within 30 days of receipt, or such further time as the applicant may agree. The 30-day timeframe is unrealistic in nearly every case, particularly since the cases that come to us for review are often ones that involve a large number of documents, and difficult issues for consideration. The Ombudsman should not be placed in a situation of having to meet an unrealistic timeframe, and of not complying with the legislation unless the applicant agrees to an extension of time. Nonetheless, we are making a conscious effort to decide all applications for review as quickly as possible.

A fuller description of our work in this jurisdiction is given later in this report.

Telecommunications (Interception) Tasmania Act 1999

Under this Act, the Ombudsman is given the role of auditing the extent of Tasmania Police's compliance with the record-keeping requirements of the legislation. Such audits were unnecessary until 2006, because no interception, were taking place.

The first such audit visit took place in November 2006, and a further audit was done in June 2007. On both occasions, the adequacy and quality of the records being kept by the police was found to be beyond reproach. The first report to the Minister under the Act has since been delivered.

The audit task has been made much easier by the development in my office of appropriate documentation for use in the audits and by agreement with the police on that documentation and on the audit procedures which will be followed.

Subsidiary jurisdictions

There has been no activity this year under the *Public Interest Disclosures Act 2002* (the State's "whistleblower" legislation), the *Personal Information Protection Act 2004* (the State's privacy legislation), the *Witness Protection Act 2000*, or the *Adoption Act 1988*. The Ombudsman has special functions under each of these. The lack of any activity under the first two statutes mentioned is particularly surprising.

Commonwealth Ombudsman

The Office of the Ombudsman has for some years provided accommodation and some administrative support for an officer of the Commonwealth Ombudsman. The Commonwealth Ombudsman decided during the reporting year not to keep an officer stationed in Tasmania, implementing that decision in June 2007. Our Office will continue to provide support, principally by referring callers and visitors through to the Commonwealth Ombudsman's Melbourne office. We will also provide facilities to officers of the Commonwealth Ombudsman who visit Tasmania.

Community Outreach

During this reporting year there has been increased focus on enhancing the profile of the office to the general public. I, and my senior staff, have been happy to attend meetings, forums and other public events to talk about the services provided by the office when invited to do so. This has included presentations to University of the Third Age and School for Seniors' district groups, North Hobart Probus, the JP Society, the Aboriginal Community Members Hobart group, and many Rotary Clubs around the State.

Also notable was our exhibit at AGFEST 2007 in May. This event provides a unique opportunity for outreach activities, and it is estimated that over the 3-day event my attending staff spoke to around 1,200 people about the services provided by the Ombudsman and the Health Complaints Commissioner. I also attended and spent a morning talking with members of the public about my role and the types of issues we can investigate.

Development of a regional visitation calendar aimed at reaching out to people in the more remote areas of Tasmania is underway, and is planned to be put into action early in 2008.

We have also been developing a fresh new look for the office through our promotional material, which we are hoping will be ready for our exhibit at the Royal Hobart Show in October.

Conclusion

This year has been one of consolidation – of improving the way that we do things and of improving the resources at our disposal. We will continue with this in the forthcoming year, a major feature of which should be the commissioning of a new case management database. We will also continue with outreach, recognising that the purpose of the Office is diminished if the public do not know about the services we provide.

I conclude by thanking all of the staff who have served with me during 2006/7 for their hard work, and for the spirit in which it has been performed.

SIMON ALLSTON
OMBUDSMAN.

October 2007

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 Minister. A person appointed to an office by the Governor or a Minister under an Act is also considered a public authority.

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

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

The Ombudsman, Health Complaints and Energy jurisdictions operate largely as separate entities, with some cross jurisdiction movement of investigation staff according to demand. Most are located at 99 Bathurst Street Hobart. There is a branch office in Launceston, which is staffed by a senior conciliator and 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 not to accept the Ombudsman's recommendations.

FOI Review

Under the *Freedom of Information Act* 1991, the Ombudsman receives requests for the review of decisions made by State Government departments, local government and various public authorities not to release information sought under the Act. The Ombudsman has the power to make a fresh determination 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;
- 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 C of this report is dedicated to the Energy Ombudsman and provides statistical information for 2005/06. This section is included because the *Energy Ombudsman Act* does not require a separate annual report, presumably expecting that reporting on the Ombudsman's functions under that Act will occur under the *Ombudsman Act*. (An annual Energy Ombudsman report is nonetheless produced as a matter of good practice, and as a resource for the energy entities, consumers and others, and a full report can be viewed at www.energyombudsman.tas.gov.au.)

This year has seen a further slight drop in the number of Energy complaints coming to the Office, with a total of 251 complaints and enquiries during the year, compared to 283 in 2006/7. However, the number of matters closed during the year rose from 255 to 262. In addition, the number of matters carried forward at year's end was lower this year, being 47, compared to 58 last year. The lower the number of matters on hand, the more quickly they should be resolved.

Most of the complaints received by the Energy Ombudsman are naturally against Aurora Energy, because of its present status as a monopoly electricity retailer to domestic customers. As part of our endeavour to reduce the time taken to handle complaints, we commenced a 3-month trial in May 2007 of a procedure under which a complaint made to our office which has previously been made to Aurora Energy's call centre and which remains unresolved is referred to more senior management in Aurora Energy for them to take up directly with the complainant. The complainant is free to come back to us if Aurora Energy has not contacted them within 48 hours, or if they remain dissatisfied after direct dealings with the company which have been initiated in this way. This is a procedure which is used in equivalent jurisdictions elsewhere.

The trial has been very promising. Of 10 cases referred to Aurora Energy in this way during the first month, 9 were quickly resolved. It has now been agreed with Aurora Energy that we will continue to deal with suitable complaints in this manner. This should enable us to reduce the time taken to resolve grievances, and ensure that the files that are open in this office are ones deserving of the concentrated attention which we provide.

If it is possible that this will reduce our open files, it may be that the reduction will be offset by the consequences of agreement by Aurora Energy to include details for the Energy Ombudsman in each disconnection warning that is sent out. This occurred at the Ombudsman's instigation, but is in fact a requirement of the *Tasmanian Electricity Code*. The wording for the notices has been settled between the company and the Tasmanian Energy Regulator, with input from this Office.

An ongoing issue in previous years was the time taken by Aurora Energy to carry out new connections to the electricity supply. It was found that the company was frequently in breach of the timeframes stipulated by the *Electricity Supply Industry (Tariff Customers) Regulations*. The causes appeared to include lack of communication and administrative inefficiencies within the company. Earlier this reporting year, the company initiated a special project to address these problems, which included taking on additional staff. Delay in connection was the primary issue in 19 cases brought to this Office in 2005/6. The equivalent figure for this year was 23. It is hoped that this figure will decline in future.

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 which limit the right of access to information and embody Parliament’s assessment of interests that justify an exception to the general right. Several exemption provisions are subject to an overriding “public interest” test. This means that in order for an agency or a Minister to refuse access to the information, the agency (or Minister) must show, on balance, that it would be contrary to the public interest to release the information.

Powers

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

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

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

Who can lodge an FOI application

Any person, whether an individual or a corporate entity, can apply for access to information under the FOI Act. An individual can apply to amend information that relates to his or her personal affairs. All applications are, in the first instance, made direct to the agency that 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 my office conducted seven workshops aimed to give FOI Officers practical material to acquaint them with the responsibilities, appointment and functions of authorised officers under the FOI Act.

Website

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

The current web address is http://www.ombudsman.tas.gov.au/freedom_of_information.

Freedom of Information statistics

During the reporting period my office received 80 (57, 2005/6) new applications, 23 more than last year. Of the 80 applications, 37 (23) external reviews were finalised.

FOI Table 1. **FOI results of finalised cases**

Decision	2004/5	2005/6	2006/7
Agency Decisions affirmed	19	13	15
Agency Decision varied	7	5	18
Agency Decision set aside	9	5	4
Agency allowed extra time to comply	2		
Decision varied	3		
Total External Reviews/Determinations	40	23	37
Other *	117	34	42
Total	157	57	79

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

In 2006-07 external reviews have been conducted as follows –

- 29 against State Government Departments of which 14 were upheld (at least in part);
- 1 against Local Councils (1 upheld); and
- 7 against Other Bodies (0 upheld).

Refer tables 2, 3 and 4.

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

Departments	2004/5	2005/6	2006/7 Applications Received	2006/7 Reviews Undertaken	2006/7 Agency Decision Varied
Economic Development (DED)	1		0	0	0
Education (DOE)	1	2	7	0	0
Health & Human Services (DHHS)	2		13	5	3
Infrastructure, Energy & Resources (DIER)			3	2	1
Justice (DOJ)	7	5	8	6	2
Police & Public Safety (DPPS)	8	2	9	6	3
Premier & Cabinet (DPAC)	1		6	2	1
Primary Industries & Water (DPIW)	3	2	4	4	3
Treasury & Finance (DT&F)	1		2	2	1
Tourism, Arts & the Environment (DTA&E)	1	3	3	2	1
Sub-Total	25	14	55	29	15

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

Local Government	2004/5	2005/6	2006/7 Applications Received	2006/7 Reviews Undertaken	2006/7 Agency Decision Varied
Break O'Day Council	1				
Central Coast	1	1	1		
Circular Head Council		1			
Glenorchy City Council	1				
Hobart City Council	1				
Huon Valley Council		1			
Launceston City Council	1		1		
Tasman Council					
Clarence City Council			1		
Glamorgan/Spring Bay Council			1		
Meander Valley Council			2		
West Tamar Council			1	1	0
Sub-Total	5	3	7	1	0

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

Prescribed Authorities	2004/5	2005/6	2006/7 Applications Received	2006/7 Reviews Undertaken	2006/7 Agency Decision Varied
Anti-Discrimination Commissioner		3	1	1	1
Clyde Water Trust	3				
Director of Public Prosecutions	2		2	1	1
Forestry Tasmania			3	2	2
Law Society of Tasmania	2				
Legal Aid Commission			1	1	1
Marine and Safety Tasmania (MAST)					
Medical Council					
Port of Devonport		1			
Psychologists Registration Board					
Tasmanian Ambulance Service	1				
Transend Networks					
University of Tasmania	2	2	1	1	1
Health Complaints Commissioner			1	0	
Hobart Water			1	0	
Private Forests			1	0	
Tote Tasmania			2	1	1
Sub-Total	10	6	13	7	7
Out of Jurisdiction					
TOTAL (tables 2, 3 & 4)	40	23	75	37	22

FOI Case Summaries

Case Summary 0610001

The applicant, a Member of Parliament, sought access to information relating to any agreement between FT and Gunns Limited (Gunns) for the supply of wood to the bleached kraft pulp mill proposed for northern Tasmania.

The information in dispute consisted of a Memorandum of Understanding and various attachments (including a discussion draft of proposed Heads of Agreement) – together referred to as the MOU – between FT and Gunns. FT claimed that the MOU was exempt from production under s 31 (the exemption for information disclosing an undertaking to competitive disadvantage), s 32 (the exemption for an agency engaged in trade or commerce) and s 33 (the exemption for information obtained in confidence). Gunns was consulted during the external review process and objected to the MOU being disclosed.

Section 32 is the primary vehicle for reconciling the main objects of the FOI Act (that is, promoting open and accountable government administration) with legitimate concerns for the protection from disclosure of commercially sensitive information. The basic object of s 32 is to provide a means whereby the general right of access to information in the possession of government agencies does not give rise to unwarranted commercial disadvantage to agencies which carry on commercial activities.

I was satisfied that FT was “*engaged in trade or commerce*” and that the MOU could be properly characterised as “*information of a business, commercial or financial nature*” within the meaning of s 32(1)(ii). The disclosure of the MOU would reveal detailed information about the proposed volumes, pricing and commercial terms contemplated by FT that I was satisfied could have adverse consequences to the conduct of FT’s ongoing business operations in the sense required by s 32. The disclosure of the information would enable a competitor in the timber industry, with knowledge of and expertise in the pricing and supply components, to use the information to assess those areas in which it would need to find savings/efficiencies in order to be more competitive in future sales of pulpwood.

However, after deleting the volume and pricing information from the MOU, I was not satisfied that the information remaining qualified for exemption under s 31, s 32(a)(ii) or s 33 of the FOI Act.

Case Summary 0602019

Whilst this review raised an important question I mainly report it because of the media interest created at the time. The applicant applied to DPAC for access to Cabinet agenda between 1993 and 1995. The exemption for Cabinet information (s 24) – if applicable in this case, which was moot – ceases to apply in respect of information incorporated in a record after the commencement of the FOI Act 10 years after its incorporation.

DPAC claimed on legal advice that it could refuse to deal with the request because the restrictions placed on the public inspection of information under s 15 of the *Archives*

Act 1983 overrode the access provisions of the *Freedom of Information Act* 1991. As a matter of statutory interpretation, I was not persuaded by the arguments DPAC advanced in this respect and a preliminary report to that effect. However, before I made a final decision, DPAC decided to release the information at issue.

Case Summary 0608002

A journalist requested information about the Beaconsfield Gold Mine from the Department. The Department claimed the information was exempt under s 28 (the law enforcement exemption). Section 28 protects against harm from the disclosure of law enforcement information. The cause of the rock fall at the Beaconsfield Mine was at the time of the request the subject of two investigations. The first investigation was into the cause of the mine collapse (the Causation Enquiry). The second investigation by the Coroner was to be held after completion of the Causation Enquiry.

The Department argued that the release of information to the public before the investigations were finalised had the capacity to impact adversely upon the integrity of the investigations. The Department said it would reconsider the release of the information at the conclusion of the investigations if the information had not already been made public.

In a review under the FOI Act the decision about the application of an exemption provision must necessarily be based upon the material provided by the parties during the external review process. Each case depends upon the facts presented.

For s 28(1) to apply an Agency must be able to provide material demonstrating that disclosure of the information “*would, or would be reasonably likely to*” result in the consequences described in the exemption. In this case the Department was unable to provide any submissions or material that demonstrated that s 28 applied – for example material demonstrating how an investigation would be compromised by the release of the information in issue. Belief by an Agency that information might in the future prove to be significant to an investigation, and at that time become subject to an exemption provision, is not a basis upon which the Ombudsman can decide, in carrying out a review under s 48 of the FOI Act, that information is exempt information.

PUBLIC INTEREST DISCLOSURES (PID)

The Act

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

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

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

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

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

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

Annual reporting requirements s 84

Section 84 of the Act sets out the annual reporting requirements for the Ombudsman (refer PID table 1).

No disclosures were made to the Ombudsman under the Act in the reporting year.

There have also been no referrals of disclosures to the Ombudsman from public bodies in accordance with s 35, nor from the State Service Commissioner in accordance with s 28, or

the President of the Legislative Council or the Speaker of the House of Assembly in accordance with s 78.

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

PID Table 1. S 84(a) to (l) – Period covered: 1 July 2006 to 30 June 2007

Sub-section	Annual Report requirements	Response
(a)	Information as to how persons may obtain or access copies of the current guidelines published by the Ombudsman under Part 6; and	Ombudsman website or Ombudsman office
(b)	The number and type of disclosures made to the Ombudsman during the year; and	Nil
(c)	The number and types of determinations made by the Ombudsman during the year as to whether disclosures are public interest disclosures; and	Nil
(d)	The number and types of disclosed matters that during the year the Ombudsman has investigated; and	Nil
(e)	The number and types of disclosed matters that during the year the Ombudsman has referred – (i) under s 41, to the Commissioner of Police, the Auditor-General, a prescribed public body or the holder of a prescribed office to investigate; or (ii) to a public body to investigate under Part 7; and	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; and	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; and	Nil
(h)	The number and types of investigations of disclosed matters taken over by the Ombudsman during the year; and	Nil
(i)	The number and types of investigations of disclosed matters for which the Ombudsman has made a recommendation during the year; and	Nil
(j)	The recommendations made by the Ombudsman during the year in relation to each type of disclosed matter; and	Nil
(k)	The recommendations made by the Ombudsman during the year re the procedures established by a public body under Part 7; and	Nil
(l)	The action taken during the year on each recommendation of the Ombudsman under this Act.	N/A
(m)	Notification under s 34 by a public body.	Nil

TELECOMMUNICATIONS INTERCEPTION

The Ombudsman has responsibility under the *Telecommunications (Interception) Tasmania Act 1999* (the Act) to inspect records kept by Tasmania Police in relation to interceptions in order to ascertain the extent of compliance by Tasmania Police with Part 2 of the Act. The Ombudsman has an obligation to inspect the records at least once in every 6-month period.

The Ombudsman must provide reports in relation to each inspection to the Minister for Police and Public Safety and must, not later than 3 months after the end of each financial year, report to the Minister on all inspections conducted during that financial year, provide a copy of the report to the Commissioner of Police, and notify the Commonwealth Attorney-General that the report has been given to the Minister.

The Act commenced on 16 July 1999. However, it was not until the 2005/6 financial year that Tasmania Police had the necessary technology and systems in place to undertake interceptions under the Act. The first warrant application was made in April 2006. The first inspection was conducted by the Ombudsman in December 2006 after a number of preliminary meetings between the Tasmania Police officers responsible for administering the interceptions and Ombudsman officers. These meetings were to ensure that all the requirements of the legislation were complied with in the reporting documents. Further, staff of the Ombudsman developed checklists that provide information as to the extent of compliance with the requirements of the legislation in relation to each warrant. A further inspection was conducted in June 2007.

Several warrants had been issued at the time of the inspection in December 2006 and the relevant records were reviewed. By the time of the inspection in June 2007, several more warrants had been issued. In addition, the records in relation to previous warrants were still being held by Tasmania Police and these also had to be inspected again in respect of any developments since the last inspection. It is anticipated that the number of records requiring inspection on each new inspection date will increase on a continuing basis. This will necessarily impact upon the resources of the Ombudsman's office in terms of the number of officers and the hours required to fulfil this statutory function.

The Ombudsman officers who have conducted the inspections have been impressed with the standard of record keeping, level of security and general compliance with the requirements of the Act demonstrated by Tasmania Police. Discussions are ongoing with Tasmania Police in relation to facilitating practical and improved ways in which the records can be inspected by Ombudsman officers on a regular basis during the life of Tasmania Police investigations.

POLICE COMPLAINTS

The Ombudsman is the only independent body in Tasmania overseeing the activities and conduct of police.

Guidelines were developed several years ago to assist with the investigation and processing of complaints against Police, and the Ombudsman and the Commissioner of Police have maintained a cooperative and productive working relationship – the Commissioner recognises that the Ombudsman’s independent review function in relation to Police complaints is in the public interest and helps to promote public confidence in Police.

The guidelines provide that complaints to the Ombudsman about Police are initially referred to Police Internal Investigations for investigation. Internal Investigations decides then whether it will conduct the investigation itself, or whether the complaint should be investigated at a district level, with Internal Investigations overseeing. In general, the more serious complaints remain with Internal Investigations, and the less serious, customer service complaints are dealt with at a district level. The Ombudsman monitors the progress of these investigations.

Once its investigation has been completed, Internal Investigations reports to the Ombudsman, enclosing relevant documentation and advising whether it considers that the complaint has been substantiated or not. If it has been, what action has been taken or is proposed to be taken is outlined. The Ombudsman then reviews the Police Investigation. This might involve such things as interviewing the parties to the complaint, or reviewing relevant Tasmania Police files. The Ombudsman is not hindered in any way from conducting a fresh investigation of the complaint at any time – and will do so whenever necessary – but in the main, the investigations conducted by Tasmania Police under the eye of the Ombudsman have been thorough and fair, and if there have been any concerns about an investigation, those concerns have been conveyed to Police to be addressed.

People who complain about the actions of Police usually fall into one of two broad categories: those who seek police assistance or report offences and the conduct of Police has not accorded with their expectations; and those for whom the attention of Police is less welcome and who question their treatment at the hands of Police.

In the reporting year, the majority of complaints against Police have either been declined or discontinued, or findings have been made that no defective administration had been demonstrated. Matters are declined when they allege purely operational as distinct from administrative matters – that is, decisions made by officers *in the field*. There are numerous reasons for discontinuance, such as when it becomes clear that to continue to investigate the complaint would not be necessary or justifiable or where a complainant has misunderstood the role of Police in a certain situation.

The complaints made during the reporting year which were not accepted for investigation or closed with no findings against Police were many and varied, and included –

- A complaint that Police had intimidated the complainant in order to obtain information in relation to the offending conduct of a third person. The investigation revealed that the complainant, who was in custody at the time of

giving the information, hoped to be bailed as a reward for assisting Police. When he wasn't (bail could not be granted because he had already been remanded), the complaint was made.

- A complaint that Police had failed for several weeks to serve a restraining order on a person who had been allegedly stalking the complainant, thus allowing her to induce breaches of a similar order she had taken out against the complainant. The investigation revealed that no restraining order in favour of the complainant had in fact been made. The complainant had applied for the order and what Police had been directed by the court to serve was the application, not the order itself. Service had been made in a timely fashion having regard to the court date set for the hearing of the application.
- Numerous complaints alleging either a failure to investigate an alleged offence or inadequate investigation, and one which alleged that Police had wrongly prosecuted the complainant for a serious criminal offence as a result of an inadequate investigation. The latter was closed because, amongst other things, the decision to prosecute had been made by the Director of Public Prosecutions rather than Police, and the Ombudsman is not entitled to question decisions made by the Director.
- Complaints of rough handling and harassment by officers in the course of carrying out their duties, which were not substantiated or which fell into the category of operational matters.

Where complaints were substantiated, appropriate remedial measures were taken. For example –

- In the case of a complaint that the Police investigation relating to a motor vehicle accident had been incomplete, a review of the accident investigation file, a visit to the accident site and discussions with the complainant enabled Internal Investigations to identify a number of outstanding avenues of enquiry that required attention. The file was returned to the relevant district to complete the accident investigation, following which it was independently reviewed. Findings were made that an officer had not complied with the Tasmania Police Manual procedures for accident investigations, and that an Inspector had failed to manage and oversee the particular investigation. Both were provided with directions and guidance.
- In the case of a complaint that Police failed to acknowledge or address a claim for the cost of repairs to a gate damaged by an officer, Police agreed to compensate the complainant for the cost of repairs upon receipt of an invoice.
- An officer was given guidance after wrongly supplying personal information about a member of the public to another member of the public – the address and telephone number of one driver involved in a motor vehicle accident had been provided to the other driver without following due process.

Other examples are given in the case summaries below.

The cooperative yet independent approach to the investigation by the Ombudsman of Police complaints complements the complaint handling procedures contained in the *Police Service Act 2003*.

Police Case Studies

Beyond the Infringement

The complainant was pulled over for a random breath test by members of Tasmania Police. She claimed that while she was waiting in the line-up to be tested, she answered a call on her mobile phone and was consequently issued with a Traffic Infringement Notice for using a mobile telephone when driving a vehicle. She was fined and had two demerit points deducted from her licence. The complainant did not believe that her conduct warranted the penalties imposed and wished to contest the notice.

She contacted Police Traffic Liaison Services (TLS) and asked how to go about contesting the notice. She was advised to seek a review through TLS and to fill out a form, available at Service Tasmania, seeking an extension of time to pay the fine while the review was conducted. She did this, only to then receive a notice informing her that her driver's licence had been suspended. When she contacted TLS, she was told that, by signing the form, she had in fact admitted liability for the offence. She alleged that she was then told that nothing further could be done about it and it was following the receipt of that advice that she complained to the Ombudsman.

The Ombudsman referred the matter to Police Internal Investigations and it was found that the TLS staff member who had spoken to the complainant had not fully appreciated the implications of signing the form and the consequences of doing so had not been clearly explained to the complainant. The Supervisor at TLS had in fact taken full responsibility for resolving the matter at the time that the complainant had brought it to the attention of TLS. Police made a successful application on behalf of the complainant to the Magistrates' Court to set aside the notice and the complainant was then summonsed to a hearing where she could contest it. TLS requested the Transport Department to reinstate the demerit points pending the outcome of the hearing. The staff member who had given the incorrect advice was given direction about the correct way to deal with such matters and all staff were provided with additional training on how to advise the public on this particular issue. The forms available at Service Tasmania were also improved as a result of this complaint and now make it clear that a person accepts liability by signing the form.

Mind the Time

The complainants, who live in Queensland, were the parents of a young man who died in Tasmania. They complained that they, as the deceased's next of kin, had not been notified by Tasmania Police of their son's death until 32 days after his body had been found.

An investigation by Internal Investigations under the Ombudsman's reference concluded that the Senior Constable investigating the death had instigated inquiries in a timely manner: the deceased had held a Victorian driver's licence and his car had been registered in Victoria, and prompt inquiries had been made of Victoria Police and the Victorian Registrar of Births, Deaths and Marriages. No record of the deceased, however, was found. It was not until the Senior Constable instigated

an Australia wide check of intelligence units and Registrars of Births, Deaths and Marriages, some weeks later, that the complainants were identified as the next of kin. It was also noted that it took the Queensland Registrar nearly two weeks to respond to the Tasmania Police inquiry.

The investigation found that, at the time, the Tasmania Police Manual did not contain any procedures to be followed by officers when trying to identify interstate next of kin, and a measure of confusion between the Senior Constable and the Coroner's Office as to their respective roles and responsibilities for the making of continuing interstate inquiries led to the delay - which Police acknowledged had been unacceptable.

To address the problem, Tasmania Police advised that it would publish a notice in the *Police Gazette* instructing police officers to conduct Australia wide inquiries in circumstances where a deceased's next of kin cannot be readily identified by immediate inquiries. The notice would confirm that it was the responsibility of the officer investigating a death to identify the next of kin. The investigation also highlighted a procedural deficiency within State Intelligence Services when information from external agencies, such as the various Registrars, was being sought. As a result, Tasmania Police has adopted a new practice such that all external agency requests are now subject to priority allocation, with follow up inquiries to be made by duty officers, in order to ensure that those agencies are prompted to respond to police inquiries in a timely manner.

PRISON COMPLAINTS

The Ombudsman is the only general review body available to prisoners (those inmates who have been sentenced) and detainees (inmates who are being held on remand pending the hearing of charges against them) outside Corrective Services' internal complaints handling procedures – the operation of which can also be reviewed by the Ombudsman. Communications between prisoners and detainees and the Ombudsman are protected under the *Ombudsman Act 1978* and the *Corrections Act 1997*, both of which provide that inmates have the right to correspond with the Ombudsman without their letters, or the Ombudsman's letters to them, being opened. These provisions reflect the importance and independence of the Ombudsman's role in dealing with prison complaints.

The Ombudsman also works closely with the Operational Review Officer in the Department of Justice. The ORO was appointed in November 2004 to undertake inspections of custodial facilities, specifically in relation to the implementation of recommendations arising from the Coronial and Ombudsman inquiries into Deaths in Custody and Risdon Prison of 2001. Those recommendations have now largely been implemented (though that implementation is to be further reviewed in November 2007) and the ORO's role has expanded to include reviewing broader issues related to the management, control and security of facilities and the security, control, grievances, safety, care and welfare of prisoners. The Ombudsman has input into the ORO's work plan and is provided with copies of reports generated by him.

During the reporting year there were major changes to the Tasmanian prison system. The old Risdon Prison was decommissioned as a maximum and medium security prison and the new Risdon Prison Complex, which includes the Mary Hutchinson Women's Prison, was opened in August 2006. Divisions 4, 5, 6 and 7 of the old Risdon Prison were recommissioned as the Ron Barwick Minimum Security Prison, and work is continuing in this regard. The new prison is very different to the old, and new operating models for the safe and secure containment of prisoners and detainees and for the provision of opportunities for rehabilitation and personal development were designed and are at various stages of implementation.

The new complex has eight maximum security units (including two mainstream units, a needs assessment unit, a crisis support unit, a behaviour management unit and a detention unit) and seven medium units, and it is from prisoners in these units that the majority of complaints have been received – though the Women's Prison and the Hobart and Launceston Reception Prisons were also represented.

Prison complaints dealt with during the year varied in complexity and seriousness and included complaints –

- that items of personal property had been lost during transfers from one facility to another;
- about the manner in which prison offences were prosecuted and the punishments imposed for those offences;
- of failure to investigate internal complaints adequately or at all;

- relating to the provision of and access to programmes of education and rehabilitation;
- that remission periods were not being correctly calculated and applied;
- as to prisoner classification and accommodation, including complaints relating to reclassification as a result of the remodelling of prison operations;
- alleging that unreasonable restrictions had been placed on visiting rights and other privileges; and
- that medications had not been administered on time or at all.

Complaints were also received from prisoners with special dietary requirements alleging that these requirements were not being met. This was also brought to the attention of the Ombudsman by Official Visitors, to whom prisoners had complained. As a result, an audit of the prison's food service was undertaken by Corrective Services, deficiencies in the delivery of special meals were identified and recommendations were made to rectify those deficiencies (see the first case study below).

In addition to complaints by prisoners and detainees, during the reporting year the Department of Health and Human Services revised the client complaints procedure available to residents of the Ashley Youth Detention Centre in April 2007 by making clear to residents the choice of complaining either to the Secretary of the Department or directly to the Ombudsman, and this also led to a number of complaints being received from Ashley residents.

Prison Case Studies

Not Chicken Tonight

The complainant, an inmate of the Risdon Prison Complex, is allergic to chicken and has a certificate from the Prison Doctor to verify this. His complaint was that he was not consistently receiving a replacement meal at times when chicken was served to inmates.

Preliminary inquiries were made into the complaint, and Prison Services acknowledged that, though the complainant might have been exaggerating the frequency of the meal error, there were nonetheless occasions when he was not receiving his replacement meal – even though those meals were being prepared by kitchen workers. An audit of the “food trail” revealed that the complainant's special meals were being delivered, along with other meals, to new prisoners housed in the holding cells at the Complex.

As a result of the complaint and the matters having been brought to the attention of Prison Services, a new meal allocation system was designed and introduced for inmates with special dietary requirements – which includes not only inmates with food allergies but also prisoners with diabetes and other medical conditions and those who are on a low fat diet. This system requires special meals to be set aside in the prison kitchen in a separate sealed container for delivery and the labelling of the special meals with the respective inmates' names and accommodation units. The Food Service Supervisor checks that all special meals have been prepared and labelled, marks those meals off on a list, and the list is placed with the meals for delivery to the despatch area.

A Correctional Supervisor checks that the container is still sealed upon its arrival at the accommodation unit, and counts the meals in the sealed container and other meal containers to ensure that a sufficient number has been delivered. Inmates with special dietary requirements collect their own meals from the various accommodation units' control rooms.

When Practice Doesn't Make Perfect

Various items of unauthorised property were found in the cell of a prisoner housed at the Hayes Prison Farm and he was charged with a prison offence. The prisoner complained that the hearing of the charge was not conducted fairly in that he was not given the opportunity to inspect the evidence against him during the course of the hearing as required by the relevant Director's Standing Order (DSO), and in that the Officer appointed to hear the charge had allegedly been biased against him. He further complained that the charge against him had been prejudged, and that the penalty imposed by the Hearing Officer had been beyond his power. The penalty consisted of relocating the complainant to Risdon Prison, changing his security rating classification from minimum to maximum and imposing a six month period before he would be eligible for reclassification.

The complaint was investigated and the allegation that the Hearing Officer had been biased could not be substantiated, and nor could the allegation that the charge had been prejudged. In support of that latter allegation the complainant had asserted that his belongings had been moved from Hayes to Risdon prior to the hearing. The investigation revealed that the decision to move the complainant to Risdon had been made prior to the charge being brought against him, and in fact it was while officers were packing his property in readiness for the transfer that the unauthorised items were discovered. The complainant had remained on a minimum security rating until after the charge had been heard.

It was found, however, that the relevant DSO in relation to the hearing of prison offences had not been complied with; Correctional Officers had not fully understood the requirements of the DSO or the principles of procedural fairness which it was designed to embrace, and this lack of understanding had become entrenched in the custom and practice of Correctional Officers. It was the custom and practice that the Ombudsman criticised, not the conduct of the particular officers complained of. It was also the custom and practice of Correctional Officers to order the reclassification of a prisoner who had been found guilty of a prison offence. The investigation found that such a penalty was beyond the power of the Hearing Officer to impose as alleged by the complainant. There was in existence a DSO clearly setting out what penalties a Hearing Officer could impose, and transfer and reclassification were not included. Again, custom and practice was criticised, not the individual officers.

The Ombudsman made the following recommendations, amongst others: that all senior staff (those likely to be Hearing Officers) receive professional development training in relation to the DSO and the rules of procedural fairness ; that the DSO be reviewed to ensure that it is recorded that a prisoner has been given the opportunity to view the evidence in support of a disciplinary charge; and that the DSO be further reviewed to clarify the process of reclassification following a disciplinary hearing.

Time Please

A prisoner at Risdon Prison complained that he had been told that he was not eligible for a grant of remission on a period of imprisonment which was immediately followed by a period of remand, before he was sentenced again. The complainant was sentenced to a number of terms of imprisonment during the period under investigation and was told by Prison staff that remission was calculated on the cumulative period of all sentences served at one time.

The Ombudsman was initially advised by the Director of Prisons that the Tasmanian Prison Service policy on remission was indeed to consider remission on the totality of all sentences being served by a prisoner and not on each individual sentence. This approach did not seem to be in accordance with the *Corrections Act 1997* and the *Corrections Regulations 1998* and an opinion was therefore sought from the Solicitor-General's office. Advice from Principal Crown Counsel confirmed the Ombudsman's view that the Director was not correctly interpreting and applying the legislation.

Following an exchange of correspondence and discussions between the Ombudsman and the Director in early July 2006 in relation to this issue, and in relation to the complainant's case in particular, remission was then calculated on the two eligible sentences that the complainant had been serving (i.e. those sentences of more than 3 months' imprisonment in accordance with r.23(2)(b)) giving him an earliest release date of 12 June 2006. The Ombudsman was advised on 19 July 2006 that the complainant had been released on 13 July 2006, having been remanded in custody until 10 July 2006 on further charges. The outcome of the hearing into those further charges was not provided, but presumably he was not sentenced to another custodial sentence. No explanation was given as to why he was released three days after his *Warrant of Remand In Custody on Adjournment* expired.

Shortly after the complainant's release, the Director of Prisons provided the Ombudsman with a draft *Policy for the Application of Remission to Custodial Sentences* and asked for comments. Quite detailed comments were provided to the Director and a number of fundamental concerns with the document were raised. The comments made clear the Ombudsman's view that aspects of the policy, as well as the previous approach to the granting of remissions, were not in conformity with the advice from the Office of the Solicitor-General and might be legally incorrect. It was suggested that the Director of Prisons should seek legal advice on the correct application of the legislation and appropriate assistance with the drafting of the policy.

The investigation report noted that, at the time the report was completed, the policy remained in draft form and had not been amended or implemented, despite the Ombudsman's comments as to its contents. The observation was made that this was highly unsatisfactory, given that the issue affected the liberty of the subject.

These recommendations were made to the Secretary of the Department of Justice –

1. That an immediate review be implemented, to establish whether there are any currently serving prisoners who should be considered for remission, but who have not been so considered because of the erroneous application of Regulation 23 of the *Corrections Regulations*.

2. That a policy be prepared in relation to the granting of remissions which complies with the *Corrections Act* and *Corrections Regulations*, and is otherwise compliant with law.
3. That the policy be submitted to the Office of the Solicitor-General for confirmation that it complies with the law, before it is adopted.

The Secretary was asked to provide advice as to the steps taken or proposed to be taken to give effect to the recommendations.

(The report of the investigation into the complaint has been published in its entirety on the Ombudsman's website at www.ombudsman.tas.gov.au.)

AGENCY CASE SUMMARIES

STATE GOVERNMENT DEPARTMENTS

Department of Health and Human Services

Ashley Youth Detention Centre

The complainant, at the time a resident of the Ashley Youth Detention Centre (AYDC), wrote to the Ombudsman about a number of incidents said to have occurred at the Centre. When the complaint was analysed, there were two main allegations: one that staff had on a particular occasion encouraged residents to ingest and “snort” kitchen products in return for rewards; and another that the complainant had been assaulted a number of times by other residents and that staff had failed to respond appropriately.

Though there had been an occasion when residents had been challenging each other to eat odd things, the first allegation was ultimately found to be unsubstantiated; staff said that it had been “high jinks” on the part of residents that they had stopped once it began to get out of hand. Staff members also categorically denied offering any inducements to residents for engaging in the subject behaviour. Despite this, the decision to allow the situation to develop was considered to be an error of judgement by staff and they were counselled by senior AYDC management.

The second incident was more concerning because there was no doubt that the complainant had been assaulted by other residents; the incident was caught by CCTV cameras. Staff had initially been unaware of the assaults as they were all in the office at the time completing paperwork. Once the CCTV footage had been viewed and it had been confirmed that the assaults had taken place, appropriate action was taken against the young people who had perpetrated them. The Team Leader acknowledged that he should not have made the decision to have all staff in the office at the same time and should have had staff on the floor actively supervising residents. Senior management confirmed that that this had constituted a significant failure in required procedure, but since the Team Leader had readily accepted responsibility for the decision, it was determined that the matter could be dealt with by way of training reinforcement and supervision. The Ombudsman was notified when this had occurred. The Ombudsman determined that appropriate remedial action had been taken by AYDC management and that no further investigation was necessary.

Housing Tasmania

The complainant rents a house from Housing Tasmania. Whilst at home one day, she heard a loud cracking sound, but a quick inspection of the property did not reveal any problems. Some time later, the complainant noticed various rooms in the house were constantly damp and mould was growing, and suspected that the noise she had heard previously was attributable to one or more roof tiles cracking, with the result that the roof was leaking.

The complainant contacted Housing Tasmania, who arranged for contractors to meet her at the house to discuss the problem. The complainant claimed that the contractors

would not believe her when she suggested a cracked tile and instead had suggested other causes for the dampness in the house, some of which the complainant thought unreasonable and unlikely. Nothing happened for several weeks after the inspection, so in frustration and wishing to have the problem rectified quickly, because it was affecting her health, a complaint was lodged with the Ombudsman.

A response to the complaint was requested from Housing but that response when it came failed to adequately address the complainant's main issue of complaint, that Housing had failed to quickly identify the cause of the dampness and mould and to rectify it in a timely manner. The Ombudsman asked Housing for more information and another, more detailed response was subsequently received.

That response detailed what action had been taken to identify the cause and then rectify it. However, nine weeks had elapsed from the date of first notification before repairs were completed. The Ombudsman was not satisfied that the time taken to finally identify the problem – it had, in fact, been a cracked roof tile – and effect repairs had been reasonable, especially in view of the time of year (late autumn/early winter) and in light of the fact that the necessary repairs had not involved any major works. Insofar as the complaint alleged unnecessary delay, it was substantiated.

The complainant had indicated in her complaint that she wanted the damaged carpet to be cleaned or replaced. In its last response to the Ombudsman, Housing Tasmania expressed its willingness to meet with the complainant and to assess the condition of the carpet, with a view to either having it cleaned or replaced at its cost. The Ombudsman was satisfied that the complaint had been resolved appropriately.

Department of Treasury and Finance

State Revenue Office

The complainant alleged that the State Revenue Office had failed to send her any land tax assessments for a period of three years, which resulted in her accruing substantial arrears, being threatened with legal action for their recovery and being referred to the Debtor Management Unit.

The Commissioner of State Revenue (the Commissioner) advised that an error in the system for issuing land tax assessments had resulted in the removal of the complainant's assessment information from that system. The system error meant that *due date* information had not been provided for the 2003/04 and 2004/05 financial years. A review of the complainant's file revealed that land tax was correctly assessed in February 2006, but because the error had not been identified at that time, the assessment was for an amount calculated by reference to three assessment periods. When the complainant's land tax was not paid by the due date, an overdue notice was issued and then a final notice. These notices had the correct amount owing but did not contain a breakdown of the years to which it related.

The Commissioner advised that as soon as the error was brought to his attention, immediate action had been taken to mitigate and explain the error and to enter into an arrangement with the complainant to assist her in paying the amount due. The Commissioner undertook an evaluation of the circumstances of the complainant's case and took remedial action to ensure that a similar error would not be repeated. He

expressed his regret that the series of errors had occurred and issued an apology to the complainant. The Commissioner does not have a discretion under the *Land Tax Act 2000* to waive the land tax assessed but, in this instance, he did not impose penalty tax and interest on the amount outstanding, and facilitated a payment arrangement favourable to the complainant in order to assist her to meet her obligations.

The Ombudsman was satisfied with the explanation given and that appropriate remedial action had been taken. Further investigation was not deemed necessary and the file was closed.

Department of Infrastructure Energy and Resources

Land Transport Safety

The complainant was the holder of a provisional motorcycle licence and had applied to Land Transport Safety for an exemption from the 250cc engine capacity limit for provisional licence holders so that he could ride his 600cc motorcycle. The complainant's application was refused, even though motorcycles with a 600cc engine capacity were included in a list of suggested motorcycles for novice riders issued by the Department to learner and provisional licence holders. The complainant did receive authorisation, however, to ride a motorcycle with an engine capacity up to 400cc. He complained to the Ombudsman.

The Ombudsman made preliminary inquiries into the complaint, and it was ascertained that exemptions could be granted to holders of learners' permits to ride motorcycles that have an engine capacity of up to 400cc, and in the case of provisional licence holders, up to 600cc. The complainant had sought the exemption on two occasions – once when he was a learner and again after he had obtained his provisional licence, and he received the same response each time. The Department conceded that on the second occasion the wrong letter, one advising that authority would only be given for him to ride a 400cc machine, had been sent to the complainant.

It was further ascertained that when processing applications for the exemption, consideration was given to the performance of the motorcycle sought to be ridden, and a power to weight ratio calculation, not the motorcycle's engine capacity alone. While motorcycles with an engine capacity of 600cc were included in the list, they all had a power to weight ratio of 150 kilowatts per tonne or less. This was not made clear, however, to applicants. The complainant had already purchased the motorcycle he wished to ride – a Yamaha YZF600R – at the time of making his application, and though other Yamahas with an engine capacity of 600cc were included on the list, the particular one purchased by the complainant was not. The application for exemption was refused because the power to weight ratio of the complainant's motorcycle was approximately 260 kilowatts per tonne. This was not made clear to the complainant either.

As a result of the complaint, the Department took action to split the list into two separate sections, to make it clearer which motorcycles might be approved for learners and which for provisional licence holders. It also modified its letters to applicants such that their wording is clearer as to the basis upon which an exemption can be granted, and processes were reviewed to ensure that the correct letter is sent.

The Ombudsman was satisfied that the Department had acknowledged ambiguities in the information provided to applicants and that it had taken the necessary steps to rectify the situation, and no further action was taken.

Department of Primary Industries and Water

Crown Land Services

Complaints were received from the owners of neighbouring blocks of land as to the way that Crown Land Services (CLS) had dealt with areas of Crown land licensed to them and encroachments onto those areas by a third party. The complainants alleged –

- that CLS had failed to allow them to enjoy their rights under the licences by failing to remove a third party “trespasser”; and
- that a CLS officer gave the complainants clear instructions to remove encroaching fences – which they had done - effectively authorising them to act as agents of the Crown, and this had exposed them to civil proceedings instituted by the third party.

In relation to the alleged trespasser, the third party, a neighbour of the complainants, had some structures on his land that encroached onto one licensed area, and had erected fences on both licensed areas, claiming portions of the land as his own. The complainants were aggrieved that CLS had taken no action to remove the structures and alleged that they could not enjoy the land as permitted by the licences. The properties are in a small, rural township where there is a recognised problem of uncertainty in relation to title boundaries. Following receipt of the complaints, CLS requested the Surveyor-General to undertake a survey of the relevant blocks of land in order to determine the correct boundaries, and advised that its intention was to offer appropriate portions of the land for sale to each party in such a way as to rectify encroachments.

The Ombudsman found that there was a degree of misunderstanding on the part of the complainants as to the nature of a licence and the rights conferred. In relation to the fences that had been erected, the complainants were not entitled to seek to compel CLS to take action to protect their rights as against a third party, and CLS’ reluctance to do so was understandable. Though the Ombudsman was of the view that the handling of the matter by CLS was open to some criticism, overall it was found that this issue of complaint was unsubstantiated.

In relation to the removal of the fences, the complainants alleged that a CLS officer gave them authority to remove the fences erected by the third party and that they did so on behalf of the Crown. As a result of this, they were of the view that the Crown should indemnify them in relation to the civil proceedings commenced by the third party. The CLS files did not clarify the issue because the standard of record keeping was inadequate. The relevant CLS officer was interviewed and adamantly denied that he had authorised the complainants to remove the fences. He stated that he had merely advised them that there was no reason why they could not.

Ultimately the Ombudsman was unable to reach a definitive conclusion and the question as to whether or not the complainants had acted as agents of the Crown remained unresolved. The Ombudsman did not make any specific recommendations in relation to indemnifying the complainants, but did note that there is an established

procedure for seeking contribution or indemnity from the Crown pursuant to Ministerial Direction No. 8 under the *State Service Act 2000*, whereby the complainants could apply in writing to the Secretary of the Department of Primary Industries and Water who would then refer the matter to an Inter-Agency Committee for a decision.

Some criticism was levelled at the Department for the way it handled the issue. It was noted that there was a clear statutory process for dealing with alleged trespass onto Crown lands under the *Crown Lands Act 1976*. The Ombudsman recommended that CLS develop a clear process, combined with proper documentation, for use when action was proposed to deal with misuse of Crown lands. It was also recommended that CLS take action to remind all officers that proper records and adequate notes should be maintained on all files.

PRESCRIBED AUTHORITIES

The Retirement Benefits Fund Board

The complainant wrote to the Ombudsman after making an application to the Retirement Benefits Fund Board (RBF) for an ill-health benefit from the Tasmanian Accumulation Scheme. She had been unable to work for a number of months due to a medical condition and was experiencing some financial difficulty. At the time of making the complaint she had been waiting for nearly three months for her payments to commence, and complained of delay as well as failure by the RBF to respond to her enquiries as to the progress of her application.

RBF responded to the Ombudsman promptly and took the necessary steps to ensure that the complainant received her benefits as a matter of urgency. It acknowledged that the delays experienced by the complainant exceeded the Board's normal processing timeframes for determining eligibility for ill-health benefits. It identified the operation of its automated work distribution system as being a factor in the delay and conceded that the complainant's experience did not reflect the level of service that RBF aims to provide to members.

RBF undertook to formally review the procedures employed in the determination of ill-health benefit eligibility to ensure that the process is completed in a more timely manner in the future. The Board also wrote to the complainant to provide her with an apology and allowed full disclosure to her of its response to the Ombudsman. The complaint was therefore substantiated, but the Ombudsman was satisfied that RBF had taken all appropriate action to rectify the defective administrative processes identified, and closed the file accordingly.

LOCAL GOVERNMENT

Hobart City Council

The complainant alleged that Hobart City Council (HCC) had made misleading representations in its Guidelines for *Public Infrastructure Construction by the Private Sector* (the Guidelines). He asserted that the Guidelines provided for a 26 week defects liability period for works undertaken but that HCC had unreasonably increased this period to 52 weeks without notice or consultation.

HCC in its response referred the Ombudsman to HCC Municipal Standard Specification Part 1 – General, Section 1.19 of which provided that *works shall be maintained for a period of six (6) months or as otherwise required by Council's Officer*. HCC had amended the period to twelve months and said that printed copies of the Guidelines available at Customer Service referred to the 52 week liability period. The amendment to the liability period seems to have been incorporated into the document on 23 December 2005, but the date of the Guideline had not been amended. The HCC internet web version of the document still referred to a defects liability period of 26 weeks and had not been amended to reflect the increased period. This raised an issue with HCC's document version control which HCC undertook to address. HCC said that, despite this anomaly, the complainant's contractor was in receipt of a public infrastructure construction permit that included a defects liability period of 52 weeks, and that this constituted sufficient notice of the relevant period.

The Ombudsman was satisfied with the explanation given by HCC, but suggested that it remove the incorrect document from its website until such time as the amended version could be uploaded. HCC undertook to do this. HCC also responded to a query about amending the Municipal Standard Specification by outlining a project being undertaken Tasmania-wide to adopt uniform specifications for subdivisional construction work. One of the objectives of the project was to minimise variations in specifications between Tasmanian Councils. HCC undertook to give careful consideration to the defects liability period in this context, but submitted that it wished to retain the current standard so as to give HCC the option of nominating a period of defects liability as required.

The Ombudsman was further satisfied with the steps taken by HCC to rectify the inaccuracy of the document available on the website. It was determined that no further investigation was necessary and the file was closed.

Meander Valley Council

The complainant had decided to buy a house she had recently inspected, but because a timber deck at the rear of the property appeared to be fairly new, the complainant through her solicitor wrote to the Meander Valley Council to check that Council had approved it. Counsel responded that it had not.

The complainant's solicitor reached an agreement with the solicitors for the vendor that the complainant would purchase the property subject to the vendor seeking and obtaining the necessary approval from Council for the deck prior to settlement, and attending to any alterations Council might require. A Council Officer inspected the deck and prepared a report. A permit and a Certificate of Substantial Compliance were issued but Council required a handrail to be raised to above one metre and the balustrade gap to be reduced to less than 125mm. The work was completed and subsequently certified as substantially compliant with the Building Code of Australia (BCA). The complainant proceeded with the purchase.

The complainant still, however, harboured doubts about the structural integrity of the deck and contacted Council. Council conceded that the inspection conducted had found compliance with the BCA at *the lower end of the scale* and was not to the *normal standard Council typically requires*, but offered no further assistance. The complainant then lodged a complaint with the Ombudsman. Council was notified and

responded without admitting liability, in part by again conceding that the inspection had not been of the highest standard and advising that the responsible officer had been counselled.

One of the Ombudsman's Investigation Officers inspected the deck accompanied by a building surveyor. The inspection established that, whilst the deck did for the most part comply with the BCA (albeit at the lower end of the scale), there were two areas of concern: the first was the size and number of joists for a span of 3 metres from the complainant's house to the end of the deck; and the second was that the ledger plate at the end of the deck was not adequately fixed to the brick wall of the house (there being a gap between the wall and the ledger plate) and that as a consequence the bolt was susceptible to bending downwards.

Council was told of the inspection and concerns raised and responded by acknowledging *that there [was] substance to the points raised*. Council also advised that, again whilst no admission of liability was made, it would contact the complainant to arrange a site meeting to analyse the extent of the problems and *to arrange remediation of any identified issues*. The complainant contacted the Ombudsman's Office once the meeting had occurred; she was to seek quotes from suitable tradespeople to rectify the two areas of concern and Council had agreed to cover the costs of these works. The Ombudsman was satisfied that the complaint had been substantiated but was also satisfied that Council had taken appropriate steps to rectify the situation and no further action was taken.

PRISON OFFICIAL VISITOR PROGRAM

The Official Visitors to prisons are appointed by the Minister under the *Corrections Act* 1997 and their activities are coordinated by the Ombudsman. Between them, the Official Visitors visit each of the State's prison facilities – the Risdon Prison Complex, the Ron Barwick Minimum Security Prison, the Hobart and Launceston Reception Prisons, Hayes Prison Farm and the Mary Hutchinson Women's Prison – monthly for the purposes of inquiring into the treatment, behaviour and conditions of the prisoners and detainees in those facilities. The Official Visitors are not salaried but each receives a small annual honorarium and a contribution towards their expenses.

At the commencement of the reporting year, there were six Official Visitors. One retired for health reasons, and in June 2007 two new Official Visitors were appointed, making seven at the end of the reporting year.

Each Visitor is allocated a particular facility or facilities, and monthly visits are conducted by one Visitor alone or by two Visitors together. The Prison Directorate and Corrections Officers understand and respect the role of the Visitors, and they are afforded the appropriate levels of freedom and confidentiality when visiting the various facilities and when discussing concerns with prisoners and detainees.

At one time, Official Visitors took a more active role in the investigation of prisoner complaints. Day-to-day concerns raised with the Visitors by prisoners and detainees are still reported by them to prison management at the time of their visits, and these are often resolved without the need for any more formal process, but the principal role of the Official Visitor is to listen (to both prisoners and Corrections Officers), observe, assess, record and report on both individual and systemic issues. In doing so, they perform an effective external monitoring function and are a source of valuable objective information about prison conditions.

Following each visit, the Official Visitor reports to the Ombudsman, and their reports are then circulated to the Prison Directorate, the Operational Review Officer and other stakeholders for comment and action where necessary or appropriate. The Director of Prisons in particular has shown himself willing to address issues and has been constructive in his responses to the Visitors' reports.

Official Visitors have observed and reported on a wide range of issues, and have had consistent concerns about prisoners housed in the maximum Security units of the Risdon Prison Complex. The Visitors appreciate that the transition from the old Risdon Prison to the new complex has meant that many changes have been made to models of prisoner management that will take time to become fully operational, and that conditions in the new prison are a significant improvement over those in the old prison, but have noted a number of recurring concerns and complaints. These include concerns and complaints relating to –

- a lack of facilities, especially for maximum security prisoners, and suitable accommodation;
- access to programmes aimed at the rehabilitation and education of prisoners and detainees, especially long term prisoners;

- delays in the effective implementation of the new case management system and a lack of sentence planning;
- special dietary needs of prisoners and detainees not being met;
- the appropriateness of the punishments handed down for prison offences; and
- the system for processing applications for pre-release leave under section 42 of the *Corrections Act 1997*.

These concerns and complaints have been recorded in the reports of the various Official Visitors and communicated to Corrective Services. The responses of the Director of Prisons indicate that they are being taken seriously and that strategies are being developed and implemented to address them. The activities and reports of the Official Visitors ensure that concerns such as those referred to remain to the fore, and their regular visits enable them to observe the effectiveness or otherwise of steps taken to address them.

Note: Figures and percentages shown in (brackets) reflect the previous reporting period 2005/6.

Reasons for closure of files

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

Declined

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

- Is the person 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 then decide that the investigation of the matter is unnecessary or unjustified.

No defective administration

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

Substantiated

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

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

The consequence of the change in the way enquiries are recorded is an apparent drop in the number of complaints received in 2005/6 and 2006/7, although the proportion of complaints about particular agencies remains constant. The Department of Health and Human Services, the Department of Justice and the Department of Police and Public Safety remain the agencies generating the largest number of complaints. This does not necessarily reflect problems with the administration of those agencies, but rather the fact that these organisations have frequent contact and interaction with members of the public.

These figures include applications for FOI reviews, as well as complaints under the *Public Interest Disclosures Act 2002* (PID).

Appendix A – Table 1. **Complaint activity for the period 2003/4 to 2006/7**

Complaints & Enquiries	2003/4	2004/5	2005/6	2006/7	Complaints only 2006/7
Open at beginning of period	85	151	184	113	113
Opened in period	825	995	936	885	374
Closed in period	755	1003	1000	882	370
Opened & closed in period	690	834	885	781	281
Open at end of period	151	184	113	117	117

Appendix A – Table 2. **Breakdown of complaints received for the period 2004-07.**

Complaint Type	Opened			Closed			Opened & Closed		
	04/05	05/06	06/07	04/05	05/06	06/07	04/05	05/06	06/07
Ombudsman	848	461	349	835	517	344	701	413	264
PID	10	1	0	12	1	0	8	1	0
Sub-total	858	462	349	847	518	344	709	414	264
FOI our records	3	2	0	4	2	0	3	2	0
FOI reviews	134	47	25	152	55	26	122	44	17
TOTAL	995	511	374	1003	575	370	834	460	281

Summary 2006/7

Government Departments

There was a decrease in the overall number of complaints recorded of approximately 10% compared to the last reporting year (253 in 2005/6, 227 in 2006/7). This decrease occurred

largely in the number of complaints against the Department of Police and Public Safety which were down by 25% (46 in 2006/7 compared to 62 in 2005/6), and the Department of Education which were down by 37.5% (10 in 2006/7 compared to 16 in 2005/6). On the other hand, complaints against most other agencies all increased slightly.

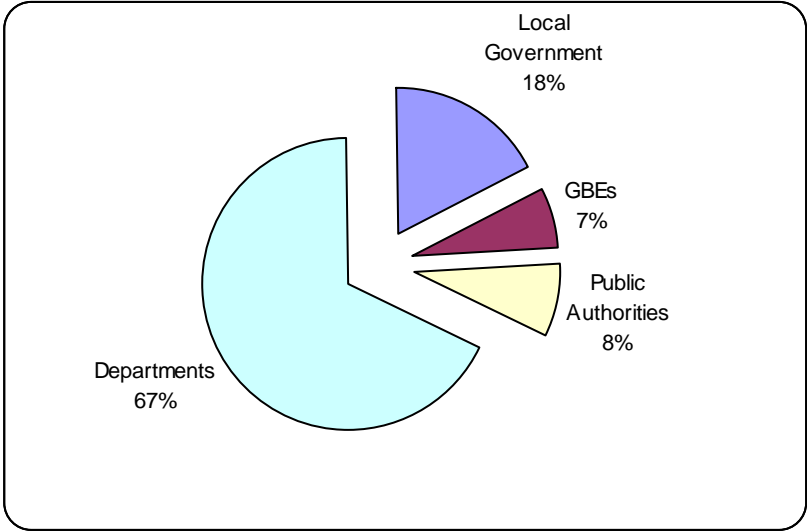
Health and Human Services, Justice and Police and Public Safety remain the Departments most frequently complained about – together accounting for approximately 74% of all complaints against Government Departments – as they have been in previous years.

- Complaints against the Department of Health and Human Services have increased by 25% (80 in 2006/7 compared to 64 in 2005/6) reflecting the significant number of complaints from residents at the Ashley Youth Detention Centre, which made up 21% of the complaints received. Housing Tasmania accounted for 31% of complaints.
- Complaints against the Department of Justice decreased by approximately 9% (42 in 2006/7 compared to 46 in 2005/6) with complaints against Corrective Services accounting for 62% of all complaints received.
- Of the complaints received against the Department of Police and Public Safety, nearly 70% involved Tasmania Police.

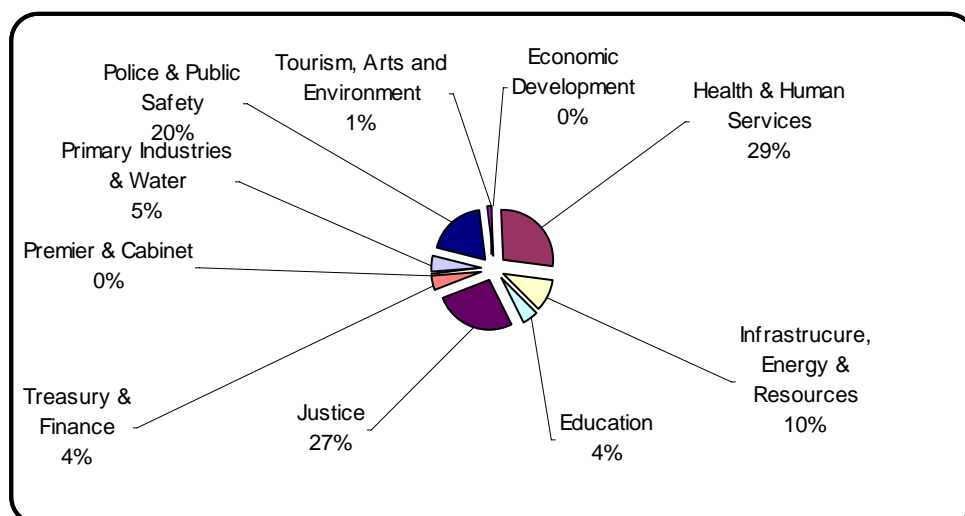
Local Government

Complaints against Local Government decreased by 45%.

Appendix A – Figure 1. **Who is being complained about?**



Appendix A – Figure 2. Further analysis of Departments



Appendix A – Table 3. Complaints against State Government Departments

	RECEIVED				CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2004/5	2005/6	2006/7	2006/7					
Department of Economic Development (DED) Total	1	1							
Department of Health & Human Services (DHHS) Total	125	64	80	72	22	8	36	6	
Departmental / Not specified		19	16	15	5			1	
Adoption and Information Services		1					4		
Alcohol and Drugs Service		3	2	4	1		1		
Child & Family Services			3	2	2		3		
Children & Families Division		10	11	5			1		
Disability Services		1	1	1					
Hospital & Ambulance Service			1	3	1	1			
Housing Tasmania		25	25	31	7	5	16	3	
North West Regional Hospital			1	1			1		
Pharmaceutical Services		1	2	2		1	1		
Royal Hobart Hospital		4	1						
Ashley Youth Detention Centre			17	9	6	1		2	
Department of Infrastructure, Energy & Resources (DIER) Total	21	20	23	21	2	3	12	4	
Departmental / Not specified		7	7	6			5	1	
Registration & Licensing		0	8	6	2	1	2	1	
Roads & Public Transport		13	8	9		2	5	2	
Department of Education (DOE) Total	23	16	10	7	4	1	2	0	
Departmental / Not specified		7	6	2	2				
Schools & Colleges		3	1	1	1				

University of Tasmania		2	2	3	1	1	1	
Teachers Registration Board			1	1			1	
State Archivist		1						
Department of Justice (DOJ) Total	92	46	42	36	7	8	15	6
Departmental / Not specified		5	1					
Attorney General		1						
Births, Deaths and Marriages		1	3	3				2
Corrective Services		29	27	25	5	6	11	4
Consumer Affairs and Fair Trading		2	4	4	1	2	1	
Crown Law			1					
Fines Enforcement			3	2	1		1	
Victims Assistance Unit			1	1			1	
Workplace Standards Tasmania		4						
Magistrates Court		4	2	1			1	
Department of Treasury & Finance	7	13	10	12	4	0	6	2
Department of Premier & Cabinet	4	6	1	2	0	0	1	1
Department of Primary Industries, Water & Environment	30	22	12	13	2	3	5	3
Department of Police and Public Safety	82	61	46	38	9	4	20	5
Department of Tourism, Parks, Heritage & Arts	0	4	3	2	0	0	2	0
Total (State Government Departments)			227	203	50	27	99	27

Appendix A – Table 4. Complaints against Local Government

	RECEIVED				CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2004/5	2005/6	2006/7	2006/7					
	Break O'Day Council	9	5	1	1				
Brighton Council	6	2	2	3		1	2		
Burnie City Council	1	0	1	1	1				
Central Coast Council	3	5	1	2			2		
Central Highlands Council	1	3	2	3		1	1	1	
Circular Head Council	3	2		1			1		
Clarence City Council	16	8	1	3	1		2		
Derwent Valley Council	2	4	1	1		1			
Devonport City Council	1	4	3	3	1	2			
Dorset Council	4	2	1	2			2		
Flinders Island Council	3	1	1						
George Town Council	6	5	2	2	1			1	
Glamorgan Spring Bay Council	10	3	2	2	1		1		
Glenorchy City Council	8	2	8	4		1	3		
Hobart City Council	14	14	2	5	1		2	2	
Huon Valley Council	7	9	2	2			1	1	
Kentish Council	5	5	3	4	1		1	1	
King Island Council	Nil	1							
Kingborough Council	9	6	2	3	3			1	
Latrobe Council	2	2	2	3		1	2		
Launceston City Council	9	8	9	10	4	3	1	2	
Meander Valley Council	5	8		1				1	
Northern Midlands Council	2	2	2	2	1		1		
Sorell Council	13	6	6	7		2	5		
Southern Midlands Council	3	0							
Tasman Council	9	3	3	3	1	1	1		
Waratah/Wynyard Council	2	0	4	4	1		3		
West Coast Council	7	3							
West Tamar Council	8	3	2	2			2		
Total (Councils)	168	116	63	74	17	13	34	10	

Appendix A – Table 5. **Complaint against Public Authorities**

	RECEIVED 2006/7	CLOSED 2006/7	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
Board of Architects of Tasmania	1	1			1	
Director of Public Prosecutions	1	1	1			
Guardianship and Administration Board	4	4	4			
Legal Aid Commission	6	4	2		2	
Marine and Safety Tasmania	1	1			1	
Medical Council of Tasmania	2	2	1			1
Nursing Board of Tasmania	2	2			2	
Pharmacy Board of Tasmania	1					
Public Guardian	1	1	1			
Tourism Tasmania	1					
Retirement Benefits Fund Board	3	3	1			2
Tasmanian Electoral Commissioner	1	1			1	
Tote Tasmania	1					
Tasmanian Fire Service	2	2			1	1
Tasmanian Qualifications Authority		2			2	
Total (Public Authorities)	27	24	10	0	10	4

Appendix A – Table 6. **Complaints against Government Business Enterprises and other authorities.**

	RECEIVED 2006/7	CLOSED 2006/7	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
Forestry Tasmania	1	1	1			
Forest Practices Authority	2	3	2		1	
Motor Accidents Insurance Board	2	1				1
Aurora Energy	1	2	1			1
TT Line	2					
The Public Trustee	13	11	2	1	8	
Total (GBEs and other authorities)	21	18	6	1	9	2

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

	RECEIVED			CLOSED	Declined	Discontinued	No Defective Administration	Partly / Fully Substantiated
	2004/5	2005/6	2006/7	2006/7/6				
Out of Jurisdiction		33	11	25	25			
GRAND TOTAL (Tables 3 – 7)	553	461	349	344	108	41	152	43

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

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

Reasons for Closure (%)	2003/4	2004/5	2005/6	2006/7
Declined to investigate ¹	25	25	40	31
Discontinued (matters resolved through negotiation with agency) ²	40	35	26	12
No defective administration found	25	28	22	44
Complaint sustained in whole or in part	10	10	12	13
Public Interest Disclosure	N/A	2	0	0
Total	100	100	100	100
Total Number of Complaints	542	662	517	344

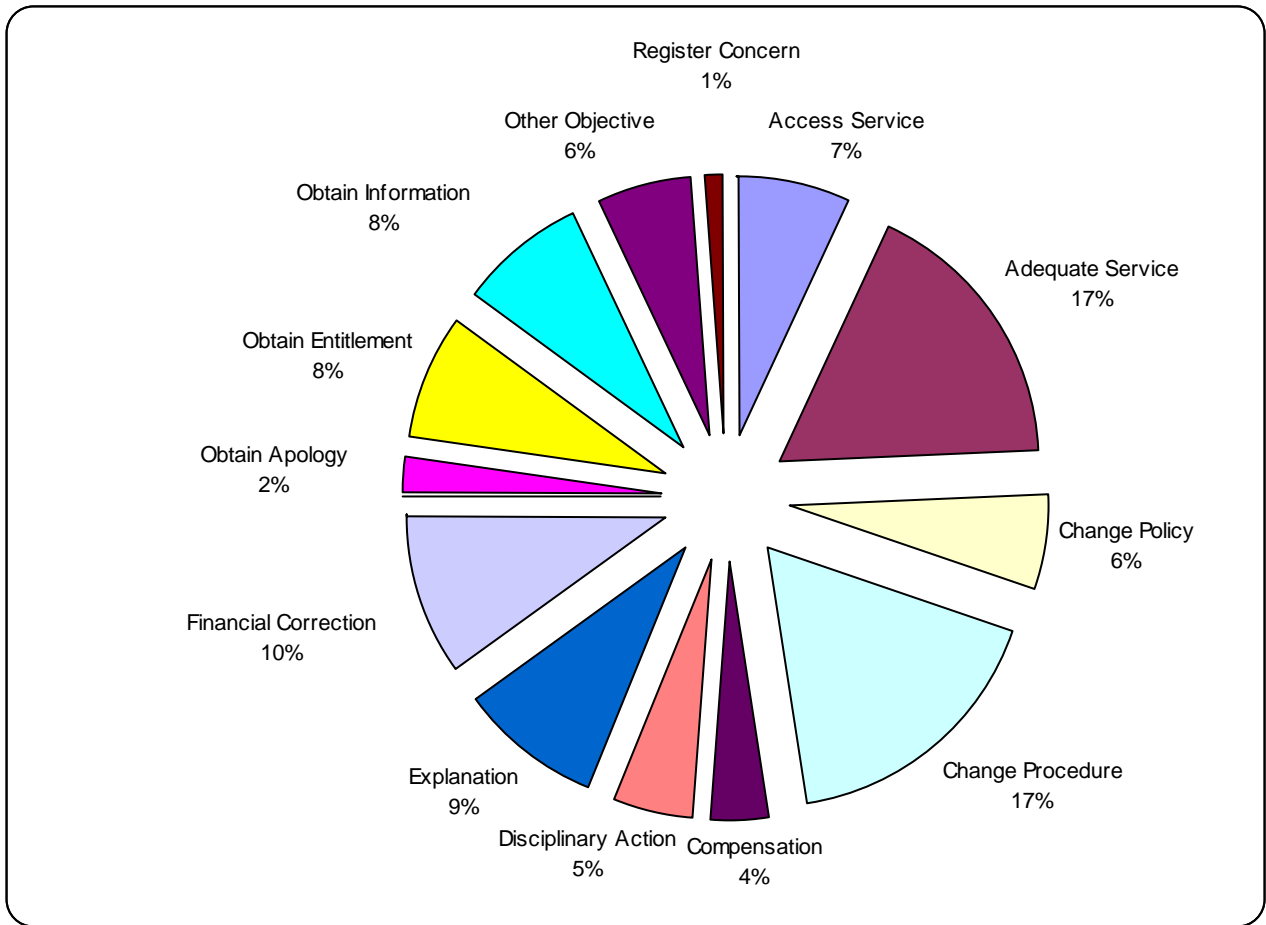
Note: 1. The 'declined' category includes matters out of jurisdiction, matters for which alternative means of redress are available, and matters which have not been taken up with the agency in the first instance.

2. 'Discontinued' includes matters largely resolved through negotiations with agencies as well as matters where the complainant does not wish to continue.

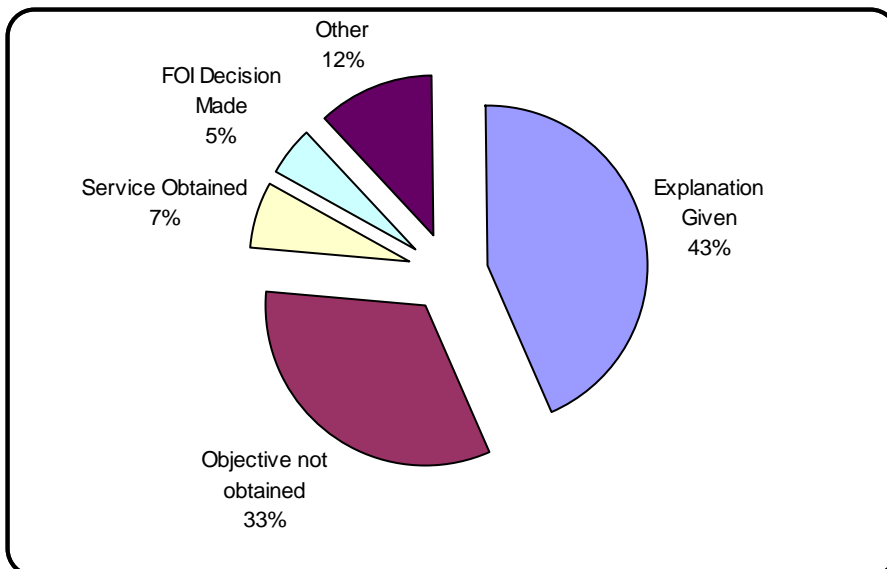
Appendix A – Table 9. **Top most common objectives requested as percentage of all objectives – all agencies**

Objectives %	2004/5	2005/6	2006/7
To gain adequate service	20	23	17
To change procedures	13	15	16
To gain a financial correction	10	7	10
To gain an explanation	14	11	8
To obtain information			8
To obtain entitlement			8
To gain access to services	12	19	8

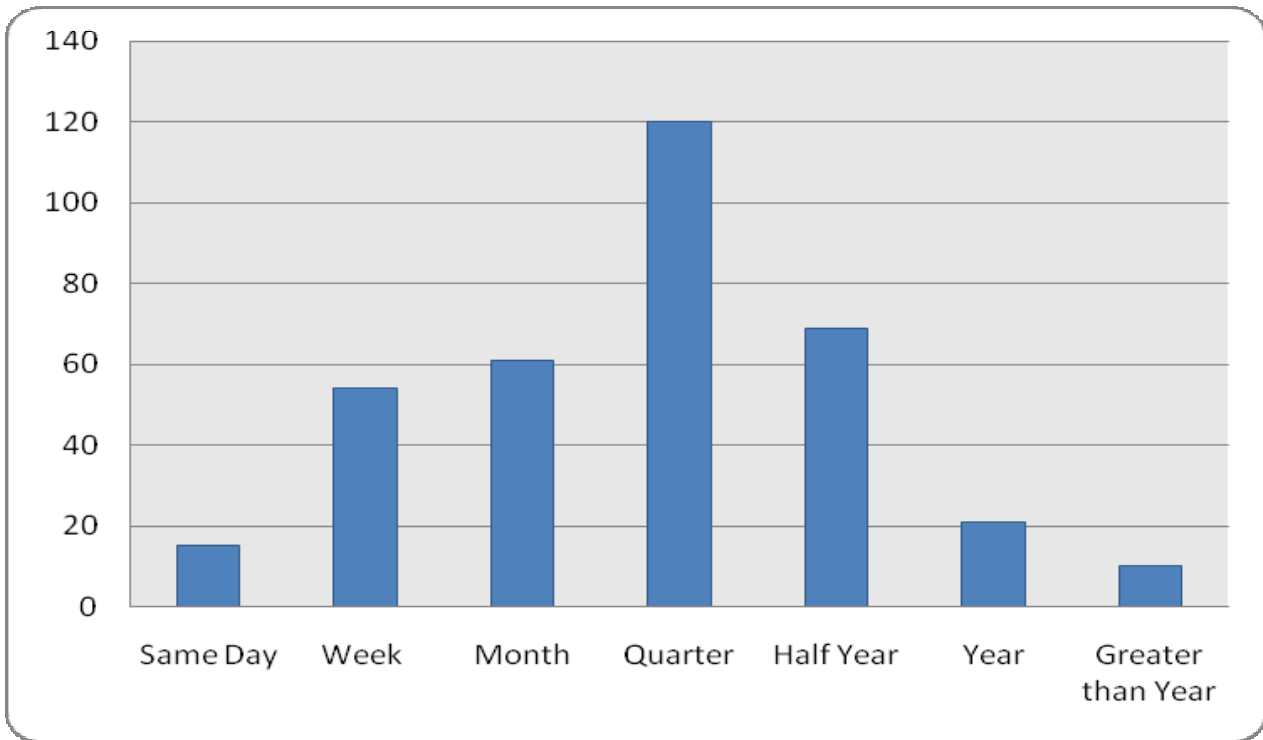
Appendix A – Figure 3. **Complainant objectives sought**



Appendix A – Figure 4. **Complaint outcomes**

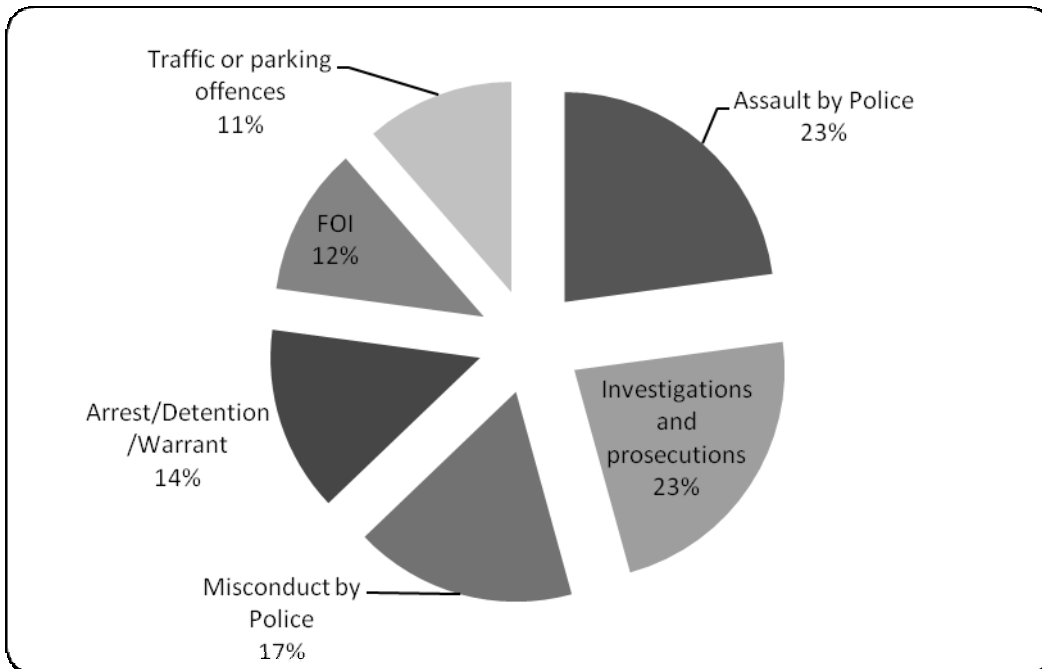


Appendix A – Figure 5. **Time taken to finalise complaints**

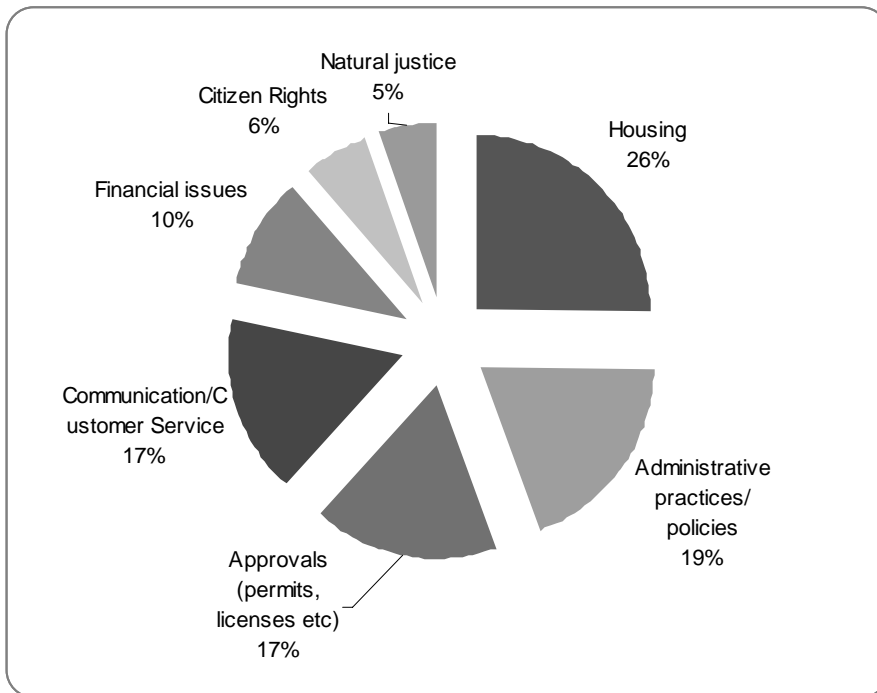


Complaint Issues

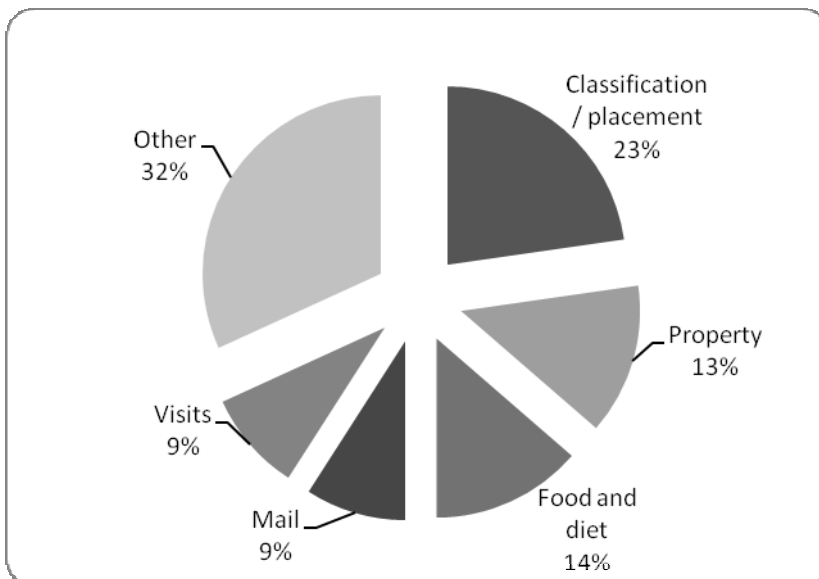
Appendix A – Figure 6. **Main issues complained about Tasmania Police (DPPS)**



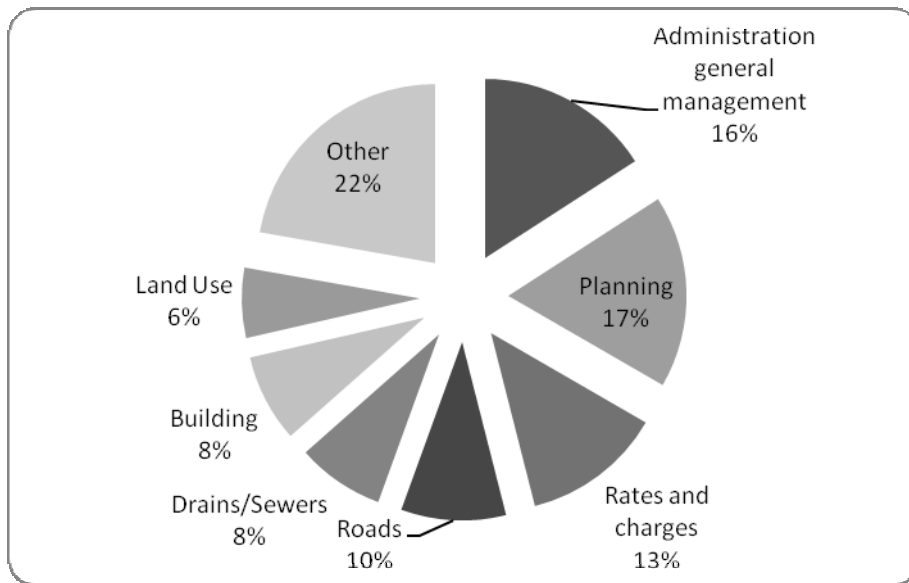
Appendix A – Figure 7. **Main issues complained about State Departments and Prescribed Authorities**



Appendix A – Figure 8. **Main issues complained about Corrective Services**



Appendix A – Figure 9. **Main issues complained about Local Government**



APPENDIX B – FINANCIAL STATEMENT

Consolidated Funds – Ombudsman

REVENUE	2004/5	2005/6	2006/7
Consolidated revenue	¹ 724,317	443,196	590,273
OPERATING EXPENDITURE			
Salary expenditure	450,973	349,493	465,884
Other employee related expenditure	17,845	9,008	5,963
Total Salary related expenditure	468,818	358,490	471,846
Information technology	34,753	² 14,587	12,486
Materials, supplies & equipment (general)	³ 37,574	11,616	13,733
Personnel expenses	220		
Travel and transport	9,557	10,893	13,127
Property expenses	66,050	³ 35,305	40,240
Finance expenses			578
Other operating expenditure	² 86,084	10,600	36,086
Consultants	7,265	1,417	1,079
Total Non-salary expenditure	241,503	84,418	117,329
TOTAL OPERATING EXPENDITURE	710,321	442,908	589,175

¹ Includes an amount of \$65,000 allocated for the set-up of the Energy Ombudsman jurisdiction 2003/4 and 2004/5.

² Property and IT costs in 2005/6 have been apportioned to the Health Complaints Commissioner and the Office of the Ombudsman based on staff salaries. This reflects the actual costs incurred.

³ Ombudsman – 2004/5 increase in General Administration due to advertising for Ombudsman position, office furniture and Energy Ombudsman set-up.

Trust Accounts – Ombudsman

General Recoveries, General Enquiries and Commonwealth

	2005/6	2006/7
Opening Balance		-133,972 ¹
Revenue	-34,662	-327,580 ²
Operating Expenditure		
Salary related expenditure		
511 Salary expenditure	63,997	42,471
512 Other employee related expenditure		3,250
Total Salary related expenditure	63,997	45,721
522 Information technology		
523 Materials, supplies & equipment		90
524 Travel and transport		
525 Property expenses	15,200	
526 Finance expenses		
527 Other expenditure	2,915	1,005
529 Consultants		3,750
Total Non-salary expenditure	18,115	4,845
Total Operating expenditure	82,112	50,566
Closing Balance	47,450	-410,986

¹ Opening balance relates to funds carried forward for Raemoc (case management database) replacement.

² This item includes funds put aside for Official Enquiry.

APPENDIX C – ENERGY OMBUDSMAN ACTIVITY 2006-07

Complaint activity for the reporting year

Energy Table 1. Activity 2003 – 2007

Number of Complaints	2003/4	2004/5	2005/6	2006/7
B/Forward from Previous	19	22	35	58
Opened in Period	394	379	283	251
Closed in Period	411	366	255	262
Opened & Closed in Period	379	347	226	210
Carried Forward (still Open)	22	35	58	47

Energy Table 2. Enquiries and Complaints Received

	2004/5			2005/6			2006/7		
	Enquiries	Complaints	Both	Enquiries	Complaints	Both	Enquiries	Complaints	Both
Aurora Energy	95	277	372	61	216	377	66	173	239
Hydro Tasmania	0	2	2	0	0	0	1	0	1
Transend Networks	0	2	2	1	2	3	0	2	2
Powerco			0		3	3	3	3	6
General Enquiries							3	0	3
Total	95	281	376	62	221	283	118	133	251

Energy Table 3. Closure Reasons by Entity

Provider Name	Dismissed	Award made	Case Withdrawn	Complaint Resolved	Enquiry Only	Explanation Given	Out of Jurisdiction	Grand Total
Aurora Energy Pty Ltd	59		9	150	22	0	5	250
Hydro Tasmania	1							1
Transend Networks				2			1	2
Powerco	1		1	2	2			6
Origin Energy								0
General Enquiries					2		1	3
Grand Total	61	0	10	154	26	6	5	262

Energy Table 4. **Closure Reasons**

Closure Reasons	2003/4	2004/5	2005/6	2006/7
Dismissed 10.1 (b) - referred to Energy Regulator	2	1	0	0
Dismissed 10.1 (c) - lacks substance	16	21	26	2
Dismissed – complaint not received in writing	82	53	21	56
Dismissed - dealt with by others	6	14	1	1
Dismissed - Other	2	1	1	3
Case Withdrawn	12	10	13	10
Complaint Resolved – Negotiated outcome	89	75	65	52
Resolved – Fair Offer	2	5	3	14
Enquiry Only	57	84	61	26
Explanation Given; No further action	89	66	43	86
Referred to Aurora	31	11	11	4
Referred to Transend	1	Nil	0	0
Referred to Powerco			1	1
Referred to Option One				1
Award Made	4	5	0	0
Referred to Court	Nil	Nil	0	0
Out of Jurisdiction	18	19	9	6
Total	411	466	255	262

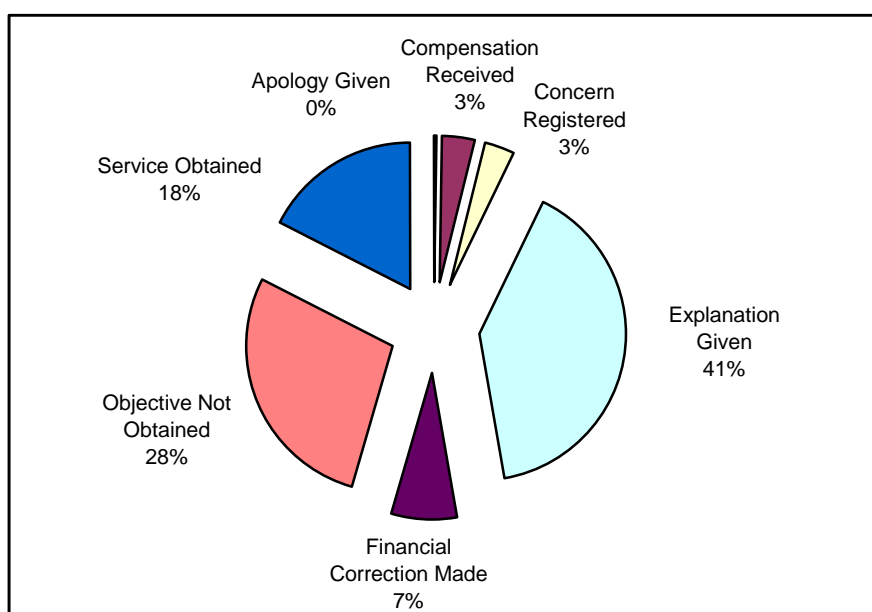
Explanation of Closure Reasons

1. **Dismissed – lacks substance:** The Ombudsman dismissed 2 complaints under this category. The major reason for dismissal is where the complainant is unable to support the argument presented in the complaint, or refute the explanation provided by the energy entity.
2. **Dismissed – complaint not received in writing:** There were 56 complaints recorded under this category. The *Energy Ombudsman Act 1998* requires a complaint to be made in writing and signed. However, the Act also provides the Ombudsman with discretion to receive a complaint that does not comply with this requirement. As a general rule, the Energy Ombudsman deals orally with any complaint that is considered urgent, or one which is considered to be easily resolvable or a relatively simple matter. In all other circumstances, the complaint is requested in writing. If a written complaint is not received within 14 days, the complainant is given a courtesy call. In many cases, the complaint has been resolved. Where a complainant indicates that providing a complaint in writing might be a problem, the Ombudsman sends out a letter detailing the issues of the complaint, for the complainant to sign and return.
3. **Dismissed – dealt with by others:** This category recorded one complaint for the reporting period. A complaint will be recorded in this category where it is resolved prior to the Ombudsman making enquiries.
4. **Dismissed – other:** There were only 3 complaints in this category. A complaint dismissed as other is only used where the reason for dismissing a complaint does not fit into any of the other closure reasons. For example, a complaint may be closed under

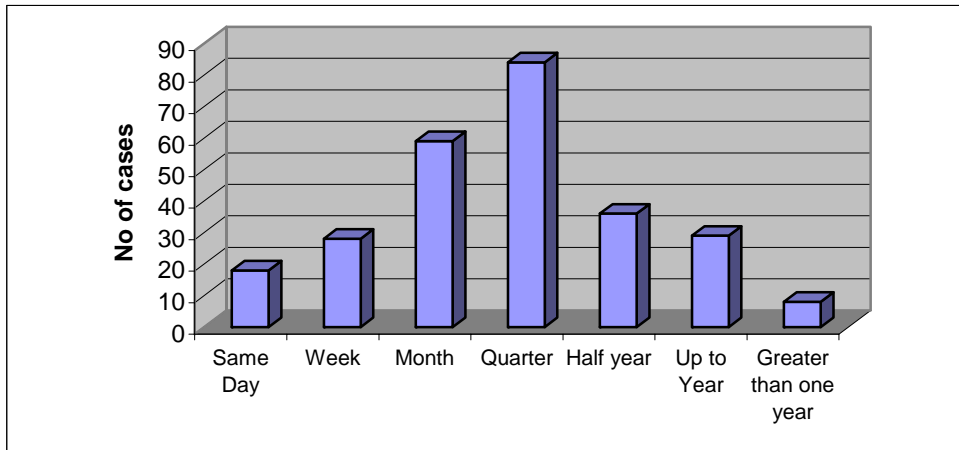
this heading if, at some point during an investigation, a complainant moves address and the investigating officer is unable to make further contact with the complainant.

5. **Case Withdrawn:** There were 10 cases withdrawn during the reporting period. A complainant may withdraw a case for a number of reasons; the problem may have resolved itself, the information provided along the way to the complainant has resulted in a change of mind about a perceived problem or the complainant just no longer wants to proceed with the complaint.
6. **Complaint Resolved:** There were 52 complaints closed as resolved for the reporting period. Some of these were negotiated outcomes with Aurora Energy and others were resolved through the investigation process.
7. **Explanation Given, no further action:** There were 86 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 – Fair Offer:** There were 14 complaints recorded in this category. A complaint is closed under this category when the entity suggests or offers a resolution that is accepted by the complainant.
9. **Out of Jurisdiction:** There were 6 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.
10. **Enquiry Only:** There were 26 matters recorded under this category. An enquiry only is where a contact is made with the office and the matter is referred, for example, to a government policy agency, the Office of Consumer Affairs or some general information is provided that in no way relates to the investigation of a complaint.

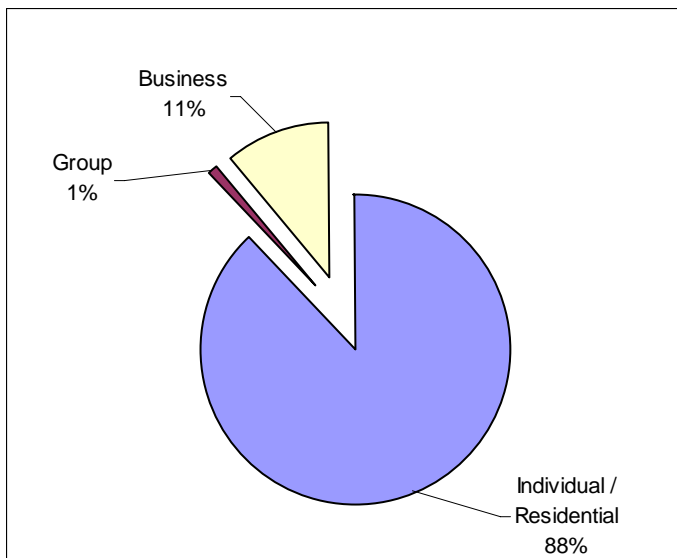
Energy Figure 1. **Complaint outcomes**



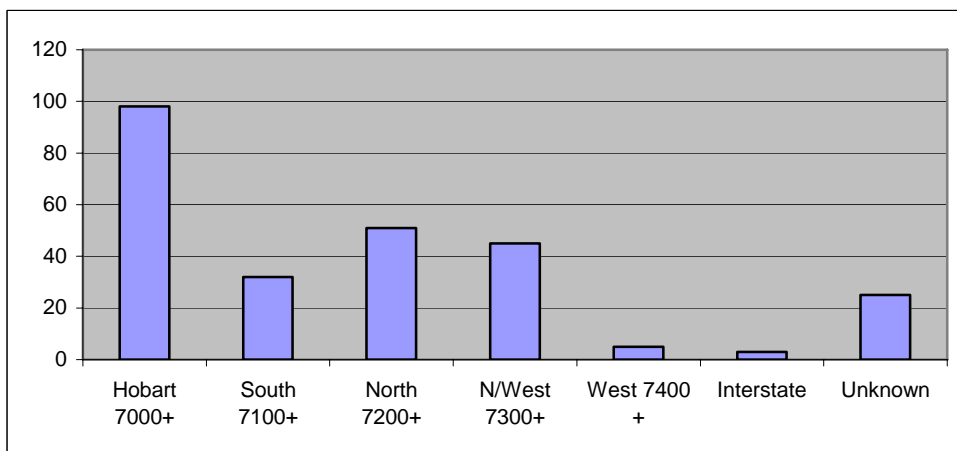
Energy Figure 2. **Time taken to finalise**



Energy Figure 3. **Nature of complainant**



Energy Figure 4. **Distribution of complaints by postcode**



Energy Table 5. Closure reasons – July 2006 to June 2007

Category	Issue	Sub issue	Primary	Secondary	Tertiary		
Billing	Arrears		1				
		Difficulty in payment	8	2			
		Disconnection	6	4			
		Error	6		1		
	Error			5	1		
		Credit		1			
		Debt transfer		2			
		Direct Debit		1			
		Disconnection					
		Easy Pay		1			
		Fees		1			
		No bill		1			
		Other		3			
		Pay As You Go		2			
		Statements		6			
		Fees			2		
			Connection		1		
	Estimated			1			
	Late fees / Interest fees			2			
	Meter checking			1	1		
	Service & Meter Charges			2			
	High						
		Difficulty in payment					
		Disputed		15	1		
		Estimated		2			
	Hydro Heat			3			
	Meter			1			
		Accuracy		4			
		Not read		1			
		Pay As You Go		7			
		Separation		2			
	Payment			1	1		
		Agents					
		Lost Payment					
		Payment Plan		2			
	Pensioner Rebate	Error		1			
		Information		5			
		None		1			
	Security deposit						
		Amount		6			
		Exemption					
Interest							
	Refund		1				
Sundry Debtor	None		2				
	Information						
Tariff			1				
	Incorrect		4				
	Information		2				
	Rate		4				
	Health Care Card Concession						
Billing Total			118	10	1		

Category	Issue	Sub issue	Primary	Secondary	Tertiary
Customer Service	Contractor	Pricing			
		Other	2		
	Failure to respond Information		1	1	
		Incorrect	1		
	Information / Consultation		3		
	Poor attitude		9	3	
	Reduced service				
Customer Service Total			16	4	
Land	Damage	Property	3		1
	Existing easement	Access			
		Use			
	Meter	Access	2		
		Cost	1	1	
		Blank			
		PAYG	1		
		Placement	2		
	New easement	Placement			
	Other				
	Provision	General Environment	2		
	Towers	Placement	1		
	Tree trimming / clearing		6	1	
Nuisance					
Land total			18	2	1
Provision	Connection		4		
		Authorisation	3		
		Capital contribution	1		
		Delay	23		
		Information	3		
		Other costs	2		
		Supply Upgrade	1		
	Disconnection		4		
		Error	3		
		Other (non bill)	4		
		Supply / defect	1		
	Poles and wires		1		
		Cost	3		
		Maintenance	4		
		Placement	11		
		Private Lines	3		
		Safety	1		
		Street Lighting			
		Timeliness	1		
Street Lighting		1			
	Repair				
Provision Total			74		

Category	Issue	Sub issue	Primary	Secondary	Tertiary
Supply	Damage		1		
		Cust Equip failure	9		
		Dist Sys Failure			
		Gen/Trans Sys Fail			
		Third Party	2		
	Outage(planned)		2		
		Duration			
	Outage(unplanned)	Notice	1		
			2		
	Quality	Duration	1		
		GSL Payments	1		
		Frequency	1		
			3		
	Variations(voltage)	4			
Supply Total			27		
Customer Service (Gas)	Information	Incorrect			
Provison (Gas)	Connection	Delay	4		
	Disconnection				
Ombudsman			1		
Out of Jurisdiction			4		
Totals			262	16	2

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 and are not inferred, embellished or watered down by the investigation officer.

Complaint Trends

Complaint numbers have fallen during this reporting year. However, billing issues have risen substantially and I expect that this trend may continue as Aurora Energy now places contact details for the Energy Ombudsman on disconnection warnings.

Overall, billing issues were again the highest issue of concern to customers throughout the reporting year, with 118, up from 90 last year. Network related issues, such as vegetation management, provision and supply issues are overall down a little from last year.

I note that delays in new connections do remain high when compared with last year. This is an issue discussed in my foreword to this report, and as indicated there I would expect a reduction in the number of complaints concerning delayed connections in future years.

Billing

Billing issues are evenly spread out across the range in this category. I note complaints stemming from arrears have dropped slightly. This may change in the future as Aurora Energy provides details for the Energy Ombudsman on disconnection notices. Complaints regarding customers disputing electricity accounts have risen over the last financial year. These complaints are often resolved through my office providing a clear explanation to the complainant on their patterns of usage and other factors that could give rise to a high account. Where necessary, I can arrange for a consultant, qualified in this area, to provide a complainant with additional details.

I continue to receive complaints regarding the requirement that a new business customer provide a security deposit before connection. I have raised my concern with Aurora Energy that, under the *Electricity Supply Industry (Tariff Customer) Regulations 1998* as currently drafted, it should take into account the customer's history of paying domestic electricity accounts when determining if a security bond should apply. I am aware that the Regulations may be amended in the future so that they deal differently with this issue.

Provision

Overall complaints about provision were down on the last reporting year. However, complaints regarding a delay in the connection of new electricity supply (23) were up on the 2005/06 reporting year. As noted above, I do expect an improvement in this area and I will continue to monitor new connection complaints over the 2007/08 financial year.

Poles and Wires: Complaints in this area are down. In particular, I have only received 3 complaints relating to private infrastructure, down from 12 last year.

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.

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 are down, particularly complaints regarding access to meters.